COMMERCE COUNCIL MEETING PACKET

Tuesday, April 18, 2006
8:00 – 10:00 a.m.
Room 404 – HOB

Allan G. Bense
Speaker

Frank Farkas
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Commerce Council

Start Date and Time:	Tuesday, April 18, 2006 08:00 am
End Date and Time:	Tuesday, April 18, 2006 10:00 am
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 217 CS Sinkhole Insurance by Legg
HB 247 CS Beverage Law by Bogdanoff
HB 431 CS Electric Transmission and Distribution by Littlefield
HB 561 CS Offenses Involving Insurance by Rivera
HB 1009 Real Estate Profession Regulation by Cretul
HB 1079 CS Exemption from the Tax on Sales, Use, and Other Transactions by Altman
HB 1329 CS Filing Insurer Information Electronically by Grant
HB 7153 Financial Entities and Transactions by Economic Development, Trade & Banking Committee
HB 7237 Public Service Commission by Utilities & Telecommunications Committee
HB 1143 CS Economic Development Incentives by McInvale
HB 7157 Fraudulent Use or Possession of Identifying Information by Economic Development, Trade & Banking Committee
HB 1467 CS (IF RECEIVED) -- Capital Formation by Grant
HB 1469 CS (IF RECEIVED) -- Public Records by Grant

Pursuant to Rule 7.22(c), amendments by non-appointed members must be filed by 5:00 p.m., Monday, April 17, 2006.

The Chair requests that members of the committee file amendments by 5:00 p.m., Monday, April 17, 2006.

NOTICE FINALIZED on 04/14/2006 15:53 by GLATFELTER.SUKIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 217 CS Sinkhole Insurance
SPONSOR(S): Legg and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 1 N, w/CS	Tinney	Cooper
2) State Administration Appropriations Committee	10 Y, 0 N, w/CS	Rayman	Belcher
3) Commerce Council		Tinney	Randle
4)			
5)			

SUMMARY ANALYSIS

In the United States, damage to the ground under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance. Since 1981, in Florida, insurers offering property coverage have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures and for stabilizing the ground beneath covered structures. Florida has more sinkholes than any other state in the nation.

Sinkholes are a naturally occurring phenomenon as rain and groundwater flow through the top layer of soil into the limestone and dolomite layers that underlay most of Florida. Florida's aquifers, the primary source for fresh water in the state, are located beneath the layer of limestone, i.e., the karst.

While sinkholes occur naturally, meaning some likely would occur in the state even if Florida were uninhabited, sinkholes occur more frequently due to human interaction with the state's natural environment. The counties in the west central portion of the state, i.e., the Tampa Bay area, are particularly prone to sinkhole formation and collapse because the limestone in that area is closer to the surface, thus making the rock layer beneath the surface there more vulnerable to erosion.

The bill amends the laws governing property insurance claims relating to sinkhole damage. A written report of findings and recommendations for repair and stabilization of the affected property, including specific requirements for the type of information to be included in the report, are required by the bill.

The bill establishes an alternative process for resolving sinkhole disputes between a policyholder and his or her insurer. The dispute resolution process established by the bill is called a "neutral evaluation." The Department of Financial Services (DFS) is directed to adopt rules to implement the neutral evaluation process. Information introduced during the course of the neutral evaluation is not admissible in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees. The bill directs the neutral evaluator to issue a non-binding report at the conclusion of the hearing. The report will indicate whether a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information regarding appropriate methods for stabilizing the land and affected structures, including the associated costs. A policyholder may seek further redress for the disputed claim in court; however, an insurer may not be liable for the policyholder's attorney fees or extra contractual damages under the bill. The bill requires the Office of Insurance Regulation (OIR) to calculate a presumed factor to reflect the impact of the changes made to rates filed by insurers who provide sinkhole loss coverage.

Both DFS and OIR report they will incur costs to implement the bill. As a result, the sum of $125,808 is appropriated to DFS for implementing the neutral evaluation hearing process. These funds, appropriated in FY 2006-07, from the Insurance Regulatory Trust Fund, include authorization for DFS to hire 2 FTEs to administer the neutral evaluation process and to print information pamphlets for use by policyholders and insurers regarding neutral evaluation. In addition, the bill appropriates $250,000 to OIR from the same trust fund for use in determining the impact of the bill on residential property insurance rates. This means a total of $375,808 is appropriated to implement the bill.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill grants rulemaking authority to the Department of Financial Services (DFS) relating to the neutral evaluation process established by the bill as an alternative to a court hearing.

Promote Personal Responsibility: The bill eliminates the statutory ability of a policyholder to recoup attorney fees and extra contractual damages relating to a sinkhole claim if the policyholder refuses to participate in the neutral evaluation process or if the policyholder declines to resolve his or her sinkhole claim as recommended by the neutral evaluator.

B. EFFECT OF PROPOSED CHANGES:

Background

A sinkhole is defined in Florida law as a landform created by soil, sediment, and rock subsiding or sinking as underlying layers are dissolved or weakened by groundwater.[1] A sinkhole may form either by the ground collapsing on itself to form a hole or by the ground settling to form a crater or indentation in the soil.

In the U.S., damage to the land under a structure covered by insurance, such as damage from an earthquake, generally is not covered by homeowners' insurance, although coverage for damage from movement of the earth may be purchased as a separate endorsement (or rider) or through a public insurer such as the California Earthquake Authority.[2] Since 1981, in Florida, insurers offering property coverage to homeowners have been required by law to provide coverage for damage resulting from sinkholes, both to covered structures and for stabilizing the ground beneath covered structures.[3]

Karst: A Unique Feature of Florida's Geology

Most of Florida is underlain by porous limestone; this underlying layer of limestone, along with the other materials, has resulted in a "karstic" topography. "Karst" is a word used to describe the landforms, or physical features, of the limestone underlying the state and the natural systems draining through the limestone into subsurface aquifers. Familiar forms of drainage systems include streams, rivers, and lakes which cross the land and eventually drain into an ocean, although these are not the most common natural drainage systems in Florida.[4]

Rather than lakes, rivers, and streams, karst terrains such as that present in Florida, are more typified by underground drainage systems consisting primarily of sinkholes, swallets, springs, caves, disappearing streams and underground drainage channels.[5] These underground drainage channels, along with the limestone and sand filters above them, all carry water into the Floridan aquifer and other aquifers. Florida's natural aquifer system supplies 95 percent of the drinking water in the state.[6]

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[1] Section 627.706, F.S., 2005.
[2] Insurance Information Institute; "Earthquakes: Risk and Insurance Issues," available at http://www.iii.org/media/hottopics/insurance/earthquake/?printerfriendly=yes, viewed January 18, 2006.
[3] Section 2, chapter 81-280, Laws of Florida (LOF).
[4] Florida Geological Survey, Department of Environmental Protection, *Karst in Florida*, Publication 29, by Ed Lane, available at http://fulltext.fcla.edu/cgi/t/text/text-idx?c=feol;cc=feol;sid=4eb76fb3d085a4a762e338980b51007f;rgn=main;view=text;idno=UF00000145;node=UF00000145%3A1;a=41; p. 2, viewed January 21, 2006.
[5] *Id.*
[6] University of Florida; Institute of Food and Agricultural Sciences (IFAS); *Plant Management in Florida's Waters: Sinkholes*; available at http://aquat1.ifas.ufl.edu/guide/sinkholes.html, viewed January 22, 2006.

Generally, the karst system under the Florida peninsula is several hundred feet thick in the northern part of the state and more than 3,000 feet thick under southern parts of the state.[7]

A karstic topography is a specific landform that develops on rock types, such as limestone and, to a lesser extent, dolomite, that are readily dissolved by water.[8] In addition to Florida and many other parts of the United States, part of Ireland also exists primarily on a karst under layer, as do the caves at the Mammoth Cave National Park near Bowling Green, KY, and the Greek Islands, along with many other parts of the world.[9]

Sinkhole Formation

Karst is a generic term which refers to the characteristic terrain produced by erosion associated with the mechanical and chemical weathering and dissolution of limestone or dolostone, the two most common carbonate rocks in Florida. Florida has more sinkholes than any other state in the nation.[10]

Erosion begins when the limestone is exposed to acidic water. Most rainwater is slightly acidic and usually becomes more acidic as it moves through decaying plant debris.[11] As acidic water passes through the subsurface rock layers, it wears away or erodes the limestone, thus gradually thinning and weakening the competent rock layers. This desolution, drainage and filtering of groundwater through the rock is a naturally-occurring process, even if humans do not intervene.[12]

The water level of the aquifers rise and fall naturally in response to groundwater levels reflecting seasonal rainfall fluctuations. The groundwater pressure provides hydrostatic support to near-surface rock layers, including sinkhole plugs and subsurface caves filled with water. This changing support may result in rock and sediment movement responding to the groundwater pressure head changes. When the water table is lower than average, the limestone layer generally receives less support, thus increasing the opportunity for the ground layer to sink to form either a hole or an indentation in the top layer of ground, i.e., a sinkhole.[13]

Changes to the surface of the land in the state, such as through urbanization and development, also can affect the likelihood of a sinkhole forming. As more land is developed for homes and other buildings and structures, land is cleared and natural drainage systems for rain and other groundwater are altered.[14]

Areas that have been cleared and developed generally reduce the topsoil and overburden, i.e., surface sediments, on top of the subsurface rock aquifer layers. This means there is less ground to filter water before it reaches the limestone, thus potentially increasing the acidity of the water as it reaches the limestone under layer. Acidity in the water helps dissolve limestone more quickly than water that reaches the subsurface through a thicker layer of topsoil and overburden.[15]

This impact to natural drainage systems is further exacerbated by the increased demand for water for human use and changes in the local watershed run-off characteristics. Further, as water is withdrawn from the aquifer, the stone layer resting on the aquifer loses groundwater hydrostatic support from the bottom at the same time topsoil and overburden is disturbed on top of the land. Thus, sinkhole

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[7] University of South Florida; Karst Research Group; *Florida Karst I: Hydrogeologic Framework of the Floridan Aquifer*, available at http://uweb.cas.usf.edu/~vacher/FloridaKarst/FloridaKarstI.htm, viewed January 22, 2006.
[8] Definition found on the website of the Geological Survey of Ireland, available at http://www.gsi.ie/workgsi/groundwater/karstbook/01-what-is.htm, viewed January 20, 2006.
[9] *Id.*
[10] *See supra*, note 6.
[11] Florida Geological Survey, Department of Environmental Protection, available at http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm, viewed January 21, 2006.
[12] *Id.*
[13] *See supra*, note 6
[14] *Id.*
[15] *Id.*

formation is increased in Florida due to growing population, associated infrastructure and buildings, and the impacts these factors have on the natural aquifer units.[16]

On the surface, sinkholes may develop progressively as subtle, bowl-shaped depressions, or they may collapse suddenly into steeply sided craters, some of which may fill with water. The shape of the sinkhole, and the speed with which it forms, depend on how the sinkhole formed, the size of the underground cavity, and the thickness and material of the overburden (rock, sediments and soils resting on or within the limestone bedrock).[17]

Increase in Sinkhole Appearance in Florida

Sinkhole formation is aggravated and accelerated by urbanization. Development increases water usage, alters drainage pathways, adds weight to the ground surface, and redistributes soil. According to the Federal Emergency Management Agency (FEMA), the number of human-induced sinkholes has doubled since 1930. Similarly, insurance claims from Florida homeowners for damages resulting from sinkholes have increased dramatically both in number and costs over the past 20 years.[18]

Although a sinkhole can form without warning, specific signs can signal potential development. Some potential indications of the presence of a sinkhole include:

- Slumping or falling fence posts, trees, or foundations;
- Sudden formation of small ponds or loss of water from same;
- Sudden appearance of a crater or hole;
- Wilting vegetation;
- Discolored well water;
- Structural cracks in ceiling, walls, and floors.[19]

Sinkholes in Tampa Bay

The seven counties comprising the Tampa Bay area of the state include Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. The major cities in the seven-county area include the communities of Tampa, St. Petersburg, Clearwater; Lakeland; and Sarasota-Bradenton.[20]

The karstic layer in west-central Florida, i.e., the Tampa Bay area, has unique features when compared to the karst in other parts of the state. Part of the soil that overlays the karst in the Tampa Bay area is more resistant to water filtering through it because the ground in that part of the state has a larger percentage of clay and other less permeable materials. As a result, the karst in west-central Florida has a mottled or mantled appearance.[21] The mottling occurs as water filtering through the karst seeks the easiest path for passing through to the underlying aquifer.

One result of the mantled karst of the Tampa Bay area is the designation of several areas as "lake districts." Many of the lakes in the region were created when the surface of the ground collapsed into the buried karst. These collapses, or indentions later filled with water, thus forming the lakes in the west-central portion of the state.[22]

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[16] *Id.*
[17] *Sinkholes, West-Central Florida: A Link Between Surface Water and Ground Water*, excerpt from USGS Circular 1182. USGS Circular 1182 is entitled *Land Subsidence in the United States* by Galloway, Jones, and Ingebritsen, 1999.
[18] *See supra*, note 6.
[19] *Id.*
[20] Tampa Bay Partnership, homepage, available at http://www.tampabay.org/, viewed January 18, 2006.
[21] *See supra*, note 17, at 124.
[22] *Id.*

The Florida Geological Survey and the Florida Sinkhole Database

The Florida Geological Survey (the Survey) within the Department of Environmental Protection is the state agency responsible for identifying, tracking, and investigating mines, minerals, sinkholes, the water supply, and other natural resources in the state. The State Geologist, a registered professional geologist, is designated as the head of the Survey.[23]

The Survey investigates calls from the state's Emergency Operations Center, a part of the Department of Community Affairs. The Emergency Operations Center serves a clearinghouse for emergency situations of all types, including sinkhole activity, throughout the state. In addition, staff of the Survey responds to requests for information and assistance from the public, state and federal agencies, and consultants regarding sinkhole development or potential for development.

There is currently no single state agency in Florida with responsibility and authority for sinkhole inspections, although the Survey maintains a database of reported sinkholes. The database is available through the website of the Department of Environmental Protection, along with a form to be used to report suspected new sinkholes. The Survey reports that it lacks sufficient staff to visit all new sinkholes, although some of the state's water management districts have staff available to check local sinkholes, particularly if they contain water.[24]

The sinkhole database maintained by the Survey dates to the early 1950s, but it contains only those sinkholes officially reported by observers. As a result, the Survey notes the sinkholes reported and included in the database tend to cluster in populated areas where they are readily seen and commonly affect roads and dwellings. However, numerous sinkholes also occur in more remote and less populated areas, many of which go unseen and unreported. As a result, sinkholes that formed earlier than the 1950s may still be unrecorded in the database.[25]

2005 Joint Select Committee on Hurricane Insurance

On January 5, 2005, Senate President Tom Lee and House Speaker Allan Bense appointed the Joint Select Committee on Hurricane Insurance. The Joint Select Committee was directed to study all aspects of the property insurance market that promote the availability and affordability of coverage and to make recommendations to stabilize the insurance market in Florida for commercial and residential property.

As part of its investigation and information gathering, members of the Joint Select Committee heard both from insurers and representatives of Citizens Property Insurance Corporation (Citizens) regarding the problem of sinkholes. Testimony to the Joint Select Committee revealed that in the Tampa Bay area, private insurers are non-renewing policies and declining to write new policies due to exposure to sinkhole claims. As a result, many homeowners in this area have been forced to obtain coverage from Citizens.

Citizens reported to the Joint Select Committee that since 2001, the number of homeowner policies in the Tampa Bay area has dramatically increased when compared to policies in force for the Tampa Bay area at the end of 2000. Citizens acknowledged that it has seen large increases in homeowner policies in Dade, Broward, and Palm Beach counties during the same period, but the increases in the Tampa Bay area are larger than the increases in south Florida or any other region of the state.

Among the issues highlighted for the Joint Select Committee were the cost to insure against sinkhole-related losses and the increasing costs to remedy damage caused to insured property by sinkholes. Both Citizens and private insurers testified to the Joint Select Committee that the costs associated with

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[23] Section 377.075, F.S.
[24] Florida Geological Survey; Department of Environmental Protection; *Sinkholes: Frequently Asked Questions*, available at http://www.dep.state.fl.us/geology/feedback/faq.htm#9, viewed January 22, 2006.
[25] *Id.*

sinkholes and property insurance adversely impact both the availability and affordability of homeowner insurance.

Insurers testifying before the Joint Select Committee also indicated a concern about the best method for remediation of sinkhole damage; how to prove property damage results from a sinkhole rather than from ground settling, soil type, or other geological occurrence; and the responsibility to pay the costs for sinkhole testing and remediation, among other related considerations.

Identifying Sinkholes and Repairing Sinkhole Damage

Several geology and engineering firms in the state routinely survey properties reported to insurers for sinkhole claims. The firms perform several types of tests, including sampling soils, photographing damage and features of interest, boring into affected soil and house foundations, among several other tests.

There are also engineering firms who repair foundations and other structures damaged by sinkholes. Methods of repair vary from the simple injection of grout into the hole to more advanced systems of engineered reinforced plugs, pins, and porous concrete. In general, if a repair has been certified by a licensed engineer, and completed to the satisfaction of the homeowner's insurance company, it likely will be safe for the near term. However, as a sinkhole is a natural geological phenomenon, there is no guarantee that a repaired sinkhole will not recur or cause future problems.[26]

2005 Legislative Changes to Laws Governing Sinkhole Insurance

Last year, the Legislature enacted several changes to laws governing property insurance in Florida in an attempt to stabilize the market for residential and commercial property. Many of the changes enacted in 2005 may be found in chapter 2005-111, Laws of Florida, including changes to the laws governing coverage for sinkholes in homeowners' policies.

The major changes enacted in 2005 regarding sinkhole coverage in property insurance policies include:

- Changed definitions for terms used in sinkhole claims;[27]
- Created an inspection, investigation, and testing process for evaluation of sinkhole claims by insurers;[28]
- Required sinkhole claims to be recorded with the property appraiser and disclosed to subsequent purchasers of property affected by sinkholes;[29] and
- Created law recognizing the sinkhole database of the Florida Geological Survey and designated it as the official statewide database of sinkholes, including the expansion and maintenance of the database.[30]

Current Law and Changes Proposed by the Bill

Several sections of current law govern the requirements for property insurance policies regarding coverage for sinkholes.[31] Definitions relating to sinkhole coverage include such terms as "sinkhole," "sinkhole loss," "sinkhole activity," "engineer," and "professional geologist".[32] None of the definitions is changed or amended by the bill, although references to engineers throughout the laws governing sinkhole claims are changed to refer to a "professional engineer." The bill does not amend law

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[26] Florida Geological Survey, Department of Environmental Protection, available at http://www.dep.state.fl.us/geology/feedback/faq.htm, viewed January 21, 2006.
[27] Section 17, chapter 2005-111, L.O.F.
[28] Sections 19, 20, and 21, chapter 2005-111, L.O.F.
[29] Section 21, chapter 2005-111, L.O.F.
[30] Section 18, chapter 2005-111, L.O.F.
[31] *See* sections 627.706, 627.7061, 627.7065, 627.707, 627.7072, 627.7073, and 627.7077, F.S., 2005.
[32] Section 627.706, F.S., 2005.

governing the requirement for homeowners' policies to provide sinkhole coverage or the law governing the database of sinkhole information.

Under current law, every insurer authorized to offer residential or commercial property insurance must make sinkhole coverage available to policyholders.[33] Current law requires insurers to make an initial inspection of the sinkhole claim once the claim is filed with the insurer.[34] If structural damage is discovered in the initial inspection, then the insurer must obtain a written report from an engineer or professional geologist that the cause of the damage is not sinkhole activity in order to deny the claim.[35]

Insurers are not allowed to nonrenew property insurance policies on the basis that a sinkhole claim was filed by the policyholder as long as the claim payment is less than policy limits and the policyholder has repaired the structure.[36] The bill does not change current law regarding coverage for sinkhole claims or nonrenewal of property insurance policies as a result of a sinkhole claim.

Under current law, sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation, as well as repairs to the structure, up to the limits of the policy.[37] It allows an insurer to deny a sinkhole claim if the insurer or its adjuster determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.[38] If an insurer cannot determine the cause of the loss or if the policyholder demands testing, the insurer must engage a professional engineer or a professional geologist to conduct testing.[39]

The bill amends s. 627.706, F.S., to require residential property insurers to include in homeowners' policies specific deductibles applicable only to coverage for sinkhole losses. Under the bill, an insurer must offer a 1 percent deductible for sinkhole losses, along with a deductible of 2 percent, 5 percent, and 10 percent of the policy dwelling limits. An insurer also must offer a premium discount for each deductible amount applicable to sinkhole losses.

An insurer may limit any payment for a sinkhole loss to the actual cash value of the loss up to the point a policyholder enters a contract for stabilizing the affected building or for repairing the foundation.[40] However, once a homeowner enters a contract for building stabilization or repairs to the foundation of a covered structure, the insurer is required by law to pay the amounts incurred for repair and stabilization. The law prohibits an insurer from requiring its policyholder to advance payment for such repairs.

The bill amends s. 627.707, F.S., to specify that an insurer is not liable up to policy limits for repair and stabilization under a policy that insures two or more buildings, structures, mobile homes, or manufactured buildings. This exception applies in cases when a blanket policy insures multiple structures, buildings, or mobile homes.

The bill further amends s. 627.707, F.S., relating to the standards for investigation of sinkhole claims by insurers. Under the bill, an insurer may pay a contractor or other person designated by the policyholder to perform the land, building, and foundation repairs directly for such repairs. The decision by the insurer to make direct payment to such persons does not make the insurer liable for the work performed.

The bill creates 627.7071, F.S., to specify legislative intent in requiring the following process to be used when a sinkhole claim is filed:

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[33] Section 627.706(1), F.S., 2005.
[34] Section 627.707, F.S., 2005.
[35] *Id.*
[36] Section 627.707(8), F.S., 2005.
[37] Section 627.707(4) and (5), F.S., 2005.
[38] Section 627.707(3), F.S., 2005.
[39] Section 627.707(3), (4), (5), (6), and (7), F.S., 2005.
[40] Section 627.707(5)(b), F.S., 2005.

(1) the insurer shall inspect the claim;
(2) If the insurer is unable to determine a valid cause of the damage, or discovers damage consistent with a sinkhole loss, or if demanded by the policyholder, the insurer shall engage in testing prescribed by s. 627.7072;
(3) If the policyholder and the insurer are unable to agree on the cause of the damage or other aspects of the sinkhole claim, the policyholder and the insurer may take part in neutral evaluation under s. 627.7074.

Currently, s. 627.7072, F.S., requires sinkhole testing to be conducted in compliance with the standards of the Florida Geological Survey. The law presently requires a geologist or engineer who conducts a sinkhole study to issue a report and certification as to the cause of the loss. If a sinkhole loss is verified, the report on the sinkhole is required to include recommendations for stabilizing the land and building and for repairing the foundation.

The bill amends the law to delete the requirement for testing by the geologist be conducted in compliance with the Florida Geological Survey Special Publication No. 57. Rather, the bill requires the person who completes the tests, i.e., a professional geologist or professional engineer, to submit a written report of his or her findings to the insurer and policyholder.

Under current law in s. 627.7073, F.S., after completion of the tests to determine the presence of a sinkhole, the engineer or geologist is required to submit a written report of his or her findings to the insurer. Current law specifies the content of the report, regardless of whether the professional geologist or professional engineer determines the damage to the structure is due to a sinkhole or other phenomenon.

The bill amends the current law specifying the information to be submitted to the insurer following testing to determine whether a sinkhole exists under the damaged structure. Under the bill, the final report from the professional geologist or professional engineer, including findings, opinions, and recommendations, is considered conclusive unless contrary findings and recommendations are proven by preponderance of evidence.

The bill creates s. 627.7074, F.S., to provide an alternative process for resolving disputes between a policyholder and his or her insurer relating to sinkhole claims. The dispute resolution process established by the bill is called a "neutral evaluation". The bill directs DFS to adopt rules to implement the neutral evaluation process. The neutral evaluation process created by the bill supersedes the alternative dispute process established by s. 627.7015, F.S. The bill also directs DFS to certify and maintain a list of neutral evaluators to moderate the dispute process.

The bill requires insurers to notify a policyholder of his or her right to a hearing under the neutral evaluation process. DFS is directed by the bill to prepare a consumer pamphlet describing the neutral evaluation process. The pamphlet, along with directions and applications, will be distributed to affected policyholders by their respective insurers. The bill specifies that the hearing process should be informal and that formal rules of evidence need not apply. Neither party is required to attend the hearing if a representative is designated to attend in place of either party.

The bill specifies that a professional engineer or professional geologist may act as a neutral evaluator. However, the bill requires such persons to complete a course in alternative dispute resolution that DFS has approved before serving as a neutral evaluator.

Under the bill, neutral evaluation is optional and nonbinding; either the policyholder or the insurer may refuse to participate. Participation in neutral evaluation will toll the time period for filing suit related to the sinkhole claim for 60 days following the conclusion of the neutral evaluation. Similarly, participation in a neutral evaluation will stay any active legal actions relating to the sinkhole claim. Insurers are required by the bill to pay the costs associated with a neutral evaluation.

The bill requires a neutral evaluation to be held within 45 days after DFS receives the request for a hearing. Neutral evaluation hearings may be conducted by telephone, if possible and convenient. The bill authorizes appropriate staff of DFS to assist policyholders who participate in the hearing without being represented by an attorney. Information introduced during the course of the neutral evaluation is not admissible under the bill in subsequent legal actions relating to the sinkhole claim, except when a judge is determining the award of attorney fees.

The bill directs the neutral evaluator to issue a report at the conclusion of the neutral evaluation hearing. The report will indicate whether the evaluator believes a loss is attributable to a sinkhole or other phenomenon. If a sinkhole loss is verified, the report must include information relating to the appropriate methods for stabilizing the land and affected structures, including the estimated costs associated with sinkhole remediation. The bill requires the neutral evaluator to send a copy of the final report to DFS and to all parties participating in the neutral evaluation.

The bill states that the report and recommendations of the neutral evaluator are not binding on the participants in the hearing. This means either the insurer or the policyholder may seek further redress for the disputed claim in court. However, if the policyholder either refuses to participate in neutral evaluation or to resolve the claim as recommended by the neutral evaluator, the insurer will not be liable for the policyholder's attorneys' fees in subsequent legal actions relating to the sinkhole claim. Similarly, if a policyholder refuses to participate in a neutral evaluation, his or her insurer is not liable for extra contractual damages in a legal proceeding relating to the sinkhole claim.

The bill authorizes a party to neutral evaluation to seek judicial review of the recommendations resulting from the neutral evaluation to determine whether the recommendations are reasonable. The bill specifies that a court must find the recommendations to be reasonable unless they were procured by fraud, corruption, or other undue means. Similarly, if the court determines the neutral evaluator was clearly partial to one or the other party, or if misconduct occurred during the neutral evaluation hearing, then the court is authorized by the bill to vacate the recommendations of the neutral evaluator.

The bill requires the Office of Insurance Regulation to calculate a certain presumed factor on residential property insurance rates by February 1, 2007. Similarly, the bill provides requirements and procedures to be used in determining the factor; requires OIR to notify residential property insurers of the factor once it is determined; requires insurers to include the rate factor in rate filings made after May 1, 2007; and provides appropriations and authorizes additional positions and salary rates to implement the bill.

C. SECTION DIRECTORY:

Section 1. Names the act the "Sinkhole Insurance Relief Act".

Section 2. Amends s. 627.706, F.S., regarding sinkhole insurance and definitions applicable to sinkhole coverage.

Section 3. Amends s. 627.707, F.S., relating to the standards for investigating sinkhole claims by insurers.

Section 4. Creates s. 627.7071, F.S., to outline the process insurers should use in investigating sinkhole claims.

Section 5. Amends s. 627.7072, F.S., relating to testing standards for determining whether a sinkhole exists.

Section 6. Amends s. 627.7073, F.S., which specifies the information to be included in a sinkhole report.

Section 7. Creates s. 627.7074, F.S., to establish an alternative hearing process, a "neutral evaluation," to resolve disputed sinkhole insurance claims.

Section 8. Requires the Office of Insurance Regulation to calculate a presumed factor on residential property insurance rates; provides requirements and procedures for determining such calculation; requires OIR to notify residential property insurers of the rate factor; and requires insurers to include the presumed factor in specified rate filings.

Section 9. Provides appropriations and authorizes full-time positions and salary rate to DFS for implementing the bill.

Section 10. Provides an effective date for the bill of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 2006–07	FY 2007-08
1. Revenues:		
None.		
2. Expenditures:		
Recurring		
Salaries and Benefits (2 FTE) (Salary rate 59,435)	$ 93,044	$ 93,044
Expenses	21,492	21,492
Human Resources Services	786	786
Total – recurring	$ 115,322	$ 115,322
Non-Recurring		
Expenses	$ 256,686	
Operating Capital Outlay	3,800	
Total – non-recurring	$ 260,486	
Total Expenditures:		
Insurance Regulatory Trust Fund	$ 375,808	$ 115,322

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The House Insurance Committee requested information from three private insurers, State Farm, Allstate, and First Floridian (Travelers) for historical data relating to sinkhole claims as part of the bill analysis. First Floridian did not provide the requested information. State Farm and Allstate indicated their respective experience in Florida with sinkhole claims is comparable to the information provided by Citizens (see Fiscal Comments section of analysis).

Under the bill, insurers are required to pay the costs associated with a neutral evaluation hearing. The associated costs likely will include expenses for the neutral evaluator, costs for teleconference facilities, room rental if a hearing is not held in Tallahassee, and other similar expenses. The costs for such hearings are not quantifiable, however, as the number of evaluators and hearings is not known. Under the bill, DFS is required to adopt rules of procedure for the neutral evaluation process.

D. FISCAL COMMENTS:

The Department of Financial Services (DFS) is directed by the bill to administer the neutral evaluation process established by the bill. This will include:

- proposing and adopting rules to implement the alternative method for settling sinkhole disputes between insurers and policyholders;
- selecting a pool of professional geologists and professional engineers to serve as neutral evaluators;
- preparing a consumer pamphlet explaining the neutral evaluation program, including applications and other forms; and
- providing staff assistance to consumers who participate in a neutral evaluation without the benefit of legal representation.

DFS estimates a total first-year cost of $125,808 for the 2 FTE employees and the printing costs for consumer information pamphlets. A Management Analyst I would implement and manage the neutral evaluation process, including selecting mediators and scheduling hearings. The costs associated with this position include rate for $27,379, salary and benefits of $42,861; expenses of $9,746; human resources services of $393; and non-recurring start-up costs of $5,243. The total cost for the Management Analyst I is $58,243.

DFS also recommends a Consumer Affairs Specialist serve as liaison for consumers who participate in neutral evaluation without the benefit of an attorney. The costs associated with the position include rate for $32,056, salary and benefits of $50,183; expenses of $9,746; human resources services of $393; and non-recurring start-up costs of $5,243. The total cost for the Consumer Affairs Specialist is $65,565.[41]

DFS is required to prepare a consumer information pamphlet for consumers regarding neutral evaluation and alternative dispute resolution for sinkholes. The cost to the Division of Consumer Services will be approximately $2,000 for a tri-fold brochure. This amount will include 4,000 brochures printed in English, 1,000 brochures in Spanish, and 250 in Creole. This would be a recurring expense.[42]

The Office of Insurance Regulation estimates a one-time cost for determining the impact to residential property insurers for implementing the provisions of the bill. Based upon the costs for determining a presumed factor several years ago, OIR estimates an expense of $250,000 to determine the presumed factor. The bill appropriates $250,000 to OIR for FY 2006-07 from the Insurance Regulatory Trust Fund as a non-recurring expense.

At the end of 2005, Citizens Property Insurance Corporation, the state's insurer-of-last-resort for residential and commercial property, had 149,087 homeowner/personal lines policies in place for the Tampa Bay area. For Citizens, the Tampa Bay area includes five counties: Citrus, Hernando, Hillsborough, Pasco, and Pinellas. The chart which follows shows the increase in policies for this area for the past 4 years.[43]

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[41] Legislative Bill Analysis from DFS dated January 23, 2006 (amended).
[42] *Id.*
[43] Information provided by Citizens Property Insurance Corporation, dated 1/23/06, on file with House Insurance Committee.

Personal Lines Account - Policies in Force

Calendar Year	2002	2003	2004	2005
CITRUS	98	1,052	2,228	3,187
HERNANDO	983	7,378	11,367	13,536
HILLSBOROUGH	2,049	20,959	32,328	26,303
PASCO	4,237	25,034	37,772	40,580
PINELLAS	11,283	41,686	58,719	65,481
Total - Five Counties	18,650	96,109	142,414	149,087

Citizens attributes much of the growth in homeowner/personal lines policies for the Tampa Bay area to the growth in the number of sinkhole claims annually in that part of the state, along with the increasing cost to adjust, investigate, and settle those claims. The number of policies is growing in Tampa Bay because private insurers are more reluctant to underwrite sinkhole losses in Florida and the Tampa Bay area has experienced a higher number of sinkhole claims than other areas of the state.[44]

The chart which follows shows the total number of sinkhole claims received by Citizens from 2002-05 for its North Gulf Coast region of the state; this region includes Hernando, Hillsborough, Pasco, and Pinellas counties, four of the five counties considered by Citizens to be in the Tampa Bay area.[45]

Region	Calendar Year	Claims Filed	Net Incurred Loss	Net Incurred LAE	Total	Average Cost per Claim
North Gulf Coast (Hernando, Hillsborough, Pasco, Pinellas; does not include Citrus)	**2002**	9	$243,050	$43,449	$286,499	$31,833
	2003	277	$7,270,071	$1,329,142	8,599,213	31,044
	2004	753	$32,535,607	$6,618,285	35,153,892	46,685
	2005	582	$53,216,349	$10,211,601	63,427,950	108,983
		1,621	**$93,265,077**	**$18,202,478**	**$111,465,555**	**N/A**

The *Net Incurred Loss* column in the chart above includes the total costs to Citizens to settle the claims, i.e., payments to policyholders for repairs and stabilization. The *Net Incurred Loss Adjustment Expense (LAE)* column shows the costs associated with adjusting the claims for that region. The LAE, which is not part of the Net Incurred Loss column, includes the cost for investigating a claim; hiring geologists and engineers to determine whether a sinkhole exists; stabilizing a home and foundation after verifying the cause for the damage is a sinkhole; and other incidental and legal expenses. The two columns added together represent the total payment for each claim.[46]

To the degree the bill causes a decrease in sinkhole claims, Citizens and other property insurers in the state may save costs associated with investigating, adjusting, and settling such claims. However, the magnitude and impact of the bill is not quantifiable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

[44] *Id.*
[45] *Id.*
[46] *See supra*, note 43.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the Department of Financial Services (DFS) to implement the neutral evaluation process established by the bill as an alternative to a court hearing. Additional rulemaking authority is granted to DFS for the creation and maintenance of a list of professional geologists and professional engineers with experience in determining whether structural damage is due to the presence of a sinkhole or other natural occurrence.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 26, 2006, meeting, the House Insurance Committee adopted a strike-all amendment to HB 217. The major changes to the original bill include the following:

- Directs insurers to select a professional geologist or professional engineer for sinkhole investigations from a list of such professionals maintained by the Department of Financial Services.
- Requires written approval of policyholder before an insurer makes direct payment to the repair person for stabilization and foundation repairs made to an insured structure.
- Clarifies that direct payment by an insurer for stabilization or repair work must be made within 30 days after completion of repairs unless a contract specifies payment to be made within a different time period, but not sooner than 15 days after repairs are completed.
- Decreases, from $2,500 to $1,000, the potential cost to a policyholder for requesting Phase II testing related to a sinkhole claim.
- Maintains, rather than amends, current law regarding the standards to be used by an engineer in testing to determine the presence of a sinkhole, i.e., the standards and tests included in Florida Geological Survey Publication #57 (2005).
- Creates law to outline the process and steps an insurer and policyholder should follow for the investigation of sinkhole claims.
- Clarifies that the neutral evaluation process created by the bill for sinkhole disputes supersedes other mediation proceedings available to consumers through DFS.

This staff analysis has been updated to reflect the changes adopted in the strike-all amendment 1/26/06.

At its April 4, 2006, meeting, the House State Administration Appropriations Committee adopted a strike-all amendment to HB 217 CS. The major changes to the Committee Substitute include the following:

- Requires multiple deductibles in residential property insurance applicable to sinkhole losses no lower than 1 percent of the policy dwelling limits.
- Authorizes additional deductibles of 2 percent, 5 percent, and 10 percent of policy dwelling limits applicable to sinkhole losses.
- Requires insurers to offer premium discounts applicable to each different deductible.
- Removes the requirement for DFS to maintain a list of engineers and geologists to be used by insurers when testing for a sinkhole.
- Clarifies that an insurer is not required to pay policy limits for sinkhole repairs under commercial policies covering more than one property, structure, or manufactured building.
- Requires the insurer to obtain approval from **a lien holder**, as well as the policyholder, before making a payment for repairs directly to the person making the repairs.

- Eliminates the requirement that the insurer pay the person making the repairs within 30 days of completion.
- Removes references to Phase I and Phase II testing regarding the presence of a sinkhole.
- Removes the requirement that testing by the geologist be conducted in compliance with the Florida Geological Survey Special Publication No. 57.
- Removes references to specific testing standards for sinkholes to allow professional engineers and geologists to perform tests deemed appropriate.
- Clarifies the final report from the professional geologist or professional engineer, including findings, opinions, and recommendations, is considered conclusive unless contrary findings and recommendations are proven by preponderance of evidence.
- Allows information from the neutral evaluation process to be admissible in court, but clarifies that evidence relating to an offer to settle the claim is not admissible.
- Clarifies the role of the DFS consumer affairs specialist as a non-attorney in a neutral evaluation hearing.
- Requires OIR to calculate a presumed factor to reflect the impact of the bill on rates filed by insurers who provide sinkhole loss coverage.
- Provides appropriations from the Insurance Regulatory Trust Fund in DFS for the purposes of funding the provisions of this legislation.

This staff analysis has been updated to reflect the changes adopted in the strike-all amendment as amended on 4/4/06.

CHAMBER ACTION

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1 The State Administration Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to sinkhole insurance; providing a short
8 title; amending s. 627.706, F.S.; authorizing the
9 inclusion of specified deductibles for sinkhole losses in
10 residential property insurance policies; amending s.
11 627.707, F.S.; revising references to certain engineers;
12 excluding certain policies from payment provisions for
13 certain repairs; authorizing insurers to make direct
14 payment for certain repairs; excluding insurers from
15 liability for repairs under certain circumstances;
16 creating s. 627.7071, F.S.; providing legislative intent
17 for the process of filing sinkhole claims; amending s.
18 627.7072, F.S.; requiring a report upon conclusion of
19 testing; amending s. 627.7073, F.S.; revising a
20 presumption relating to the findings, opinions, and
21 recommendations in sinkhole reports; creating s. 627.7074,
22 F.S.; providing for an alternative procedure for the
23 resolution of disputed sinkhole insurance claims which is

24 optional, nonbinding, and informal; providing definitions;
25 requiring the Department of Financial Services to certify
26 and maintain a list of neutral evaluators, prepare a
27 consumer information pamphlet explaining the alternative
28 procedure, and adopt rules for the implementation of an
29 alternative procedure; providing for payment of costs and
30 attorney's fees; preserving access to courts and
31 authorizing judicial review of neutral evaluation
32 recommendations; requiring the Office of Insurance
33 Regulation to calculate a certain presumed factor on
34 residential property insurance rates; providing
35 requirements and procedures for determining such
36 calculation; requiring the office to provide notice of
37 such rate factor to insurers; requiring insurers to
38 include such rate factor in certain rate filings;
39 providing appropriations and authorizing additional
40 positions and salary rates; providing an effective date.
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. <u>This act may be cited as the "Sinkhole</u>
45 <u>Insurance Relief Act."</u>
46 Section 2. Section 627.706, Florida Statutes, is amended
47 to read:
48 627.706 Sinkhole insurance; definitions.--
49 (1) Every insurer authorized to transact property
50 insurance in this state shall make available coverage for
51 insurable sinkhole losses on any structure, including contents

52 of personal property contained therein, to the extent provided
53 in the form to which the sinkhole coverage attaches.
54 (2) A policy for residential property insurance shall
55 include a deductible applicable to sinkhole losses no lower than
56 1 percent of the policy dwelling limits. The policy shall offer
57 additional deductibles applicable to sinkhole losses of 2
58 percent, 5 percent, and 10 percent, with premium discounts
59 offered with each deductible amount.
60 (3) ~~(2)~~ As used in ss. 627.706-627.7074, and as used in
61 connection with any policy providing coverage for sinkhole
62 losses:
63 (a) "Sinkhole" means a landform created by subsidence of
64 soil, sediment, or rock as underlying strata are dissolved by
65 groundwater. A sinkhole may form by collapse into subterranean
66 voids created by dissolution of limestone or dolostone or by
67 subsidence as these strata are dissolved.
68 (b) "Sinkhole loss" means structural damage to the
69 building, including the foundation, caused by sinkhole activity.
70 Contents coverage shall apply only if there is structural damage
71 to the building caused by sinkhole activity.
72 (c) "Sinkhole activity" means settlement or systematic
73 weakening of the earth supporting such property only when such
74 settlement or systematic weakening results from movement or
75 raveling of soils, sediments, or rock materials into
76 subterranean voids created by the effect of water on a limestone
77 or similar rock formation.
78 (d) "Engineer" means a person, as defined in s. 471.005,
79 who has a bachelor's degree or higher in engineering with a

80 specialty in the geotechnical engineering field. An engineer
81 must have geotechnical experience and expertise in the
82 identification of sinkhole activity as well as other potential
83 causes of damage to the structure.
84 (e) "Professional geologist" means a person, as defined by
85 s. 492.102, who has a bachelor's degree or higher in geology or
86 related earth science with expertise in the geology of Florida.
87 A professional geologist must have geological experience and
88 expertise in the identification of sinkhole activity as well as
89 other potential geologic causes of damage to the structure.
90 (4) ~~(3)~~ Every insurer authorized to transact property
91 insurance in this state shall make a proper filing with the
92 office for the purpose of extending the appropriate forms of
93 property insurance to include coverage for sinkhole losses.
94 Section 3. Subsections (2), (3), (5), (6), and (9) of
95 section 627.707, Florida Statutes, are amended to read:
96 627.707 Standards for investigation of sinkhole claims by
97 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
98 loss, an insurer must meet the following standards in
99 investigating a claim:
100 (2) Following the insurer's initial inspection, the
101 insurer shall engage a professional ~~an~~ engineer or a
102 professional geologist to conduct testing as provided in s.
103 627.7072 to determine the cause of the loss within a reasonable
104 professional probability and issue a report as provided in s.
105 627.7073, if:

106 (a) The insurer is unable to identify a valid cause of the
107 damage or discovers damage to the structure which is consistent
108 with sinkhole loss; or
109 (b) The policyholder demands testing in accordance with
110 this section or s. 627.7072.
111 (3) Following the initial inspection of the insured
112 premises, the insurer shall provide written notice to the
113 policyholder disclosing the following information:
114 (a) What the insurer has determined to be the cause of
115 damage, if the insurer has made such a determination.
116 (b) A statement of the circumstances under which the
117 insurer is required to engage a professional ~~an~~ engineer or a
118 professional geologist to verify or eliminate sinkhole loss and
119 to engage a professional ~~an~~ engineer to make recommendations
120 regarding land and building stabilization and foundation repair.
121 (c) A statement regarding the right of the policyholder to
122 request testing by a professional ~~an~~ engineer or a professional
123 geologist and the circumstances under which the policyholder may
124 demand certain testing.
125 (5)(a) Subject to paragraph (b), if a sinkhole loss is
126 verified, the insurer shall pay to stabilize the land and
127 building and repair the foundation in accordance with the
128 recommendations of the professional engineer as provided under
129 s. 627.7073, and in consultation with the policyholder, subject
130 to the coverage and terms of the policy. The insurer shall pay
131 for other repairs to the structure and contents in accordance
132 with the terms of the policy.

133 (b) The insurer may limit its payment to the actual cash
134 value of the sinkhole loss, not including underpinning or
135 grouting or any other repair technique performed below the
136 existing foundation of the building, until the policyholder
137 enters into a contract for the performance of building
138 stabilization or foundation repairs. After the policyholder
139 enters into the contract, the insurer shall pay the amounts
140 necessary to begin and perform such repairs as the work is
141 performed and the expenses are incurred. The insurer may not
142 require the policyholder to advance payment for such repairs. If
143 repair has begun and the professional engineer selected or
144 approved by the insurer determines that the repair cannot be
145 completed within the policy limits, the insurer must either
146 complete the professional engineer's recommended repair or
147 tender the policy limits to the policyholder without a reduction
148 for the repair expenses incurred. The provisions of this
149 subsection do not apply when two or more buildings, structures,
150 mobile homes, or manufactured buildings are insured under a
151 blanket policy for a single amount of insurance.
152 (c) Upon the insurer's obtaining the written approval of
153 the policyholder and any lienholder, the insurer may make
154 payment directly to the persons selected by the policyholder to
155 perform the land and building stabilization and foundation
156 repairs. The decision by the insurer to make direct payment to
157 such persons does not hold the insurer liable for the work
158 performed.

159 (6) Except as provided in subsection (7), the fees and
160 costs of the professional engineer or the professional geologist
161 shall be paid by the insurer.
162 (9) The insurer may engage a professional structural
163 engineer to make recommendations as to the repair of the
164 structure.
165 Section 4. Section 627.7071, Florida Statues, is created
166 to read:
167 627.7071 Legislative intent.--It is the intent of the
168 Legislature that the following process be used when a sinkhole
169 claim is filed:
170 (1) The insurer shall inspect the claim.
171 (2) If the insurer is unable to determine a valid cause of
172 the damage or discovers damage to the structure consistent with
173 a sinkhole loss or if demanded by the policyholder, the insurer
174 shall engage in testing, as set forth in s. 627.7072.
175 (3) If the policyholder and the insurer are unable to
176 agree on the cause of the damage or other aspects of the
177 sinkhole claim, the policyholder and the insurer may take part
178 in neutral evaluation under s. 627.7074.
179 Section 5. Subsections (1) and (2) of section 627.7072,
180 Florida Statutes, are amended to read:
181 627.7072 Testing standards for sinkholes.--
182 (1) The professional engineer and professional geologist
183 shall perform such tests as sufficient, in their professional
184 opinion, to determine the presence or absence of sinkhole loss
185 or other cause of damage within reasonable professional
186 probability and for the professional engineer to make

187 recommendations regarding necessary building stabilization and
188 foundation repair.
189 (2) Upon conclusion of testing required by this section,
190 the person conducting the tests must provide a written report to
191 the insurer and policyholder ~~Testing by a professional geologist~~
192 ~~shall be conducted in compliance with the Florida Geological~~
193 ~~Survey Special Publication No. 57 (2005)~~.
194 Section 6. Subsection (1) of section 627.7073, Florida
195 Statutes, is amended to read:
196 627.7073 Sinkhole reports.--
197 (1) Upon completion of testing as provided in s. 627.7072,
198 the professional engineer or ~~and~~ professional geologist shall
199 issue a report and certification to the insurer and the
200 policyholder as provided in this section.
201 (a) Sinkhole loss is verified if, based upon tests
202 performed in accordance with s. 627.7072, a professional ~~an~~
203 engineer or ~~and~~ a professional geologist issue a written report
204 and certification stating:
205 1. That the cause of the actual physical and structural
206 damage is sinkhole activity within a reasonable professional
207 probability.
208 2. That the analyses conducted were of sufficient scope to
209 identify sinkhole activity as the cause of damage within a
210 reasonable professional probability.
211 3. A description of the tests performed.
212 4. A recommendation by the professional engineer of
213 methods for stabilizing the land and building and for making
214 repairs to the foundation.

215 (b) If sinkhole activity is eliminated as the cause of
216 damage to the structure, the professional engineer or ~~and~~
217 professional geologist shall issue a written report and
218 certification to the policyholder and the insurer stating:
219 1. That the cause of the damage is not sinkhole activity
220 within a reasonable professional probability.
221 2. That the analyses and tests conducted were of
222 sufficient scope to eliminate sinkhole activity as the cause of
223 damage within a reasonable professional probability.
224 3. A statement of the cause of the damage within a
225 reasonable professional probability.
226 4. A description of the tests performed.
227 (c) The respective findings, opinions, and recommendations
228 of the professional engineer or ~~and~~ professional geologist as to
229 the cause of distress to the property ~~verification or~~
230 ~~elimination of a sinkhole loss~~ and the findings, opinions, and
231 recommendations of the professional engineer as to land and
232 building stabilization and foundation repair are conclusive,
233 unless contrary findings and conclusions are proven by
234 preponderance of evidence ~~shall be presumed correct~~.
235 Section 7. Section 627.7074, Florida Statutes, is created
236 to read:
237 627.7074 Alternative procedure for resolution of disputed
238 sinkhole insurance claims.--
239 (1) As used in this section:
240 (a) "Neutral evaluation" means the alternative dispute
241 resolution provided for in this section.

242 (b) "Neutral evaluator" means an professional engineer or
243 a professional geologist who has completed a course of study in
244 alternative dispute resolution designed or approved by the
245 department for use in the neutral evaluation process, who is
246 determined to be fair and impartial, and who is attempting to
247 resolve the dispute or claim under this section.
248 (c) "Department" means the Department of Financial
249 Services.
250 (2) The department shall certify and maintain a list of
251 persons who are neutral evaluators.
252 (3) Following the receipt of the report provided under s.
253 627.7073 or the denial of a claim for a sinkhole loss, the
254 insurer shall notify the policyholder of his or her right to
255 participate in the neutral evaluation program under this
256 section. Neutral evaluation supersedes the alternative dispute
257 resolution process under s. 627.7015. The department shall
258 prepare a consumer information pamphlet for distribution by the
259 insurer to policyholders. The pamphlet shall clearly describe
260 the neutral evaluation process and include directions and forms
261 necessary for the policyholder to request a neutral evaluation.
262 (4) Neutral evaluation is optional and nonbinding. Either
263 the policyholder or the insurer may decline to participate. A
264 request for neutral evaluation shall be filed with the
265 department by the policyholder or the insurer on a form approved
266 by the department. The request for neutral evaluation must state
267 the reason for the request and must include an explanation of
268 all the issues in dispute at the time of the request. Filing a
269 request for neutral evaluation tolls the applicable time

270 requirements for filing suit for a period of 60 days following
271 the conclusion of the neutral evaluation process or the time
272 prescribed in s. 95.11, whichever is later.
273 (5) Neutral evaluation shall be conducted as an informal
274 process in which formal rules of evidence and procedure need not
275 be observed. A party to neutral evaluation is not required to
276 attend, provided a representative of the party attends and has
277 the authority to settle the claim on behalf of the party. All
278 parties shall participate in the evaluation in good faith.
279 (6) The insurer shall pay the costs associated with the
280 neutral evaluation.
281 (7) Upon receipt of a request for neutral evaluation, the
282 department shall refer the request to a neutral evaluator. The
283 neutral evaluator shall notify the policyholder and the insurer
284 of the date, time, and place of the neutral evaluation
285 conference. The conference may be held by telephone, if feasible
286 and desirable. The neutral evaluation conference shall be held
287 within 45 days after receipt of the request by the department.
288 (8) The department shall adopt rules of procedure for the
289 neutral evaluation process and, through materials produced,
290 clarify the role of the consumer affairs specialist as a
291 nonattorney.
292 (9) For policyholders not represented by an attorney, a
293 consumer affairs specialist of the department or an employee
294 designated as the primary contact for consumers on issues
295 relating to sinkholes under s. 20.121 shall be available for
296 consultation to the extent that he or she may lawfully do so.

297 (10) Evidence of an offer to settle a claim during the
298 neutral evaluation process, as well as any relevant conduct or
299 statements made in negotiations concerning the offer to settle a
300 claim, is inadmissible to prove liability or absence of
301 liability for the claim or its value, except as provided in
302 subsection (13).
303 (11) Any court proceeding related to the subject matter of
304 the neutral evaluation shall be stayed pending completion of the
305 neutral evaluation.
306 (12) For matters that are not resolved by the parties at
307 the conclusion of the neutral evaluation, the neutral evaluator
308 shall prepare a report stating that in his or her opinion the
309 sinkhole loss has been verified or eliminated and, if verified,
310 the need for and estimated costs of stabilizing the land and any
311 covered structures or buildings and other appropriate
312 remediation or structural repairs. The evaluator's report shall
313 be sent to all parties in attendance at the neutral evaluation
314 and to the department.
315 (13) The recommendation of the neutral evaluator is not
316 binding on any party and the parties retain access to courts.
317 The neutral evaluator's written recommendation is admissible in
318 any subsequent action or proceeding relating to the claim or to
319 the cause of action giving rise to the claim only for purposes
320 of determining the award of attorney's fees.
321 (14) If the policyholder declines to participate in
322 neutral evaluation requested by the insurer or declines to
323 resolve the matter in accordance with the recommendation of the
324 neutral evaluator pursuant to this section, the insurer shall

325 not be liable for attorney's fees under s. 627.428 or other
326 provisions of the insurance code or for extra contractual
327 damages related to a claim for a sinkhole loss.
328 (15) A party may seek judicial review of the
329 recommendation of the neutral evaluator to determine whether the
330 recommendation is reasonable. A recommendation is reasonable
331 unless it was procured by corruption, fraud, or other undue
332 means; there was evident partiality by the neutral evaluator or
333 misconduct prejudicing the rights of any party; or the neutral
334 evaluator exceeded the authority and power granted by this
335 subsection. If the court declares the recommendation is not
336 reasonable, the neutral evaluation recommendation shall be
337 vacated.
338 Section 8. (1) By February 1, 2007, the Office of
339 Insurance Regulation shall calculate a presumed factor to
340 reflect the impact of the changes made in this act to rates
341 filed by residential property insurers providing sinkhole loss
342 coverage. The office shall issue a notice informing all insurers
343 writing residential property insurance coverage of the presumed
344 factor.
345 (2) In determining the presumed factor, the office shall
346 use generally accepted actuarial techniques and standards in
347 determining the expected impact on losses, expenses, and
348 investment income of the insurer.
349 (3) The office may contract with an appropriate vendor to
350 determine the presumed factor.
351 (4) Each residential property insurer shall, at its next
352 annual rate filing after May 1, 2007, reflect an overall rate

353 reduction at least as great as the presumed factor determined
354 under subsection (1).
355 (5) The sum of $250,000 in nonrecurring funds is
356 appropriated from the Insurance Regulatory Trust Fund in the
357 Department of Financial Services to the Office of Insurance
358 Regulation for the 2006-2007 fiscal year for the purposes of
359 funding the provisions of this section.
360 Section 9. The sums of $115,322 in recurring funds and
361 $10,486 in nonrecurring funds are appropriated from the
362 Insurance Regulatory Trust Fund in the Department of Financial
363 Services for the 2006-2007 fiscal year for the purposes of
364 funding the provisions of this act, and two full-time equivalent
365 positions with 59,435 in associated salary rate are authorized.
366 Section 10. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0217**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative Legg offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (1) and paragraph (d) of subsection
7 (2) of section 627.706, Florida Statutes, are amended to read:
8 627.706 Sinkhole insurance; definitions.--
9 (1) Every insurer authorized to transact property
10 insurance in this state shall make available coverage for
11 insurable sinkhole losses on any structure, including contents
12 of personal property contained therein, to the extent provided
13 in the form to which the sinkhole coverage attaches. A policy
14 for residential property insurance may include a deductible
15 amount applicable to sinkhole losses equal to 1 percent, 2
16 percent, 5 percent, or 10 percent of the policy dwelling limits,
17 with appropriate premium discounts offered with each deductible
18 amount.
19 (2) As used in ss. 627.706-627.7074, and as used in
20 connection with any policy providing coverage for sinkhole
21 losses:

22 (d) "Professional engineer" means a person, as defined in
23 s. 471.005, who has a bachelor's degree or higher in engineering
24 with a specialty in the geotechnical engineering field. A
25 professional ~~An~~ engineer must have geotechnical experience and
26 expertise in the identification of sinkhole activity as well as
27 other potential causes of damage to the structure.
28 Section 2. Subsections (2), (3), (5), (6), and (9) of
29 section 627.707, Florida Statutes, are amended to read:
30 627.707 Standards for investigation of sinkhole claims by
31 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
32 loss, an insurer must meet the following standards in
33 investigating a claim:
34 (2) Following the insurer's initial inspection, the
35 insurer shall engage a professional ~~an~~ engineer or a
36 professional geologist to conduct testing as provided in s.
37 627.7072 to determine the cause of the loss within a reasonable
38 professional probability and issue a report as provided in s.
39 627.7073, if:
40 (a) The insurer is unable to identify a valid cause of the
41 damage or discovers damage to the structure which is consistent
42 with sinkhole loss; or
43 (b) The policyholder demands testing in accordance with
44 this section or s. 627.7072.
45 (3) Following the initial inspection of the insured
46 premises, the insurer shall provide written notice to the
47 policyholder disclosing the following information:
48 (a) What the insurer has determined to be the cause of
49 damage, if the insurer has made such a determination.
50 (b) A statement of the circumstances under which the
51 insurer is required to engage a professional ~~an~~ engineer or a
52 professional geologist to verify or eliminate sinkhole loss and

53 to engage a professional ~~an~~ engineer to make recommendations
54 regarding land and building stabilization and foundation repair.
55 (c) A statement regarding the right of the policyholder to
56 request testing by a professional ~~an~~ engineer or a professional
57 geologist and the circumstances under which the policyholder may
58 demand certain testing.
59 (5)(a) Subject to paragraph (b), if a sinkhole loss is
60 verified, the insurer shall pay to stabilize the land and
61 building and repair the foundation in accordance with the
62 recommendations of the professional engineer as provided under
63 s. 627.7073, and in consultation with the policyholder, subject
64 to the coverage and terms of the policy. The insurer shall pay
65 for other repairs to the structure and contents in accordance
66 with the terms of the policy.
67 (b) The insurer may limit its payment to the actual cash
68 value of the sinkhole loss, not including underpinning or
69 grouting or any other repair technique performed below the
70 existing foundation of the building, until the policyholder
71 enters into a contract for the performance of building
72 stabilization or foundation repairs. After the policyholder
73 enters into the contract, the insurer shall pay the amounts
74 necessary to begin and perform such repairs as the work is
75 performed and the expenses are incurred. The insurer may not
76 require the policyholder to advance payment for such repairs. If
77 repair covered by a personal lines residential property
78 insurance policy has begun and the professional engineer
79 selected or approved by the insurer determines that the repair
80 cannot be completed within the policy limits, the insurer must
81 either complete the professional engineer's recommended repair
82 or tender the policy limits to the policyholder without a
83 reduction for the repair expenses incurred.

84 (c) Upon the insurer's obtaining the written approval of
85 the policyholder and any lienholder, the insurer may make
86 payment directly to the persons selected by the policyholder to
87 perform the land and building stabilization and foundation
88 repairs. The decision by the insurer to make payment to such
89 persons does not hold the insurer liable for the work performed.
90 (6) Except as provided in subsection (7), the fees and
91 costs of the professional engineer or the professional geologist
92 shall be paid by the insurer.
93 (9) The insurer may engage a professional structural
94 engineer to make recommendations as to the repair of the
95 structure.
96 Section 3. Section 627.7072, Florida Statutes, is amended
97 to read:
98 627.7072 Testing standards for sinkholes.--
99 (1) The professional engineer or ~~and~~ professional
100 geologist shall perform such tests as sufficient, in their
101 professional opinion, to determine the presence or absence of
102 sinkhole loss or other cause of damage within reasonable
103 professional probability and for the professional engineer to
104 make recommendations regarding necessary building stabilization
105 and foundation repair.
106 ~~(2) Testing by a professional geologist shall be conducted~~
107 ~~in compliance with the Florida Geological Survey Special~~
108 ~~Publication No. 57 (2005).~~
109 Section 4. Subsections (1) and (2) of section 627.7073,
110 Florida Statutes, are amended to read:
111 627.7073 Sinkhole reports.--
112 (1) Upon completion of testing as provided in s. 627.7072,
113 the professional engineer or ~~and~~ professional geologist shall

114 issue a report and certification to the insurer and the
115 policyholder as provided in this section.
116 (a) Sinkhole loss is verified if, based upon tests
117 performed in accordance with s. 627.7072, a professional ~~an~~
118 engineer or ~~and~~ a professional geologist issue a written report
119 and certification stating:
120 1. That the cause of the actual physical and structural
121 damage is sinkhole activity within a reasonable professional
122 probability.
123 2. That the analyses conducted were of sufficient scope to
124 identify sinkhole activity as the cause of damage within a
125 reasonable professional probability.
126 3. A description of the tests performed.
127 4. A recommendation by the professional engineer of
128 methods for stabilizing the land and building and for making
129 repairs to the foundation.
130 (b) If sinkhole activity is eliminated as the cause of
131 damage to the structure, the professional engineer or ~~and~~
132 professional geologist shall issue a written report and
133 certification to the policyholder and the insurer stating:
134 1. That the cause of the damage is not sinkhole activity
135 within a reasonable professional probability.
136 2. That the analyses and tests conducted were of
137 sufficient scope to eliminate sinkhole activity as the cause of
138 damage within a reasonable professional probability.
139 3. A statement of the cause of the damage within a
140 reasonable professional probability.
141 4. A description of the tests performed.
142 (c) The respective findings, opinions, and recommendations
143 of the professional engineer or ~~and~~ professional geologist as to
144 the cause of distress to the property ~~verification or~~

145 ~~elimination of a sinkhole loss~~ and the findings, opinions, and
146 recommendations of the professional engineer as to land and
147 building stabilization and foundation repair shall be presumed
148 correct.
149 (2) Any insurer that has paid a claim for a sinkhole loss
150 shall file a copy of the report and certification, prepared
151 pursuant to subsection (1), with the county clerk of court
152 ~~property appraiser~~, who shall record the report and
153 certification with the parcel number. The insurer shall bear the
154 cost of filing and recording the report and certification. There
155 shall be no cause of action or liability against an insurer for
156 compliance with this section. The seller of real property upon
157 which a sinkhole claim has been made shall disclose to the buyer
158 of such property that a claim has been paid and whether or not
159 the full amount of the proceeds were used to repair the sinkhole
160 damage.
161 Section 5. Effective October 1, 2006, section 627.7074,
162 Florida Statutes, is created to read:
163 627.7074 Alternative procedure for resolution of disputed
164 sinkhole insurance claims.--
165 (1) As used in this section, the term:
166 (a) "Neutral evaluation" means the alternative dispute
167 resolution provided for in this section.
168 (b) "Neutral evaluator" means a professional engineer or a
169 professional geologist who has completed a course of study in
170 alternative dispute resolution designed or approved by the
171 department for use in the neutral evaluation process, who is
172 determined to be fair and impartial.
173 (2)(a) The department shall certify and maintain a list of
174 persons who are neutral evaluators.

175 (b) The department shall prepare a consumer information
176 pamphlet for distribution by insurers to policyholders which
177 clearly describes the neutral evaluation process and includes
178 information and forms necessary for the policyholder to request
179 a neutral evaluation.
180 (3) Following the receipt of the report provided under s.
181 627.7073 or the denial of a claim for a sinkhole loss, the
182 insurer shall notify the policyholder of his or her right to
183 participate in the neutral evaluation program under this
184 section. Neutral evaluation supersedes the alternative dispute
185 resolution process under s. 627.7015. The insurer shall provide
186 to the policyholder the consumer information pamphlet prepared
187 by the department pursuant to paragraph (2)(b).
188 (4) Neutral evaluation is optional and nonbinding. Either
189 the policyholder or the insurer may decline to participate. A
190 request for neutral evaluation may be filed with the department
191 by the policyholder or the insurer on a form approved by the
192 department. The request for neutral evaluation must state the
193 reason for the request and must include an explanation of all
194 the issues in dispute at the time of the request. Filing a
195 request for neutral evaluation tolls the applicable time
196 requirements for filing suit for a period of 60 days following
197 the conclusion of the neutral evaluation process or the time
198 prescribed in s. 95.11, whichever is later.
199 (5) Neutral evaluation shall be conducted as an informal
200 process in which formal rules of evidence and procedure need not
201 be observed. A party to neutral evaluation is not required to
202 attend neutral evaluation if a representative of the party
203 attends and has the authority to make a binding decision on
204 behalf of the party. All parties shall participate in the
205 evaluation in good faith.

206 (6) The insurer shall pay the costs associated with the
207 neutral evaluation.
208 (7) Upon receipt of a request for neutral evaluation, the
209 department shall refer the request to a neutral evaluator. The
210 neutral evaluator shall notify the policyholder and the insurer
211 of the date, time, and place of the neutral evaluation
212 conference. The conference may be held by telephone, if feasible
213 and desirable. The neutral evaluation conference shall be held
214 within 45 days after receipt of the request by the department.
215 (8) The department shall adopt rules of procedure for the
216 neutral evaluation process.
217 (9) For policyholders not represented by an attorney, a
218 consumer affairs specialist of the department or an employee
219 designated as the primary contact for consumers on issues
220 relating to sinkholes under s. 20.121 shall be available for
221 consultation to the extent that he or she may lawfully do so.
222 (10) Evidence of an offer to settle a claim during the
223 neutral evaluation process, as well as any relevant conduct or
224 statements made in negotiations concerning the offer to settle a
225 claim, is inadmissible to prove liability or absence of
226 liability for the claim or its value, except as provided in
227 subsection (13).
228 (11) Any court proceeding related to the subject matter of
229 the neutral evaluation shall be stayed pending completion of the
230 neutral evaluation.
231 (12) For matters that are not resolved by the parties at
232 the conclusion of the neutral evaluation, the neutral evaluator
233 shall prepare a report stating that in his or her opinion the
234 sinkhole loss has been verified or eliminated and, if verified,
235 the need for and estimated costs of stabilizing the land and any
236 covered structures or buildings and other appropriate

237 remediation or structural repairs. The evaluator's report shall
238 be sent to all parties in attendance at the neutral evaluation
239 and to the department.
240 (13) The recommendation of the neutral evaluator is not
241 binding on any party, and the parties retain access to courts.
242 The neutral evaluator's written recommendation is admissible in
243 any subsequent action or proceeding relating to the claim or to
244 the cause of action giving rise to the claim only for purposes
245 of determining the award of attorney's fees.
246 (14) If the neutral evaluator first verifies the existence
247 of a sinkhole and, second, recommends the need for and estimates
248 costs of stabilizing the land and any covered structures or
249 buildings and other appropriate remediation or structural
250 repairs, which costs exceed the amount that the insurer has
251 offered to pay the policyholder, the insurer is liable to the
252 policyholder for up to $2,500 in attorney's fees for the
253 attorney's participation in the neutral evaluation process. For
254 purposes of this subsection, the term "offer to pay" means a
255 written offer signed by the insurer or its legal representative
256 and delivered to the policyholder within 10 days after the
257 insurer receives notice that a request for neutral evaluation
258 has been made under this section.
259 (15) If the policyholder declines to participate in
260 neutral evaluation requested by the insurer or declines to
261 resolve the matter in accordance with the recommendation of the
262 neutral evaluator pursuant to this section, the insurer is not
263 liable for attorney's fees under s. 627.428 or other provisions
264 of the insurance code or for extra-contractual damages related
265 to a claim for a sinkhole loss.
266 (16) A party may seek judicial review of the
267 recommendation of the neutral evaluator to determine whether the

268 recommendation is reasonable. A recommendation is reasonable
269 unless: it was procured by corruption, fraud, or other undue
270 means; there was evident partiality by the neutral evaluator or
271 misconduct prejudicing the rights of any party; or the neutral
272 evaluator exceeded the authority and power granted by this
273 section. If the court declares the recommendation is not
274 reasonable, the neutral evaluation recommendation shall be
275 vacated.
276 Section 6. Subsection (2) of section 877.02, Florida
277 Statutes, is amended to read:
278 877.02 Solicitation of legal services or retainers
279 therefor; penalty.--
280 (2) It shall be unlawful for any person in the employ of
281 or in any capacity attached to any hospital, sanitarium, police
282 department, wrecker service or garage, prison or court, ~~or~~ for a
283 person authorized to furnish bail bonds, investigators,
284 photographers, insurance or public adjusters, or for a general
285 or other contractor as defined in s. 489.105 or other business
286 providing sinkhole remediation services, to communicate directly
287 or indirectly with any attorney or person acting on said
288 attorney's behalf for the purpose of aiding, assisting or
289 abetting such attorney in the solicitation of legal business or
290 the procurement through solicitation of a retainer, written or
291 oral, or any agreement authorizing the attorney to perform or
292 render legal services.
293 Section 7. Except as otherwise expressly provided in this
294 act, this act shall take effect July 1, 2006.
295
296 ========== T I T L E A M E N D M E N T ==========
297 Remove the entire title and insert:
298 A bill to be entitled

299 An act relating to sinkhole insurance; amending s.
300 627.706, F.S.; allowing a deductible amount applicable to
301 sinkhole losses in a policy for residential property
302 insurance; defining the term "professional engineer";
303 amending s. 627.707, F.S.; revising references to certain
304 engineers; authorizing insurers to make direct payment for
305 certain repairs; excluding insurers from liability for
306 repairs under certain circumstances; amending s. 627.7072,
307 F.S.; revising references to certain engineers;
308 eliminating the requirement for certain testing
309 compliance; amending s. 627.7073, F.S.; revising
310 requirements for sinkhole reports by professional
311 engineers and professional geologists; providing for the
312 recording of sinkhole reports by the clerk of court rather
313 than the property appraiser; creating s. 627.7074, F.S.;
314 prescribing an alternative method for resolving disputed
315 sinkhole insurance claims; providing definitions;
316 prescribing procedures for invoking the alternative
317 method; providing that a recommendation by a neutral
318 evaluator is not binding on any party; providing for
319 payments of costs; requiring the insurer to pay attorney's
320 fees of the policyholder up to a specified amount under
321 certain conditions; providing that an insurer is not
322 liable for attorney's fees or for certain damages under
323 certain conditions; providing for judicial review;
324 amending s. 877.02, F.S.; prohibiting certain
325 solicitations by contractors and other persons providing
326 sinkhole remediation services; providing penalties;
327 providing effective dates.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 217**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bilirakis offered the following:
3
4 **Amendment to Strike-all Amendment by Representative Legg**
5 **(with title amendment)**
6 Between line(s) 5 and 6 insert:
7 Section 1. Paragraph (d) of subsection (6) of section
8 627.351, Florida Statutes, is amended to read:
9 627.351 Insurance risk apportionment plans.--
10 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--
11 (d)1. It is the intent of the Legislature that the rates
12 for coverage provided by the corporation be actuarially sound
13 and not competitive with approved rates charged in the admitted
14 voluntary market, so that the corporation functions as a
15 residual market mechanism to provide insurance only when the
16 insurance cannot be procured in the voluntary market. Rates
17 shall include an appropriate catastrophe loading factor that
18 reflects the actual catastrophic exposure of the corporation.
19 2.a. Except as provided in subparagraph 3., for each
20 county, the average rates of the corporation for each line of
21 business for personal lines residential policies excluding rates
22 for wind-only policies shall be no lower than the average rates
23 charged by the insurer that had the highest average rate in that

24 county among the 20 insurers with the greatest total direct
25 written premium in the state for that line of business in the
26 preceding year, except that with respect to mobile home
27 coverages, the average rates of the corporation shall be no
28 lower than the average rates charged by the insurer that had the
29 highest average rate in that county among the 5 insurers with
30 the greatest total written premium for mobile home owner's
31 policies in the state in the preceding year.
32 b.~~3.~~ Rates for personal lines residential wind-only
33 policies must be actuarially sound and not competitive with
34 approved rates charged by authorized insurers. Corporation rate
35 manuals shall include a rate surcharge for seasonal occupancy.
36 To ensure that personal lines residential wind-only rates are
37 not competitive with approved rates charged by authorized
38 insurers, the corporation, in conjunction with the office, shall
39 develop a wind-only ratemaking methodology, which methodology
40 shall be contained in each rate filing made by the corporation
41 with the office. If the office determines that the wind-only
42 rates or rating factors filed by the corporation fail to comply
43 with the wind-only ratemaking methodology provided for in this
44 subsection, it shall so notify the corporation and require the
45 corporation to amend its rates or rating factors to come into
46 compliance within 90 days of notice from the office.
47 3. The provisions of sub-subparagraph 2.a. do not apply to
48 coverage provided by the corporation in any area of a postal zip
49 code for which the office determines that no competition exists
50 for personal lines residential policies. The provisions of sub-
51 subparagraph 2.b. do not apply to coverage provided by the
52 corporation in any area of a postal zip code for which the
53 office determines that no competition exists for personal lines
54 residential policies in the portion of the area of that postal
55 zip code that is eligible for wind-only coverage. In such postal

56 zip code areas, the rates for personal lines residential
57 coverage must only be actuarially sound and not excessive,
58 inadequate, or unfairly discriminatory and are subject to the
59 other provisions of this paragraph and s. 627.062. The
60 commission shall adopt rules establishing criteria for
61 determining whether no competition exists for personal lines
62 residential policies in an area of a postal zip code. Beginning
63 October 1, 2006, and each 3 months thereafter, the office shall
64 determine and identify for purposes of this subparagraph those
65 areas of postal zip codes for which no competition exists for
66 personal lines residential policies.
67 4. For the purposes of establishing a pilot program to
68 evaluate issues relating to the availability and affordability
69 of insurance in an area where historically there has been little
70 market competition, the provisions of sub-subparagraph 2.a.
71 ~~subparagraph 2.~~ do not apply to coverage provided by the
72 corporation in Monroe County if the office determines that a
73 reasonable degree of competition does not exist for personal
74 lines residential policies. The provisions of sub-subparagraph
75 2.b. ~~subparagraph 3.~~ do not apply to coverage provided by the
76 corporation in Monroe County if the office determines that a
77 reasonable degree of competition does not exist for personal
78 lines residential policies in the area of that county which is
79 eligible for wind-only coverage. In this county, the rates for
80 personal lines residential coverage shall be actuarially sound
81 and not excessive, inadequate, or unfairly discriminatory and
82 are subject to the other provisions of the paragraph and s.
83 627.062. The commission shall adopt rules establishing the
84 criteria for determining whether a reasonable degree of
85 competition exists for personal lines residential policies in
86 Monroe County. By March 1, 2006, the office shall submit a

87 report to the Legislature providing an evaluation of the
88 implementation of the pilot program affecting Monroe County.
89 5. Rates for commercial lines coverage shall not be
90 subject to the requirements of sub-subparagraph 2.a.
91 ~~subparagraph 2.~~, but shall be subject to all other requirements
92 of this paragraph and s. 627.062.
93 6. Nothing in this paragraph shall require or allow the
94 corporation to adopt a rate that is inadequate under s. 627.062.
95 7. The corporation shall certify to the office at least
96 twice annually that its personal lines rates comply with the
97 requirements of this paragraph ~~subparagraphs 1. and 2~~. If any
98 adjustment in the rates or rating factors of the corporation is
99 necessary to ensure such compliance, the corporation shall make
100 and implement such adjustments and file its revised rates and
101 rating factors with the office. If the office thereafter
102 determines that the revised rates and rating factors fail to
103 comply with the provisions of this paragraph ~~subparagraphs 1.~~
104 ~~and 2.~~, the office ~~it~~ shall notify the corporation and require
105 the corporation to amend its rates or rating factors in
106 conjunction with its next rate filing. The office must notify
107 the corporation by electronic means of any rate filing it
108 approves for any insurer among the insurers referred to in sub-
109 subparagraph 2.a ~~subparagraph 2~~.
110 8. In addition to the rates otherwise determined pursuant
111 to this paragraph, the corporation shall impose and collect an
112 amount equal to the premium tax provided for in s. 624.509 to
113 augment the financial resources of the corporation.
114 9.~~a.~~ To assist the corporation in developing additional
115 ratemaking methods to ensure ~~assure~~ compliance with this
116 paragraph ~~subparagraphs 1. and 4.~~, the corporation shall appoint
117 a rate methodology panel consisting of one person recommended by
118 the Florida Association of Insurance Agents, one person

119 recommended by the Professional Insurance Agents of Florida, one
120 person recommended by the Florida Association of Insurance and
121 Financial Advisors, one person recommended by the insurer with
122 the highest voluntary market share of residential property
123 insurance business in the state, one person recommended by the
124 insurer with the second-highest voluntary market share of
125 residential property insurance business in the state, one person
126 recommended by an insurer writing commercial residential
127 property insurance in this state, one person recommended by the
128 Office of Insurance Regulation, and one board member designated
129 by the board chairman, who shall serve as chairman of the panel.
130 ~~b. By January 1, 2004, the rate methodology panel shall~~
131 ~~provide a report to the corporation of its findings and~~
132 ~~recommendations for the use of additional ratemaking methods and~~
133 ~~procedures, including the use of a rate equalization surcharge~~
134 ~~in an amount sufficient to assure that the total cost of~~
135 ~~coverage for policyholders or applicants to the corporation is~~
136 ~~sufficient to comply with subparagraph 1.~~
137 ~~c. Within 30 days after such report, the corporation shall~~
138 ~~present to the President of the Senate, the Speaker of the House~~
139 ~~of Representatives, the minority party leaders of each house of~~
140 ~~the Legislature, and the chairs of the standing committees of~~
141 ~~each house of the Legislature having jurisdiction of insurance~~
142 ~~issues, a plan for implementing the additional ratemaking~~
143 ~~methods and an outline of any legislation needed to facilitate~~
144 ~~use of the new methods.~~
145 ~~d. The plan must include a provision that producer~~
146 ~~commissions paid by the corporation shall not be calculated in~~
147 ~~such a manner as to include any rate equalization surcharge.~~
148 ~~However, without regard to the plan to be developed or its~~
149 ~~implementation, producer commissions paid by the corporation for~~
150 ~~each account, other than the quota share primary program, shall~~

151 ~~remain fixed as to percentage, effective rate, calculation, and~~
152 ~~payment method until January 1, 2004.~~
153 10. ~~By January 1, 2004,~~ The corporation shall develop a
154 notice to policyholders or applicants that the rates of Citizens
155 Property Insurance Corporation are intended to be higher than
156 the rates of any admitted carrier and providing other
157 information the corporation deems necessary to assist consumers
158 in finding other voluntary admitted insurers willing to insure
159 their property.
160
161 ========== T I T L E A M E N D M E N T ==========
162 Remove line(s) 299 and insert:
163 An act relating to property insurance; amending s. 627.351,
164 F.S.; providing additional legislative intent relating to
165 coverage rates provided by the Citizens Property Insurance
166 Corporation; specifying nonapplication of certain policy
167 requirements in postal zip code areas lacking any competition
168 for personal lines residential policies under certain
169 circumstances; requiring the Financial Services Commission to
170 adopt rules; requiring the Office of Insurance Regulation to
171 periodically determine and identify postal zip code areas in
172 which no competition exists for personal lines residential
173 policies; deleting an obsolete rate methodology panel reporting
174 requirement provision; amending s.

HB 247 CS / Bogdanoff

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 CS Beverage Law
SPONSOR(S): Bogdanoff and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 144, SB 282, SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	18 Y, 0 N, w/CS	Morris	Liepshutz
2) Finance & Tax Committee	9 Y, 0 N, w/CS	Rice	Diez-Arguelles
3) Commerce Council		Morris	Randle
4)			
5)			

SUMMARY ANALYSIS

A recent U. S. Supreme Court ruling, *Granholm v. Heald,* struck down laws in Michigan and New York, similar to Florida law, allowing in-state wineries to make direct deliveries of wine to consumers, but prohibiting out-of-state wineries from making direct deliveries. The Court held that the laws in both states discriminated against interstate commerce to the benefit of in-state interests in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the Twenty-first Amendment. Subsequent to the *Granholm* decision, the U. S. District Court in Tampa ruled, in a pending Florida case *Bainbridge v. Turner*, that ss. 561.54(1) and (2) and 561.545(1), F.S., also discriminated against out-of-state wine producers to the advantage of in-state wine producers and were unconstitutional under *Granholm*.

In response to the *Granholm* and *Bainbridge* decisions, the Department of Business and Professional Regulation began allowing out-of-state wine producers to make direct deliveries. A legislative response is needed to provide regulations and guidelines. This bill creates a direct shipper license and the regulatory mechanism for the direct shipment of wine by out-of-state or in-state wineries to Florida consumers for personal consumption.

The Revenue Estimating Conference has determined that the bill has a positive indeterminate impact on state revenues. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for an estimate of expenditures by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes — The bill creates a new winery shipper license fee in the amount of $250.

Safeguard Individual Liberty — Both commercial and individual freedom are expanded by allowing out-of-state as well as in-state wineries to sell wine directly to Florida consumers without the current restrictions of the three-tier system of alcoholic beverage distribution. In addition, the bill proposes to cure the commerce clause violations cited in the *Granholm* decision by the U. S. Supreme Court.

Provide Limited Government—The bill creates a new license and regulatory system; the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation estimates the need for 23.5 FTEs and approximately $1.3 million annually to implement and regulate the direct shipment of wine as provided in this legislation.

B. EFFECT OF PROPOSED CHANGES:

HISTORY OF ALCOHOL BEVERAGE REGULATION

Methods of controlling alcoholic beverage commerce have varied from complete inaction to absolute prohibition. Adopted in 1920, the 18th Amendment to the U. S. Constitution ushered in prohibition by forbidding the manufacture, sale, transportation, importation and exportation of beverage alcohol. The 21st Amendment to the U. S. Constitution, adopted in 1933, repealed prohibition. The 21st Amendment prohibits the transportation or importation into any state in violation of that state's laws and places the responsibility of controlling alcoholic beverage commerce upon the individual states for all activity within that state's borders.

The ability to engage in alcoholic beverage commerce is commonly viewed as a privilege subject to stringent safeguards. Alcoholic beverages are a highly taxed and highly regulated commodity at the state and federal levels.

Currently in the United States, most states operate under a "license" system. "License" states issue licenses to private individuals or businesses in all segments of alcoholic beverage commerce. The State of Florida operates under such a license system. Other states, however, maintain more direct control over the sale of alcoholic beverages by substituting the state for the private marketplace and are known as "control" states. Some states control only the wholesale level; others have retained control at retail through government-operated stores; and some control the sale of wine, as well as distilled spirits.

The Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Among the Division's statutory responsibilities is the authority for licensing businesses, conducting criminal and administrative investigations, conducting audits, inventories and tax assessments, seizing non-tax paid alcoholic beverages, and imposing penalties for violations. Licensees are held to a high standard of accountability.[1] The licensed premises of a Florida alcoholic beverage licensee are subject to random, unannounced inspection and a licensee can lose the ability to operate for violations of the Beverage Law or other state laws.

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer to wholesale distributor to retailer, with the retail vendor making the ultimate sale to the

[1] Licensure requirements, qualification standards and prohibitions are set forth in ss. 561.15 and 561.17, F.S.

consumer.[2] Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax and by-the-drink tax are collected at the retail level. For FY 2004-05 the Division collected $575.9 million in state alcohol excise taxes - $117.8 million of that amount was from wine products. While estimates specific to wine were not available, the Office of Economic and Demographic Research estimates that $549.3 million was collected from the retail sale of all alcoholic beverages in the state. Alcoholic beverage wholesalers are audited twice each year. The excise tax rate on typical table wine is $2.25 per gallon.[3]

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law.[4] Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any vendor. Section 561.22, F.S., provides that no manufacturer, distributor or exporter may be licensed as a vendor [retailer]. This statute further provides that no vendor may also be licensed as a manufacturer, distributor or exporter. Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter.

Notwithstanding the overall premise, the Beverage Law contains a series of exceptions to the structured three-tiered distribution system. Included among those exceptions is authority for the licensure of wineries where the manufacturer of the beverage is also the wholesale distributor and the retail vendor of the product.

Section 561.221, F.S., authorizes the issuance of up to three vendor [retail] alcoholic beverage licenses for wine manufacturers in the state if the retail premises are situated on property contiguous to the manufacturing premises. Florida wineries may also be dually licensed as wholesale distributors. According to the Division there are currently 41 licensed wineries in the state, ten of which have wholesale distributor licenses and 32 of which also have retail licenses. In addition, qualifying wineries may receive a designation as a Certified Florida Farm Winery. To qualify as a Certified Florida Farm Winery, a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;
- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of $100.

To facilitate growth in Florida's viticulture industry the Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways.

HISTORY OF DIRECT SALES

In recent years there has been an expansion of solicitations and advertisements for alcoholic beverage sales, particularly wine, via magazines, specialty catalogues, direct mailings and, more recently, the Internet.[5] In addition, there has been increased interest on the part of consumers to more easily obtain their specific wines of choice. Sales of this nature most often bypassed the state's regulatory and tax collection procedures. During this same time period, consumers and wine industry interests have sought the ability to legally ship wine into the various states through reciprocity laws or laws allowing for limited direct shipping.

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[2] See s. 561.14, F.S. for license and registration classifications

[3] Section 564.06, F.S., establishes a staggered taxation rate on wine based upon the percent of alcohol by volume. Typical table wine containing 0.5 percent or more alcohol by volume but less than 17.259 percent alcohol by volume is taxed at a rate of $2.25 per gallon.

[4] In the beverage alcohol industry, licensed premises are often called "houses." It was perceived to be an *evil* for houses of the retail tier to be tied to houses at the wholesaler or manufacturing tier – hence, *Tied House Evil.* This group of laws is designed to prevent manufacturers or wholesalers from owning or controlling retail outlets where their product may be sold to the exclusion of other products and where, during pre-prohibition years, an abundance of social ills existed.

[5] Federal law, 18 USC 1716 (f), prohibits mailing any alcoholic beverage through the U. S. Postal Service.

In the early 1990's the Division of Alcoholic Beverages and Tobacco issued numerous requests to out-of-state shippers to discontinue the practice of selling and shipping alcoholic beverages, primarily wine, directly to Florida consumers in violation of state law. The Division, however, lacked legal jurisdiction to require compliance on two fronts: 1) since the out-of-state shippers did not maintain a physical presence in the State of Florida there was no nexus to bring them under Florida jurisdiction; and 2) federal law did not provide a remedy by which the state could receive injunctive relief in federal courts.[6] This scenario appeared to leave Florida regulators without a means to require out-of-state shippers to comply with Florida's regulatory and taxation requirements.

The Legislature, in 1997, found that the direct shipment of alcoholic beverages was a danger to the public health, safety, and welfare; to state revenue collections; and to the economy of the state. The 1997 Legislature enacted Chapter 97-213, Laws of Florida, which increased the penalty from a misdemeanor to a 3rd degree felony for knowingly and intentionally shipping alcoholic beverages from an out-of-state location directly to a Florida consumer in violation of the Beverage Law. Some argued that this penalty increase would act as a deterrent to direct shipping since a wine manufacturer would not risk losing their federal permit by being charged with a felony.[7] Others argued that the penalty and the underlying regulatory structure were antiquated, anticompetitive, and a violation of free trade between the states.

Florida's direct shipping statute was subsequently challenged in *Bainbridge v. Turner.*[8] During this same period, similar challenges were taking place in other states, including Michigan and New York, with mixed results.

DIRECT SHIPPING LITIGATION

Granholm v. Heald

Similar to Florida's law, the State of Michigan banned out-of-state wineries from shipping wine directly to consumers but allowed in-state wineries to do so. The State of New York allowed direct shipments to residents but only if the out-of-state shipper obtained a license and a condition of obtaining that license was a physical presence in the state. Both laws were challenged and Michigan's law was held invalid while the New York law was upheld. Appeals from these two cases were ultimately consolidated into a single case before the U. S. Supreme Court, *Granholm v. Heald.*[9] In its decision, the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted, non-discriminatory trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The question before the Supreme Court was: *Does a state regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Section 2 of the Twenty-first Amendment?*

Section 2 of the 21st Amendment to the U. S. Constitution reads: *The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.*

The U. S. Supreme Court struck down both the Michigan and New York laws. The Court held that the laws in both states discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the 21st Amendment.

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[6] See *Department of Business and Professional Regulation v. Sam's Wines and Liquors,* No. 96-3602, (Fla. 2nd Cir. Ct., September 3, 1997), *affirmed* 731 So.2d 655 (Fla. 1st DCA 1999) and *Florida DBR v. Zachy's*, 125 F.3d 1399 (11th Cir. 1997)

[7] The Federal Alcohol Administration Act, 27 U.S.C. s. 203, requires a basic permit in order to engage in the business of importing into the United States distilled spirits, wine, or malt beverages, to engage in the business of distilling spirits or producing wine, and for wine, spirits and beer wholesalers. Retailers and beer manufacturers are not required to obtain a federal basic permit.

[8] *Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM; Originally *Bainbridge v. Martelli* , 148 F.S.Supp.2d 1306 (M.D. Fla. 2001)

[9] *Granholm v. Heald,* 125 S.Ct. 1885 (May 16, 2005)

The Court ruled that either all sales of wine must be through face-to-face transactions or a permit system must be developed to allow for wine deliveries from out-of-state which did not discriminate against out-of-state interests to the benefit of in-state interests. The Court stated that tax collection and other regulatory objectives -- facilitating orderly market conditions, ensuring regulatory accountability, protecting the public health and safety -- could be achieved through a permit system. States may not require residency of wine producers in order to compete on equal terms with in-state businesses, nor may states require reciprocal shipping privileges for wine producers from other states. The Court's decision addresses only wine producers. The Court specifically distinguished other products and the opinion does not directly open the door for out-of-state retailers to ship direct. The Court made a clear distinction between laws regarding direct sales by wine producers as distinguished from the state's regulation within its borders of the resale of alcohol beverages.

The Court did not specifically address the issue of personal jurisdiction for purposes of enforcement but referenced the authority of the states' attorneys general to seek injunctive relief in federal court under the 21st Amendment Enforcement Act and a winery's potential loss of its federal basic permit as incentive to comply with a state's alcoholic beverage statutes. [See also **Federal Law** comments.]

The traditional three tier system of alcohol beverage distribution utilized by Florida and many other states was held to be legitimate as long as state laws satisfy the key holdings of *Granholm.*

Bainbridge v. Turner

At a status conference held by the court on May 25, 2005, the State conceded that based upon the *Granholm* decision the two statutes in question in *Bainbridge v. Turner,*[10] ss. 561.54(1)-(2) and 561.545(1), F.S., were unconstitutional.

Subsequently, an August 5, 2005 Order issued by U. S. District Court Judge James Whittemore in Tampa found the two statutes in question in *Bainbridge* violated the Commerce Clause to the extent that they discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

> "Florida's direct shipment scheme, codified in ss. 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. Florida's direct shipment statutes prohibit *out-of-state vendors and producers* from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*." [Emphasis supplied]

While the Order enjoined the State from enforcing the two statutes in question, it is unclear whether direct wine shipments are allowed under the statutory scheme remaining in place. Further, it remains unclear whether this injunction is limited to out-of-state wineries or permits direct shipments by out-of-state wineries and *other shippers* that are not wineries. The Order did not address the constitutionality of these statutes with regard to other alcoholic beverages such as beer and spirits.

Nevertheless, in response to the *Granholm* and *Bainbridge* decisions, in February 2006 the agency charged with the regulation of alcoholic beverage commerce, the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation, began allowing out of state direct shipments of wine.

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[10] *Bainbridge v. Turner,*[10] Case No. 8:99-CV-2681-T-27TBM, (M.D. Fla. August 5, 2005)

The Division provided information on its web site informing wineries that there are five dry counties in Florida and that Florida prohibits sales of alcoholic beverages to persons under the age of 21. The Division also informed wineries that excise taxes must be paid and posted links to forms and payment instructions. In addition the Division provided information regarding the applicability of the use tax to Florida consumers who purchase items from an out-of-state seller.

A legislative response to *Granholm* and *Bainbridge* is required to clarify Florida law.

FEDERAL LAW

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. s. 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling spirits or producing wine. According to the Bureau of Alcohol and Tobacco Tax and Trade in the Department of the Treasury [TTB] there are currently 4,390 wine premises with federal basic producer permits. A basic permit is also required for spirits, wine and malt beverage wholesalers. Retailers are not required to obtain basic permits under the FAA Act.

A basic permit may not be issued to a person that has, within 5 years prior to the date of making application, been convicted of a state or federal felony, or has, within 3 years of making application, been convicted of a federal misdemeanor relating to liquor. The TTB indicates that at the present time fingerprint-based background checks are not conducted, rather the Bureau conducts a background investigation based on the name, date-of-birth and social security number of the applicant. The FAA Act provides that basic permits are conditioned upon, among other things, compliance with the 21st Amendment and other Federal laws relating to its enforcement and may be suspended or revoked for certain violations.[11] There is no fee for a basic permit.

There is no distinction based on the size of a winery for licensing purposes. For tax purposes, however, federal law treats domestic wineries producing less than 250,000 gallons of wine annually somewhat differently than those producing more than 250,000 gallons, i.e., federal law allows incremental tax credits for those smaller domestic wineries producing between 100,000 and 250,000 gallons of wine annually.[12]

Generally, wine producers are required to post a bond as surety for the payment of taxes in amounts ranging from $1,000 to $100,000 depending upon expected tax liability. Smaller wine producers are allowed under federal law to defer tax payments for as long as one year and may post a second type of bond called deferral coverage. A deferred coverage bond must be sufficient to cover the outstanding tax for the deferral period but may not be less than $500 or more than $250,000.[13]

The Bureau of Alcohol, Tobacco, and Firearms [now Bureau of Alcohol and Tobacco Tax and Trade] in ATF Ruling 2000-1 ruled that the Bureau could, under appropriate circumstances, take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State.

> "ATF will intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. However, while ATF is vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the FAA Act, the extent of this authority does not extend to situations where *an out-of-State retailer* is making the shipment into the State of the consumer." [Emphasis supplied.]

[11] Title 27, ch.8, subchapter I, s.204(c)
[12] 27 CFR 24.278
[13] 27 CFR 24.145-.159

Preliminary reports from TTB did not identify any instance where the federal government has taken action in this manner against a federal basic permit as a result of an unlawful shipment of alcoholic beverages.

The Twenty-first Amendment Enforcement Act, 27 U.S.C. s. 122a, provides the federal district courts with subject matter jurisdiction over any action brought by a state attorney general against a person who is engaged in, or has engaged in, the illegal transportation of alcoholic beverages into a state. The act prohibits the direct shipment of wine into a state in violation of state laws and authorizes state attorneys general the power to sue wineries in federal court to enjoin violations of state law. Staff has been unable to determine whether a state attorney general has utilized this law.[14]

EFFECT OF PROPOSED CHANGES

The bill creates s. 561.585, F.S. to provide the license and regulatory mechanism for the direct shipment of wine into Florida for personal consumption. Among its provisions the bill specifies the qualifications for a winery shipper license, provides for labeling of packages and signature of recipient, provides for monthly reports, and requires payment of taxes.

Amendments to Direct Shipping Prohibition Statutes

Sections 561.54 and 561.545, F.S., were the two statutory provisions ruled unconstitutional in *Bainbridge*; this bill amends both sections.

Existing s. 561.54, F.S. prohibits the delivery of an alcoholic beverage from without the state into the state except to qualified licensees. This bill creates a new subsection (3) in s. 561.54, F.S., to provide an exception to the direct shipping prohibition and allow the shipment of wine by a winery shipper licensee and delivery by a common carrier in accordance with newly created s. 561.585, F.S.

Section 561.54, F.S., grants standing for a licensee aggrieved by a violation of the direct shipping prohibition statute in any court of jurisdiction to recover money for the state and to seek injunctive relief. The bill removes the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof.

Both the *Granholm* and *Bainbridge* decisions addressed inequities with regard to direct shipments of wine. This bill amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor.

Section 561.22, F.S., prohibits a manufacturer, distributor, or exporter from being licensed as a retail vendor. [Retail vendors are authorized to make deliveries of any alcoholic beverage sold on its licensed premises and telephone and mail orders are considered as sales actually made on the licensed premises.] Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter. That statute also prohibits the renewal of a dual license but contains an exception to this structured three-tiered distribution system for certain qualifying wineries, including Certified Florida Farm Wineries. The ability of in-state licensees to avail themselves of the benefits of these exceptions in the Beverage Law was central to the *Bainbridge* decision which stated:

> Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-

[14] Empirical information gathered from conversations with TTB personnel and with industry representatives; see also *Interim Project Summary 2006-146*, Committee on Regulated Industries, the Florida Senate, October 2005.

state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.

This bill amends s. 561.24, F.S., to grandfather in any winery that holds a license as a distributor on July 1, 2006, while prohibiting any wine manufacturer from obtaining a wholesale distributor license in the future.

Winery Shipper License

The bill creates a "winery shipper license" and authorizes winery shipper licensees to ship wine directly to Florida consumers for their personal use only and not for resale. To qualify for a winery shipper license the applicant must:

- file a Division-prescribed application with the Division;
- obtain and maintain licensure as a primary American source of supply;
- provide the Division with a copy of its current wine manufacturer's license issued by this or another state;
- provide the Division with a copy of its current federal basic permit as a wine producer;
- manufacture no more than 250,000 gallons of wine per year;
- pay a $250 license fee; and
- file a $5,000 surety bond with the Division.

The applicant also must complete one of the following:

- qualify for licensure under ss. 561.15 and 561.17; **or**
- provide the Division with a copy of its current certification from the alcoholic beverage authority of the Federal Government or the state in which the winery is located that include the following standards:
    - fingerprinting of applicant;
    - applicant must be at least 21 years of age; and
    - disqualification of applicants that have been convicted of the following:
        - violation of the beverage laws of this state, another state, or the federal government within the past five years;
        - a felony in this or any state; or
        - a criminal violation of controlled substances in this state or any other state or the federal government.

The present annual license fee for a wine manufacturer in Florida is $1,000 [$2,000 if manufacturing wines and cordials]; the annual license fee for a wine distributor in Florida is $1,250; and the annual licensee fee for a retail vendor of wine is based on county population ranging from $60 to $280. The annual fee for the winery shipper license created in this legislation is $250.

This bill does not require an in-state licensee to relinquish any existing beverage license but provides an option for licensure as a winery shipper. Licensees presently holding dual licenses are grandfathered and may continue to ship wine directly to Florida consumers. In addition, winery shipper licensees may continue to use the state's licensed distribution network while also shipping direct to the consumer under the authority of the newly created winery shipper license; one means does not preclude the other.

The bill provides that a winery shipper license may not be issued or renewed if the applicant or licensee is owned by a winery that manufacturers more than 250,000 gallons of wine annually. Therefore, if a winery producing less than 250,000 annually is owned by a winery that producers more than 250,000 annually, the smaller winery could not qualify for a winery shipper license. Production statistics are not readily available as many wineries are privately held and their production information is considered proprietary information; therefore, it is not possible to ascertain the actual number of wineries that could qualify, or be disqualified, for licensure based on production levels. While the percentage is not

verifiable, various interests contend that over 90% of wineries nationwide produce less than 250,000 gallons of wine annually; however, one industry submission identified over 125 California wineries that would be disqualified from licensure based on their production levels.

The bill also permits applicants to receive a temporary license under the provisions outlined in the beverage law.

Winery shipper licensees may not ship more than 18 cases of wine per calendar year to one adult individual and Florida consumers are prohibited from purchasing more than 18 cases of wine per calendar year per adult of legal age.

Primary American Source of Supply

For purposes of tax revenue control s. 564.045, F.S., requires the registration of each brand of wine sold in Florida and the licensure of that brand's "primary American source of supply" [PAS]. There is only one PAS for each brand and each brand must have a licensed PAS. Generally, the PAS is either the wine manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured. In the case of foreign-produced wine it is often an importer. Licensure as a PAS authorizes the shipment of wine manufactured within and without the state to licensed distributors, importers, manufacturers, bonded warehouses, and registered exporters within the state.

This bill requires, as a condition of licensure, that the winery shipper licensee obtain and maintain a current license as a primary American source of supply.

Record Retention and Reporting Requirements

The Beverage Law requires manufacturers, distributors, sales agents, importers, and exporters to maintain records and make monthly reports to the Division of all beverages manufactured, imported, exported, and sold within the state. Reports must be made by the 10th day of each month and records must be maintained for a period of three years.

This bill requires winery shipper licensees to report monthly to the Division whether any wine was shipped into or within the state during the previous month, the total amount of wine shipped into or within the state for the preceding month, the quantity and types of wine shipped, and the amount of excise tax paid to the Division for the wine shipped during the previous month. To avoid duplicate filings, this report is not required from a winery shipper licensee that files a monthly report pursuant to s. 561.55, F.S. that contains all the required information.

Section 562.20, F.S., requires common carriers to file monthly reports of alcoholic beverages deliveries into or within the state with the Division. This bill exempts common carriers making deliveries of alcoholic beverages from this required report filing.

Audit, Bond and Tax Requirements

Present law requires alcoholic beverage excise taxes to be paid by the 10th day of each month, and licensed wholesalers and manufacturers are audited twice each year for compliance. In addition, alcoholic beverage wholesalers and manufacturers are required to file a surety bond with the Division to ensure the payment of all taxes. The surety bond for a winery is $5,000 and for a wine distributor is $25,000. [See ss. 561.37, 561.41, 561.50, 561.55, F.S.]

This bill requires winery shipper licensees to pay the appropriate excise tax to the Division and the appropriate sales tax to the Department of Revenue monthly. To establish that the transfer of title takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if each sale takes place at the location where the delivery occurs in Florida. [Please see FISCAL COMMENTS section for further tax implication discussion.] Records of the direct shipments,

including the names, addresses, amounts, and dates of all shipments to persons in this state must be maintained for a period of three years and are subject to audit by the Division of Alcoholic Beverages and Tobacco or the Department of Revenue upon request. The cost of performing an audit is assigned to the agency requesting the audit unless the licensee is found to be in material violation of the direct shipping statute in which case the cost of the audit is assigned to the licensee. No audit schedule is provided in the bill.

Winery shipper licensees are required to post a $5,000 surety bond as surety for the payment of all taxes. The Division is authorized to accept a bond of a lesser amount if it is determined that the amount of taxable sales is such that a lower bond would be adequate; however, the bond may not be reduced below $1,000. If a winery already has a surety bond on file with the Division pursuant to s. 561.37, F.S., or for another license in an amount in excess of $5,000, it is deemed to satisfy this requirement.

Age Verification

The Beverage Law makes it unlawful for any person to sell, give, serve, or permit to be served any alcoholic beverage to a person less than 21 years of age. A violation of this prohibition constitutes a 2nd degree misdemeanor. In addition, a retail vendor's alcoholic beverage license is subject to suspension or revocation for unlawful sales to persons under the age of 21 by the licensee or an employee of the licensee. The Beverage Law does not specifically require a vendor to verify age through identification checks prior to the sale of an alcoholic beverage but provides a complete defense to an unlawful sale if: 1) the person falsely evidenced that he or she was of legal age to purchase or consume the beverage; 2) the appearance of the person was such that an ordinarily prudent person would believe him or her to be of lawful age; and 3) the licensee or employee checked one of the approved forms of identification. For these purposes approved forms of identification include: a driver's license, an identification card issued by this state or another state, a passport, or a United States Uniformed Services identification card. [See s. 562.11, F.S.]

This bill, in newly created s. 561.585(3), F.S., mandates that the winery shipper licensee and common carrier must require that the signature of the recipient is obtained prior to delivery and after presentation of valid identification showing the recipient is 21 years of age or older. Acceptable forms of identification are the same as specified in s. 562.11, F.S. A winery shipper licensee or common carrier that allows a person under the age of 21 to accept delivery of an alcoholic beverage is provided with a complete defense against any civil action, except for administrative action by the Division, if the licensee or common carrier complied with the specified age verification procedures.

The bill provides that a winery shipper licensee that knowingly and intentionally ships wine to a person in Florida under the age of 21 commits a 3rd degree felony. Likewise, a common carrier, permit carrier, or other commercial conveyance that knowingly and intentionally delivers wine to a person in Florida under the age of 21 commits a 3rd degree felony. A person who knowingly and intentionally obtains wine in violation of newly created s. 561.585, F.S., commits a 2nd degree misdemeanor.

Package Labeling Requirements

The bill establishes labeling requirements for wine shipments but allows flexibility for common carriers to use their individual labeling criteria. The winery shipper and common carrier must ensure that the outside shipping label on each package is conspicuous and includes the following components, without specifying the format:

- that the package contains alcohol;
- that an adult signature is required; and
- that the recipient must be at least 21 years of age.

Alcoholic Beverage Deliveries by In-state Licensees

The Beverage Law allows retail vendors, or persons acting on their behalf, to make deliveries away from their place of business of alcoholic beverage sales actually made at the business location, s. 561.57, F.S. The law does not specifically require the licensee or an agent of the licensee making an off-premises delivery of an alcoholic beverage to check identification in order to verify the recipient is at least 21 years of age but treats such sales and deliveries the same as an on-premises sale. An off-premises delivery of an alcoholic beverage to a person under the age of 21 is a violation of s. 562.11, F.S., and subject to the same penalty. In addition, the retail vendor is subject to administrative penalties under the Beverage Law, including license revocation.

This bill amends s. 561.57(6), F.S., to require all licensees, common carriers or other person acting as an agent for delivery in this manner to verify that the person receiving the alcoholic beverage is at least 21 years of age and requires the Division to adopt rules. The bill specifies that adherence to these age verification procedures provides the common carrier and the licensee or other person hiring the common carrier with a complete defense of selling, giving or serving alcoholic beverages to any person under the age of 21. This same standard applies to individuals using a common carrier to make a delivery of an alcoholic beverage, e.g. a gift delivery.

Section 561.57(1), F.S., specifies that telephone and mail orders received at a licensed business are construed as sales actually made on the licensed premises. This bill amends that subsection to construe Internet orders, in addition to telephone and mail orders, as a sale actually made at the vendor's licensed place of business.

Penalties

Section 561.585(7), F.S., provides that in addition to the penalties provided by in the Beverage Law, the Division may suspend or revoke a winery shipper's license or impose a fine in an amount up to $2,500 per violation of s. 561.585, F.S. In addition, this subsection provides that any person that *knowingly and intentionally* obtains wine from a winery shipper licensee in violation of s. 561.585, F.S., commits a misdemeanor of the second degree.

The bill provides that any winery shipper licensee, or any common carrier, permit carrier or other commercial conveyance that *knowingly and intentionally* ships or delivers wine directly to any person in this state who is under 21 years of age commits a felony of the 3rd degree.

The bill changes the applicability of existing s. 561.545, F.S., from all alcoholic beverages to only beer and spirits. As amended, the bill makes it a violation for a business selling beer or spirits, a common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance to knowingly and intentionally transport beer or spirits from an out-of-state location directly to a Florida consumer. Any business selling beer or spirits who violates this prohibition within two years after receiving a cease and desist order, or within two years after a prior conviction, commits a 3rd degree felony. Any common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance who violates this prohibition due to a second or subsequent delivery from the same source and location within a 2-year period after the first delivery shall be issued a notice to show cause why a cease and desist order should not be issued. Any subsequent violation within two years after receiving the cease and desist order or within two years of a prior conviction is a 3rd degree felony.

Jurisdiction

The bill creates a new s. 561.585(5), F.S., which specifies that by obtaining a direct shipper license the licensee is deemed to have consented to the jurisdiction of the Division and to any other state agency and the courts of this state concerning enforcement. To establish that the transfer of title for the product takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if the sale took place at the location where the delivery occurred in Florida. Winery shippers are obligated to collect discretionary surtaxes when applicable.

Florida Farm Wineries

Section 599.004, F.S., establishes the criteria necessary to be designated as a certified Florida Farm Winery. The Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction, and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways. To qualify as a certified Florida Farm Winery a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;
- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of $100.

Some wineries in Florida import grape juices and other products from other states or nations and use those products to produce wine. To encourage the use of Florida agricultural products this bill amends the criteria for designation as a certified Florida Farm Winery to require that at least 60 percent of wine produced at the winery be made from Florida agricultural products. The Commissioner of Agriculture is authorized to waive this production requirement in times of hardship.

Non-Impairment of Contracts

The bill provides protection for distributors in the state that have exclusive contracts to distribute particular beverages.

Other

Please see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT portion of the bill analysis for estimates of fiscal impact.

The bill adds winery shipper license as a license classified under the beverage law.

The bill also contains a severability clause and rulemaking authority for the Division and the Department of Revenue and will take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates s. 561.585, F.S., creating a winery shipper license that authorizes the direct shipment of wine for personal consumption; establishes qualifications and restrictions; imposes labeling requirements; provides signature requirements; requires monthly reports; requires collection and remittance of sales and use taxes and payment of excise taxes; authorizes audits; provides jurisdiction; and establishes penalties.

Section 2. Creates s. 561.14(8), F.S., to classify the winery shipper license under the Beverage Law.

Section 3. Amends s. 561.54(2), F.S., to remove the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof; creates s. 561.54(3), F.S., exempting shipments of wine by a licensed winery shipper from the direct shipping prohibitions.

Section 4. Amends s. 561.545, F.S., authorizing the direct shipment of wine to individuals by licensed winery shippers and exempting those shipments from the direct shipping prohibitions and penalties in s. 561.545; maintains direct shipping prohibition for beer and liquor.

Section 5. Amends s. 561.57, F.S., to construe Internet orders as taking place on a Florida vendor's licensed premises; exempting common carriers from certain reporting requirements; providing for age verification procedures; and providing a defense for common carriers and licensees for certain unlawful sales.

Section 6. Amends s. 599.004, F.S., to add a new criteria for qualification as a certified Florida Farm Winery.

Section 7. Amends s. 561.24(5), F.S., to remove the authority for renewal of distributor licenses held by a wine manufacturers and grandfathers in existing licensees.

Section 8. Provides for severability.

Section 9. Provides for the non-impairment of contracts.

Section 10. Provides for rulemaking by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation and the Department of Revenue.

Section 11. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Licensing Fees
The State of Florida will receive a $250 licensing fee for every winery shipper licensee who wishes to ship wine directly to consumers in Florida. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in license fee revenue annually to the Alcoholic Beverage and Tobacco Trust Fund.

Sales and Excise Taxes
Licensed winery shippers are required to pay excise taxes on and to collect and remit sales for all wines shipped directly to individuals in this state. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in sales and excise tax collections.

	2006-07	2007-08
General Revenue	Indeterminate	Indeterminate
Alcoholic Beverage and Tobacco TF	Indeterminate	Indeterminate
Total	Indeterminate	Indeterminate

2. Expenditures:

Assuming each of the current 1,098 Primary American Source of Supply licensees receive a winery shipper license, the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation estimates the need for additional positions to implement and regulate the direct shipment of wines into the state.

Licensing
Based on the assumption that there would be an estimated 1,098 winery shipper licenses to be processed each year, the Division estimates that the increase in workload will require one half-time Regulatory Specialist II position. This position will license the winery shippers and microfilm all of the corresponding licensing records. The Division contends it will be necessary to keep this permanent position in order to maintain the continual licensing and registering processes.

Auditing
A total of 13,176 reports would be received annually if each of the estimated 1,098 winery shipper licensees report each month as required by the legislation. Assuming it will take 30 minutes to process each report, and using 1,854 available work hours per employee, the Division estimates

that the Bureau of Auditing will need 4 additional Revenue Specialist positions in addition to current staff for monthly report processing.

The frequency of audits is not determined by the bill. In-state manufacturers and distributors are currently audited semi-annually by the Division. Although this audit frequency may not be practical for the out-of-state entities, by auditing the estimated 1,098 licensed direct shippers semi-annually, and assuming a minimum of 16 hours to perform each audit, the Division estimates that the Bureau of Auditing would need 9 additional Tax Auditor positions. In addition, the Division estimates annual travel expenses of $12,000 per auditor, which would encompass one trip per month, per auditor.

Information Technology:
The Division estimates that there will be a need for extensive computer programming for the direct shipment program. This includes a licensing program to incorporate the licensing of the winery shipper licensees, a records maintenance system to incorporate the additional records that must be maintained for the new licensees, and audit programs to verify the accuracy of the reported shipments and tax payments. The Division estimates the need for one Systems Programming Administrator to develop and maintain these programs.

Office of the General Counsel:
The Division estimates the need for one additional senior attorney position, and associated travel expenses, to assist the Division in the implementation and enforcement of the program.

Service Operations:
The new license requires an annual renewal, which will create a workload increase in the Central Intake Unit. Annual renewals increase the revenue activity and renewal of license records and support of these license records is performed throughout the life of the record. The Division estimates the need for two Regulatory Specialist II positions to process annual renewals for a conservative base of 1,000 records. In addition, these positions will perform data entry needed to maintain license records, including name, address and renewal changes.

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Non-Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Operating Capital Outlay	45,050	0	0
Other Personal Services	0	0	0
Other Expenses	77,457	0	0
Subtotal	122,507	0	0

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Salaries/Benefits 23.5 FTE's	1,065,131	1,103,476	1,131,063
Expenses	262,055	262,055	262,055
Other DMS/Hr Svc.	9,236	9,568	9,807
Subtotal	1,336,421	1,375,099	1,402,925

Non-Operating Expenditures	FY 2006-07	FY 2007-08	FY 2008-09
Service Charges (to General Revenue)	9,896	10,503	11,476
Other Indirect Costs	0	0	0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Federal Trade Commission bans on interstate direct shipping of wine represent the single largest regulatory barrier to expanded e-commerce of wine.[15] Many wine producers reportedly rely on the Internet to market their product and implementation of this legislation would support the increased viability of these businesses.

It is unknown to what extent the availability of direct-to-consumer purchases of wine will decrease sales made at licensed Florida retail locations and from licensed wholesalers.

D. FISCAL COMMENTS:

The bill provides that each direct shipper of wine, as provided in s. 561.585(6), F.S., is deemed to have consented to the jurisdiction of any state agency. As such, every dealer who is licensed as a direct shipper of wine has consented to the requirements of ch. 212, F.S. related to sales and use tax.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The Wine Institute, a California-based industry association, contends that the 250,000 gallon qualification ceiling amounts to discrimination based on size, rather than geographic location as was the case in *Granholm*, and may be subject to a constitutional challenge. Others contend that the 250,000 ceiling captures over 90% of wine producers nationwide and treats similarly situated wine producers equally.

B. RULE-MAKING AUTHORITY:

The Division is required by rule to prescribe the age verification process of common carriers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 561.585(7), F.S., provides that any "common carrier, permit carrier, *or other commercial conveyance*" that knowingly and intentionally delivers wine directly to a person who is under 21 commits a 3rd degree felony. The term "other commercial conveyance" is not used elsewhere in the bill when referring to the universe of potential means of commercial transportation.

The Department of Revenue has recommended an effective date of January 1, 2007, to ensure sufficient time to adequately implement the provisions of the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[15] *Possible Anticompetitive Barriers to E-Commerce: Wine,* Federal Trade Commission, July 2003 @ page 3. Report available at http://www.ftc.gov/os/2003/07/winereport2.pdf

Business Regulation Committee

The sponsor of this bill offered a strike-all amendment which was adopted by the Business Regulation Committee on February 7, 2006.

This strike-all amendment creates a new s. 561.585, F.S., and the license and regulatory mechanism which allows the direct shipment of wine to any person that is at least 21 years of age for personal consumption; the amendment deletes the provision contained in the original bill allowing for direct shipments to vendors.

A "winery shipper" license may only be obtained by a wine manufacturer. The bill removes the authority for a Florida wine manufacturer to also be licensed as a distributor but grandfathers existing licensees and retains authority for certain wine manufacturers to hold retail licenses. To obtain a winery shipper license a winery applicant must:

- obtain and maintain licensure as a primary American source of supply;
- provide the Division with a copy of its current wine manufacturer's license issued by this or another state; [limits to wine manufacturers, not all alcoholic beverage licensees as in original bill]
- provide the Division with a copy of its current Federal basic permit as a wine producer; [new requirement]
- manufacture less than 250,000 gallons of wine per year; [new requirement]
- pay a $250 license fee; [increased from $100 fee]
- file a $5,000 surety bond with the Division. [new requirement]

The bill provides that a winery shipper license may not be issued to an applicant that is owned by a winery that produces more than 250,000 gallons of wine annually. According to industry estimates over 90 percent of wineries nationwide produce less than 250,000 gallons of wine annually. Winery shippers are prohibited from shipping more than 42 gallons of wine per year to a single address and recipients are prohibited from ordering more than 42 gallons of wine per year per address.

The criteria to become certified as a Florida Farm Winery was amended to require that at least 60 percent of all wine produced by the farm winery be made from Florida agricultural products. The bill allows the Commissioner of Agriculture to waive this requirement in times of hardship.

The strike-all amendment establishes additional labeling requirements for wine shipments. The winery shipper must ensure that the outside shipping label on each package is conspicuous and includes the following components, without specifying the format:

- that the package contains alcohol;
- that an adult signature is required; and
- that the recipient must be at least 21 years of age.

Responsibility is placed on both the winery shipper and the common carrier to ensure that the signature of a person that is at least 21 years of age is obtained prior to delivery of the direct-shipped wine. The approved forms of identification are expanded to include an identification card issued under s. 322.051 or, if the person is physically handicapped as defined in s. 553.45(1).

The amendment clarifies administrative penalty provisions and allows for the suspension or revocation of a winery shipper license or the imposition of a fine in an amount up to $2,500 per violation of newly created s. 561.585. Other penalty provisions in the strike-all amendment remain the same as in the original bill, except that the amendment increases the evidentiary standard for a person that obtains wine from a winery shipper in violation of the statute to knowingly and intentionally, which is the same standard applicable to a winery shipper or a common carrier.

The amendment provides the winery shipper and the common carrier with a complete defense to civil actions for the sale or delivery of alcoholic beverages to a person under the age of 21 if the prescribed age verification procedures were followed.

The amendment expands the monthly reporting requirements for winery shippers to provide greater specificity with regard to the wines shipped into the state and taxes paid. The amendment also exempts those licensees that already make monthly reports pursuant to s. 561.55, F.S., from duplicate reporting requirements if all relevant information is captured in other required reports.

The requirement for payment of excise and sales taxes remain in the strike-all amendment. Sales taxes are calculated as if the sale took place at the location where the delivery occurs in the state. A new provision is included to specify that the cost of performing an audit shall be assigned to the agency requesting the audit unless the licensee is found to be in material violation, at which time the cost of the audit will be assigned to the licensee.

The strike-all further amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor. In-state retailers retain their ability to make direct deliveries of any type of alcoholic beverage.

The strike-all construes Internet orders as telephone orders made at a vendor's place of business and allows vendor delivery of same.

The strike-all amendment contains a severability clause and rulemaking authority for the Division and the Department of Revenue.

Finance and Tax Committee

On March 24, 2006, the Finance and Tax Committee adopted several amendments to the bill. The first clarified the procedure for winery shippers to "collect and remit" sales and use taxes. The second reinforced the intent that out-of-state shippers are required to collect applicable local option taxes. The third ensured that all applicants, whether licensed by this or another state, will have fingerprints on file with DBPR. The fourth provides for the non-impairment of exclusive distributor contracts. The fifth allows winery shipper license applicants to receive a temporary license, and changes the limit on the amount of wine shipped from 42 gallons per residence to 18 cases per adult individual. The final amendment insured that the winery shipper license is classified under the beverage law.

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Beverage Law; creating s. 561.585,
7 F.S.; authorizing certain direct shipments of wine;
8 requiring licensure of winery shippers; providing
9 requirements for licensure; providing prohibitions;
10 requiring that a winery shipper licensee file a surety
11 bond with the Division of Alcoholic Beverages and Tobacco
12 of the Department of Business and Professional Regulation;
13 requiring that each container of wine shipped directly be
14 labeled with a notice; requiring monthly reports by winery
15 shipper licensees; providing limitations on the amount of
16 wine a winery shipper may ship or cause to be shipped;
17 providing age requirements for those receiving direct
18 shipments of wine; providing a defense to certain actions;
19 requiring the collection, remittance, and payment of
20 certain taxes by direct shippers; requiring that winery
21 shippers maintain certain records for a certain time
22 period; providing for jurisdiction; providing penalties;
23 amending s. 561.14, F.S.; classifying the winery shipper

24 license; amending s. 561.54, F.S.; removing a provision
25 requiring that the licensee be aggrieved by a violation
26 involving prohibited delivery from without the state to
27 have standing to bring an action; exempting from such
28 prohibition shipment of wine by a winery shipper licensee;
29 amending s. 561.545, F.S.; revising provisions relating to
30 prohibition against direct shipment of alcoholic beverages
31 to limit applicability to malt or spirituous beverages;
32 exempting applicability of such prohibition to the
33 shipment of wine by a winery shipper licensee; amending s.
34 561.57, F.S.; providing that Internet orders shall be
35 construed as telephone orders; exempting common carriers,
36 licensees, or other persons utilizing common carriers as
37 their agents from certain report filing requirements;
38 requiring common carriers to verify the age of persons
39 receiving shipments; providing a defense to certain
40 actions; amending s. 599.004, F.S.; revising
41 qualifications for the certification of Florida Farm
42 Wineries; amending s. 561.24, F.S.; revising an effective
43 date; authorizing certain manufacturers of wine holding a
44 distributor's license to renew such license; removing
45 exemption of Florida Farm Wineries from prohibition
46 against manufacturer being licensed as distributor or
47 registered as exporter; providing for severability;
48 providing for non-impairment of contracts; providing for
49 rulemaking authority; providing an effective date.
50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 561.585, Florida Statutes, is created
54 to read:
55 561.585 Direct shipment of wine for personal
56 consumption.--
57 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--
58 (a) Notwithstanding any provision of the Beverage Law or
59 any rule to the contrary, a person, firm, corporation, or other
60 entity that is licensed as a winery shipper under this section
61 may ship wine directly to any person who is at least 21 years of
62 age for personal use only and not for resale. To obtain or renew
63 a winery shipper's license, an applicant must:
64 1. File an application with the division on forms
65 prescribed by the division.
66 2. Qualify for licensure under ss. 561.15 and 561.17 or
67 provide a true copy of a certification from the alcoholic
68 beverage licensing authority of the Federal Government or the
69 state in which the winery is located that qualifications for the
70 winery license include, at a minimum, the following components:
71 a. Fingerprinting of applicants.
72 b. Disqualification for applicants under 21 years of age.
73 c. Disqualification for applicants convicted of the
74 following:
75 (I) Within the past 5 years, any violation of the beverage
76 laws of this state, the United States, or any other state;
77 (II) Within the past 15 years, any felony in this state or
78 any other state of the United States; or

79 (III) Any criminal violation of the controlled substance
80 act of this state, the United States, or any other state.
81 3. Obtain and maintain a current license as a primary
82 American source of supply as provided in s. 564.045.
83 4. Provide to the division a true copy of its current wine
84 manufacturer's license issued by this state or another state and
85 a true copy of its current federal basic permit as a wine
86 producer issued in accordance with the Federal Alcohol
87 Administration Act.
88 5. Manufacture no more than 250,000 gallons of wine per
89 year.
90 6. Pay an annual license fee in the amount of $250.
91 7. File with the division a surety bond acceptable to the
92 division in the sum of $5,000 as surety for the payment of all
93 taxes provided that when, at the discretion of the division, the
94 amount of business done by the winery shipper licensee is such
95 volume that a bond of less than $5,000 will be adequate, the
96 division may accept a bond in a lesser sum but not less than
97 $1,000. The surety bond currently on file with the division for
98 a winery pursuant to s. 561.37 is deemed to comply with this
99 requirement. Any applicant that has a surety bond for another
100 license on file with the division that is in excess of $5,000
101 shall be deemed to be in compliance with this requirement.
102 (b) Applicants under this section may obtain a temporary
103 initial license as authorized in s. 561.181.
104 (c) The division may not issue a license under this
105 section if the applicant or licensee is owned by a winery that
106 manufactures more than 250,000 gallons of wine annually.

107 (d) Winery shipper licensees may not ship or cause to be
108 shipped more than 18 cases of wine per calendar year to one
109 adult individual.
110 (2) LABEL.--Each winery shipper licensee shall ensure that
111 the outside shipping label on each package is conspicuous and
112 includes the following components:
113 (a) This package contains alcohol.
114 (b) An adult signature is required.
115 (c) The recipient must be at least 21 years of age.
116 (3) SIGNATURE.--
117 (a) Each winery shipper licensee and common carrier shall
118 require, prior to delivery, that the signature of the addressee
119 or other person at least 21 years of age is obtained after
120 presentation of a valid driver's license, an identification card
121 issued under the provisions of s. 322.051, or, if the person is
122 physically handicapped, a comparable identification card issued
123 by another state which indicates the person's age, a passport,
124 or a United States Uniformed Services identification card.
125 (b) A winery shipper licensee or common carrier who
126 violates this subsection shall have a complete defense to any
127 civil action therefor, except for any administrative action by
128 the division, if, at the time the alcoholic beverage was sold,
129 given, delivered, or transferred, the person falsely evidenced
130 that he or she was of legal age to purchase or consume the
131 alcoholic beverage and the appearance of the person was such
132 that an ordinarily prudent person would believe him or her to be
133 of legal age to purchase or consume the alcoholic beverage and
134 if the winery shipper licensee or common carrier acted in good

135 faith and in reliance upon the representation and appearance of
136 the person in the belief that he or she was of legal age to
137 purchase or consume the alcoholic beverage and carefully checked
138 one of the following forms of identification with respect to the
139 person: a valid driver's license, an identification card issued
140 under the provisions of s. 322.051, or, if the person is
141 physically handicapped, a comparable identification card issued
142 by another state which indicates the person's age, a passport,
143 or a United States Uniformed Services identification card.
144 (4) MONTHLY REPORT.--
145 (a) Each winery shipper licensee shall report monthly to
146 the division on forms prescribed by the division:
147 1. Whether any wine product was shipped into or within
148 this state under this section during the preceding month.
149 2. The total amount of wine shipped into or within this
150 state under this section during the preceding month.
151 3. The quantity and types of wine shipped into or within
152 this state under this section during the preceding month.
153 4. The amount of excise tax paid to the division for
154 shipments of wine into or within this state under this section
155 during the preceding month.
156 (b) The report required by this subsection is not required
157 from a winery shipper licensee who files a monthly report
158 pursuant to s. 561.55 that contains all the information required
159 in paragraph (a). The division is authorized to prescribe the
160 format for submission of this information in order that
161 duplicate filings are eliminated.
162 (5) TAXES.--

163 (a) Each winery shipper licensee shall collect and remit
164 monthly to the Department of Revenue all sales taxes and pay to
165 the division all excise taxes due on sales to persons in this
166 state for the preceding month. Notwithstanding s. 212.0596, the
167 amount of such taxes shall be calculated as if the sale took
168 place at the location where the delivery occurred in this state.
169 (b) Each winery shipper licensee shall maintain for at
170 least 3 years after the date of delivery records of its
171 shipments into or within this state pursuant to this section,
172 including the names, addresses, amounts, and dates of all
173 shipments to persons in this state, and shall allow the
174 Department of Revenue or the division, upon request, to perform
175 an audit of such records.
176 (c) The cost of performing an audit under paragraph (b)
177 shall be assigned to the agency requesting the audit unless the
178 winery shipper licensee is found to be in material violation of
179 this subsection, in which case the cost of the audit shall be
180 assigned to the licensee.
181 (6) JURISDICTION.--Each winery shipper licensee is deemed
182 to have consented to the jurisdiction of the division or any
183 other state agency and the courts of this state concerning
184 enforcement of this section and any related laws or rules.
185 (7) PENALTIES.--
186 (a) In addition to any other penalty provided in the
187 Beverage Law, the division may suspend or revoke a winery
188 shipper license or impose fines on the winery shipper licensee
189 in an amount not to exceed $2,500 per violation for any
190 violation of this section.

191 (b) A winery shipper licensee that knowingly and
192 intentionally ships, or causes to be shipped, wine to any person
193 in this state who is under 21 years of age commits a felony of
194 the third degree, punishable as provided in s. 775.082, s.
195 775.083, or s. 775.084.
196 (c) Any common carrier, permit carrier, or other
197 commercial conveyance that knowingly and intentionally delivers
198 wine directly to any person in this state who is under 21 years
199 of age commits a felony of the third degree, punishable as
200 provided in s. 775.082, s. 775.083, or s. 775.084.
201 (d) A person who knowingly and intentionally obtains wine
202 from a winery shipper licensee in violation of this section
203 commits a misdemeanor of the second degree, punishable as
204 provided in s. 775.082 or s. 775.083.
205 Section 2. Subsection (8) is added to section 561.14,
206 Florida Statutes, to read:
207 561.14 License and registration classification.--Licenses
208 and registrations referred to in the Beverage Law shall be
209 classified as follows:
210 (8) Wineries licensed as winery shippers under s. 561.585.
211 Section 3. Section 561.54, Florida Statutes, is amended to
212 read:
213 561.54 Certain deliveries of beverages prohibited.--
214 (1) It is unlawful for common or permit carriers,
215 operators of privately owned cars, trucks, buses, or other
216 conveyances or out-of-state manufacturers or suppliers to make
217 delivery from without the state of any alcoholic beverage to any
218 person, association of persons, or corporation within the state,

219 except to qualified manufacturers, distributors, and exporters
220 of such beverages so delivered and to qualified bonded
221 warehouses in this state.
222 (2) Any licensee ~~aggrieved by a violation of this section~~
223 may bring an action in any court of competent jurisdiction to
224 recover for the state all moneys obtained by common carriers or
225 permit carriers; obtained by operators of privately owned cars,
226 trucks, buses, or other conveyances; or obtained by out-of-state
227 manufacturers or suppliers as a result of the delivery of
228 alcoholic beverages in violation of this section, and may obtain
229 a declaratory judgment that an act or practice violates this
230 section and enjoin any person from violating this section. In
231 addition to such relief, the court may order the confiscation
232 and destruction of any alcoholic beverages delivered in
233 violation of this section. In assessing damages, the court shall
234 enter judgment against a defendant for three times the amount of
235 the delivery charges proved or the fair market value of
236 merchandise unlawfully brought into the state. Payment or
237 satisfaction of any judgment under this section, other than for
238 costs and attorney's fees, shall be made in its entirety to the
239 state. In any successful action under this section, the court
240 shall award the plaintiff costs and reasonable attorney's fees.
241 (3) This section does not apply to the shipment of wine by
242 a winery shipper licensee to a person who is at least 21 years
243 of age in accordance with s. 561.585.
244 Section 4. Section 561.545, Florida Statutes, is amended
245 to read:

246 561.545 Certain shipments of beverages prohibited;
247 penalties; exceptions.--The Legislature finds that the direct
248 shipment of alcoholic beverages by persons in the business of
249 selling malt or spirituous ~~alcoholic~~ beverages to residents of
250 this state in violation of the Beverage Law poses a serious
251 threat to the public health, safety, and welfare; to state
252 revenue collections; and to the economy of the state. The
253 Legislature further finds that the penalties for illegal direct
254 shipment of malt or spirituous ~~alcoholic~~ beverages to residents
255 of this state should be made adequate to ensure compliance with
256 the Beverage Law and that the measures provided for in this
257 section are fully consistent with the powers conferred upon the
258 state by the Twenty-first Amendment to the United States
259 Constitution.
260 (1) Any person in the business of selling malt or
261 spirituous ~~alcoholic~~ beverages who knowingly and intentionally
262 ships, or causes to be shipped, any malt or spirituous ~~alcoholic~~
263 beverage from an out-of-state location directly to any person in
264 this state who does not hold a valid manufacturer's or
265 wholesaler's license or exporter's registration issued by the
266 Division of Alcoholic Beverages and Tobacco or who is not a
267 state-bonded warehouse is in violation of this section.
268 (2) Any common carrier or permit carrier or any operator
269 of a privately owned car, truck, bus, or other conveyance who
270 knowingly and intentionally transports any malt or spirituous
271 beverages ~~alcoholic beverage~~ from an out-of-state location
272 directly to any person in this state who does not hold a valid
273 manufacturer's or wholesaler's license or exporter's

274 registration or who is not a state-bonded warehouse is in
275 violation of this section.
276 (3) Any person found by the division to be in violation of
277 subsection (1) shall be issued a notice, by certified mail, to
278 show cause why a cease and desist order should not be issued.
279 Any person who violates subsection (1) within 2 years after
280 receiving a cease and desist order or within 2 years after a
281 prior conviction for violating subsection (1) commits a felony
282 of the third degree, punishable as provided in s. 775.082, s.
283 775.083, or s. 775.084.
284 (4) Any common carrier or permit carrier, or any operator
285 of a privately owned car, truck, bus, or other conveyance found
286 by the division to be in violation of subsection (2) as a result
287 of a second or subsequent delivery from the same source and
288 location, within a 2-year period after the first delivery shall
289 be issued a notice, by certified mail, to show cause why a cease
290 and desist order should not be issued. Any person who violates
291 subsection (2) within 2 years after receiving the cease and
292 desist order or within 2 years after a prior conviction for
293 violating subsection (2) commits a felony of the third degree,
294 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
295 (5) This section does not apply to:
296 (a) The direct shipment of sacramental alcoholic beverages
297 to bona fide religious organizations as authorized by the
298 division;
299 (b) The ~~or to~~ possession of alcoholic beverages in
300 accordance with s. 562.15(2); or
301 (c) The shipment of wine in accordance with s. 561.585.

302 Section 5. Subsections (1) and (6) of section 561.57,
303 Florida Statutes, are amended to read:
304 561.57 Deliveries by licensees.--
305 (1) Vendors shall be permitted to make deliveries away
306 from their places of business of sales actually made at the
307 licensed place of business; provided, telephone or mail orders
308 received at vendor's licensed place of business shall be
309 construed as a sale actually made at the vendor's licensed place
310 of business. For purposes of this section, Internet orders shall
311 be construed as telephone orders.
312 (6) Common carriers are not required to have vehicle
313 permits to transport alcoholic beverages. Nothing in this
314 section shall prohibit any common carrier or any licensee or
315 other person utilizing a common carrier as his or her agent from
316 making deliveries of alcoholic beverages within the state.
317 Deliveries of alcoholic beverages by common carriers or by
318 licensees or other persons utilizing common carriers as their
319 agents under this section are exempt from the report filing
320 requirements in s. 562.20. All common carriers acting as
321 designated agents for delivery under this section shall verify
322 that any person receiving alcoholic beverages is at least 21
323 years of age upon the delivery of such alcoholic beverages, as
324 prescribed in division rules. Compliance with the prescribed age
325 verification measures in s. 561.585(3) shall give the common
326 carrier and the licensee or other person hiring the common
327 carrier a complete defense of selling, giving, delivering, or
328 transferring alcoholic beverages to any person under the age of
329 21.

330 Section 6. Subsection (1) of section 599.004, Florida
331 Statutes, is amended to read:
332 599.004 Florida Farm Winery Program; registration; logo;
333 fees.--
334 (1) The Florida Farm Winery Program is established within
335 the Department of Agriculture and Consumer Services. Under this
336 program, a winery may qualify as a tourist attraction only if it
337 is registered with and certified by the department as a Florida
338 Farm Winery. A winery may not claim to be certified unless it
339 has received written approval from the department.
340 (a) To qualify as a certified Florida Farm Winery, a
341 winery shall meet the following standards:
342 1. Produce or sell less than 250,000 gallons of wine
343 annually <u>of which 60 percent of wine produced shall be made from</u>
344 <u>this state's agricultural products. The Commissioner of</u>
345 <u>Agriculture may waive this requirement in times of hardship</u>.
346 2. Maintain a minimum of 10 acres of owned or managed
347 vineyards in Florida.
348 3. Be open to the public for tours, tastings, and sales at
349 least 30 hours each week.
350 4. Make annual application to the department for
351 recognition as a Florida Farm Winery, on forms provided by the
352 department.
353 5. Pay an annual application and registration fee of $100.
354 (b) To maintain certification and recognition as a Florida
355 Farm Winery, a winery must comply with the qualifications
356 provided in this section. The Commissioner of Agriculture is

357 authorized to officially recognize a certified Florida Farm
358 Winery as a state tourist attraction.
359 Section 7. Subsection (5) of section 561.24, Florida
360 Statutes, is amended to read:
361 561.24 Licensing manufacturers as distributors or
362 registered exporters prohibited; procedure for issuance and
363 renewal of distributors' licenses and exporters'
364 registrations.--
365 (5) Notwithstanding any of the provisions of the foregoing
366 subsections, any corporation which holds a license as a
367 distributor on June 3, 1947, shall be entitled to a renewal
368 thereof, provided such corporation complies with all of the
369 provisions of the Beverage Law of Florida, as amended, and of
370 this section and establishes by satisfactory evidence to the
371 division that, during the 6-month period next preceding its
372 application for such renewal, of the total volume of its sales
373 of spirituous liquors, in either dollars or quantity, not more
374 than 40 percent of such spirituous liquors sold by it, in either
375 dollars or quantity, were manufactured, rectified, or distilled
376 by any corporation with which the applicant is affiliated,
377 directly or indirectly, including any corporation which owns or
378 controls in any way any stock in the applicant corporation or
379 any corporation which is a subsidiary or affiliate of the
380 corporation so owning stock in the applicant corporation. Any
381 manufacturer of wine holding a license as a distributor on July
382 1, 2006, ~~the effective date of this act~~ shall be entitled to a
383 renewal of such license notwithstanding the provisions of

384 subsections (1)-(5). ~~This section does not apply to any winery~~
385 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~
386 Section 8. Should any portion of this act be held
387 unconstitutional, it is the intent of the Legislature that the
388 courts disturb only as much of the regulatory system of this
389 state as is necessary to enforce the United States Constitution.
390 Section 9. Notwithstanding the provisions of s. 561.585,
391 Florida Statutes, contracts not otherwise prohibited by the
392 Beverage Law shall not be impaired.
393 Section 10. The Division of Alcoholic Beverages and
394 Tobacco of the Department of Business and Professional
395 Regulation and the Department of Revenue may adopt rules
396 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to
397 implement and administer this act.
398 Section 11. This act shall take effect upon becoming a
399 law.

Amendment No. 1

Bill No. HB 247 CS

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 58 and insert:
6 (a) Wineries shall not ship or cause to be shipped any
7 wine to individual consumers in this state unless licensed under
8 this section. Notwithstanding any provision of the Beverage Law
9 or
10
11
12
13
14 [Amendment clarifies that wineries cannot ship until they are
15 licensed in Florida.]

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 99-101 and insert:
6 requirement. The division, upon written request of the winery
7 shipper, shall review the total tax liability to the state by
8 the winery shipper and reduce the bond to 110 percent of the
9 prior year's total tax liability as a licensee under this
10 section but not less than one thousand dollars.
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Amendment No. 3 by Bogdanoff

Bill No. HB 247 CS

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line 109 and insert:
6
7 adult individual. For purposes of this section, a case is
8 defined as a container or containers that contain no more than
9 9000 mL of wine.
10 (e) Licensees shall comply with s. 564.05, which limits
11 the size of wine containers.
12 (f) Purchasers shall not purchase or cause to be shipped
13 more than 18 cases of wine per calendar year to any adult
14 individual.
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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 183 and insert:
6 other state agency or local law enforcement agency and the
7 courts of this state concerning
8
9

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 5

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 189 and insert:
6 in an amount not to exceed $1,000 per violation for any
7
8
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Bogdanoff Amd 5 - decreases penalty from $2,500 to $1,000

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 196-200 and insert:
6 (c) Any common carrier, permit carrier, or other
7 commercial conveyance that knowingly and intentionally delivers
8 wine directly to any person in this state who is under 21 years
9 of age commits a misdemeanor of the second degree, punishable as
10 provided in s. 775.082 or s. 775.083.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 7

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 On line(s) 249, 254, 260-261, 262, 270-271 remove:
6 malt and spirituous ~~alcoholic~~
7
8 and insert: alcoholic
9
10
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Bogdanoff Amd 7 - reverts to existing law

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 313-329 and insert:
6 permits to transport alcoholic beverages. Nothing in this
7 section shall prohibit any licensee from utilizing a common
8 carrier as his or her agent to make deliveries of alcoholic
9 beverages within the state. Deliveries of alcoholic beverages by
10 licensees or common carriers utilized by licensees under this
11 section are exempt from the report filing requirements in s.
12 562.20. All common carriers making deliveries under this
13 section shall verify that any person receiving alcoholic
14 beverages is at least 21 years of age upon the delivery of such
15 alcoholic beverages, as prescribed in division rules. Compliance
16 with the prescribed age verification measures in s. 561.585(3)
17 shall give the common carrier and the licensee a complete
18 defense to any civil action thereof, except for any
19 administrative action by the division, if, at the time the
20 alcoholic beverage was sold, given, delivered, or transferred,
21 the person falsely evidenced that he or she was of legal age to

22 purchase or consume the alcoholic beverage and the appearance of
23 the person was such that an ordinarily prudent person would
24 believe him or her to be of legal age to purchase or consume the
25 alcoholic beverage and if the licensee or common carrier acted
26 in good faith and in reliance upon the representation and
27 appearance of the person in the belief that he or she was of
28 legal age to purchase or consume the alcoholic beverage and
29 carefully checked one of the following forms of identification
30 with respect to the person: a valid driver's license, an
31 identification card issued under the provisions of s. 322.051,
32 or, if the person is physically handicapped, a comparable
33 identification card issued by another state which indicates the
34 person's age, a passport, or a United States Uniformed Services
35 identification card.
36
37

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 9

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment (with title amendments)**
5 Between line(s) 397-398 insert:
6 Section 11. For fiscal year 2006-2007, six full-time
7 equivalent positions, are authorized and the sums of $484,096 in
8 recurring funds and $41,944 in nonrecurring funds from the
9 Alcoholic Beverage and Tobacco Trust Fund of the Department of
10 Business and Professional Regulation are hereby appropriated
11 within a Qualified Expenditure Category for the purpose of
12 carrying out regulatory activities provided in this act. In
13 addition, for fiscal year 2006-2007, two full-time equivalent
14 positions, with associated salary rate of 76,129, are authorized
15 and the sums of $127,340 in recurring funds and $10,486 in
16 nonrecurring funds from the Administrative Trust Fund of the
17 Department of Business and Professional Regulation are hereby
18 appropriated for the purpose of carrying out central-service
19 administrative support functions related to the regulatory
20 activities provided in this act.
21

22
23
24
25 ========== T I T L E A M E N D M E N T ==========
26 Remove line(s) 49 and insert:
27 rulemaking authority; authorizing additional positions and
28 providing an appropriation; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 10

Bill No. **HB 247 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Bogdanoff offered the following:
3
4 **Amendment**
5 Remove line(s) 66-70 and insert:
6 2. Qualify for licensure under ss. 561.15 and 561.17 or
7 provide a true copy of a certification from the alcoholic
8 beverage licensing authority of the federal government, or the
9 state in which the winery is located, with license
10 qualifications and procedures for that winery license that
11 include, at a minimum, the following components:
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 431 CS Local Government Land Development Regulation
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 980

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	14 Y, 1 N, w/CS	Cater	Holt
2) Growth Management Committee	7 Y, 3 N, w/CS	Strickland	Grayson
3) Local Government Council	7 Y, 0 N, w/CS	Camechis	Hamby
4) Commerce Council		Cater	Randle
5)			

SUMMARY ANALYSIS

The zoning districts for electrical substation siting are determined by individual local governments. As a result, varying regulations for substation siting have been established. Currently, electrical substations for distribution lines are sited as a special use or a conditional use through the local government planning and zoning processes. Likewise, land development regulations and ordinances for vegetation maintenance vary among local governments.

HB 431 w/CS creates ss. 163.3208, 163.3209, and 186.0201, F.S., to provide a statewide process governing the siting of electric substations and maintenance of right-of-ways for electrical transmission or distribution lines. The bill provides a definition of "distribution electric substations," to which this bill applies. The bill also provides consistency among the regulations for substation siting and in the vegetation management within electric power line rights-of-way. The bill additionally establishes a role for utilities to submit their five-year plans for siting substations and to have that advisory information included in the regional planning councils' annual reports.

Generally, the bill establishes new substations as a permittable use in all land use categories and zoning districts within a utility's service territory. If a local government does not adopt reasonable standards for setback, landscaping, buffering, or screening substations, provisions are provided in the bill for default standards. The bill also provides a timeframe for a local government to grant or deny an application for an electrical substation, or the application is deemed approved. The bill further provides for a waiver of timeframes under certain circumstances.

The bill prohibits local governments from requiring permits or other approvals for vegetation maintenance in an established electrical transmission or distribution line right-of-way, but requires the utility to provide the local government with five days advance notice before conducting vegetation management activities. These activities must conform to standards established by the American National Standards Institute (ANSI) and must be supervised by qualified utility personnel, licensed contractors under the utility's control, or certified arborists. Further, the bill specifies vegetation height limits within an established right-of-way.

The bill clarifies a reference to "department" to expressly provide that Regional Planning Councils are to submit annual reports to the state land planning agency, the Department of Community Affairs.

The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates statewide procedures governing the siting of electric substations and maintenance of right-of-ways for electrical transmission or distribution lines to replace individual local government procedures. The bill limits the authority of local governments to enact regulations governing the siting of electric substations and right-of-way maintenance. The bill provides default requirements in case the local government does not adopt "reasonable" standards for substation siting. The bill provides that a local government may not require permits or other approval for vegetation management and tree trimming within an electric utility's established right-of-way, and provides minimum standards for vegetation maintenance by electric utilities.

Maintain Public Security: The bill may increase reliability of electric services by making electrical substations permittable in all land use categories and zoning districts, thereby placing them closer to the loads they serve, and by making it easier for electric utilities to manage intrusive vegetation within their rights-of-way.

B. EFFECT OF PROPOSED CHANGES:

Background

Comprehensive Planning and Zoning
The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3161 – 163.3217, F.S., requires each local government to plan for future development and growth through the adoption and amendment of comprehensive plans. Local governments have broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.[1] Section 163.3164(23), F.S., defines the term "land development regulations" as "ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, . . ." A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government's comprehensive plan.[2] Citizens have standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.[3]

Electrical Power Plant and Transmission Line Siting
Part II of ch. 403, F.S., governs electrical power plant and transmission line siting, and establishes a process for applying for electrical power plant site certification with the Department of Environmental Protection (DEP). Within 90 days after DEP receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.[4] The sole issue for determination at the hearing is whether the proposed site is consistent, and in compliance, with the jurisdiction's existing land use plan and zoning ordinances.[5] For purposes of this application process,

[1] s. 163.3202(1), Fla. Stat. (2005).
[2] s. 163.3213, Fla. Stat. (2005).
[3] s. 163.3215, Fla. Stat. (2005).
[4] s. 403.508(1), Fla. Stat. (2005).
[5] s. 403.508(2), Fla. Stat. (2005).

an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.[6]

Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process. The terms "special use" or "conditional use" refer to those land uses that are not permitted outright under a local government's zoning code, but may be approved by the zoning board.

Vegetation Management and Tree Trimming in a Utility Right-of-Way
Based on a compilation of the 2004 Electric Reliability Reports[7] submitted by the investor-owned electric utilities, 17 percent of all electrical outages are vegetation related, making it second only to equipment failures. Moreover, this statistic excludes events such as hurricanes and tornados since, pursuant to Rule 25-6.0455(2), F.A.C., outages related to these events may be excluded from the report.

In order to avoid tree-related outages, the electric utilities have established vegetation management plans. Depending on the species of tree, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree trimming that have been developed by the International Society of Arboriculture and the National Arborist Association. A primary vegetation management concern is that fast-growing invasive species can make contact with facilities in rights-of-way and contribute to power outages.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements.

Regional Planning Councils' Annual Report
Florida has 11 regional planning councils that serve as a link between the state and local governments that share mutual resources, characteristics, and issues within an area. Each regional planning council includes members from counties and municipalities located in the region's planning district and gubernatorial appointees. Section 186.513, F.S., requires each regional planning council to provide an annual report on its activities to the department[8] and the local general-purpose governments within its jurisdiction. Interested persons may also obtain a copy of the report for a fee.

EFFECT OF PROPOSED CHANGES

Section 1. Creates s. 163. 3208, F.S., relating to Electric Substation Siting
The bill creates s. 163.3208, F.S., to provide a uniform, statewide process applicable to siting distribution electric substations[9] and maintenance of vegetation surrounding electric substations. Local government regulations and processes that are inconsistent with the procedures provided for in this bill may not be applicable. The term "distribution electric substation" is defined as an "electrical substation which takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid though one or more distribution lines less than 69 kilovolts in size."

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[6] s. 403.503(12), Fla. Stat. (2005).
[7] The 2005 reports are due to be filed early March 2006.
[8] Existing law does not identify to which "department" the regional planning councils are directed to provide their annual report. Historically, the term "department" was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: "'Department' means the department of community affairs."
[9] Electric utilities use substations to "step-down" voltage so it is usable by end users.

This new section states that it is the Legislature's intent to maintain, encourage, and ensure adequate and reliable electric infrastructure in the state, and that it is essential for electric infrastructure to be constructed and maintained in various locations to ensure efficient and reliable delivery of electric service. The bill further finds that electric infrastructure should be constructed, to the maximum extent practicable, to achieve compatibility with adjacent and surrounding land uses and that the criteria included in this section are intended to balance the need for electricity with land use compatibility.

The section limits local governments' authority to enact regulations regarding substation siting by authorizing the adoption and enforcement of "reasonable land development regulations for new distribution electric substations addressing only setback, landscaping, buffering, screening, lighting, and other aesthetic compatibility-based standards." Local governments may not require vegetated buffers or screening beneath aerial access points to the substation equipment to have a mature height in excess of 14 feet.

The section provides that, within a utility service territory, new substation siting is a permittable use in all land use categories in the applicable comprehensive plan and zoning districts. An exception is provided for new substation siting in areas designated as preservation, conservation, or historic preservation on future a land use map or by ordinance. If a local government has not adopted "reasonable" standards for new substation siting in accordance with this section, default standards are provided as follows:

- *Nonresidential Areas* – The new substation must comply with the same setback and buffer criteria for similar uses in that district.
- *Residential Areas* -- Unless the local government adopts a lesser setback or landscape requirement, a setback of up to 100 feet between the property boundary of the substation and permanent equipment structures must be maintained as follows:
    - *Setbacks between 50 and 100 feet* – A green-space must be formed by installing native landscaping material with a security fence around the equipment.
    - *Setbacks of less than 50 feet* – An eight foot buffer wall or eight foot fence with native landscaping must be installed around the substation.

The section provides that if a proposed electric substation is consistent with the local government's applicable setback, landscaping, buffering, screening, and other aesthetic compatibility–based standards, an application for siting the substation must be approved. Standards for substation siting adopted after the effective date of this bill are not applicable to applications that were submitted prior to the local government's notice of adoption hearing.

The section establishes procedures specifically applicable to placement or construction of substations in residential areas. Under these procedures, the utility must consult with the local government regarding the selection of a site prior to submitting an application for the location of a new distribution electric substation in a residential area. The utility must provide information regarding the utility's preferred site and as many as three alternative available sites, including sites within non-residential areas, that are technically and electrically reasonable for the load to be served, if the local government deems that the siting of a new distribution electric substation warrants this additional review and consideration. The final determination on the site application as to the preferred and alternative sites is made solely by the local government within 90 days of presentation of all the necessary and required information on the preferred site and on the alternative sites. In the event the utility and the local government are unable to reach agreement on an appropriate location, the substation site selection must be submitted to mediation conducted pursuant to ss. 44.401 – 44.406, F.S., unless otherwise agreed to in writing by the parties, and the mediation must be concluded within 30 days unless extended by written agreement of the parties. The 90-day time period for the local government to render a final decision on the site application is tolled from the date a notice of intent to mediate the site selection issue is served on the utility or local government, until the mediation is concluded, terminated

or an impasse is declared. The local government and utility may agree to waive or extend this 90-day time period. Upon rendition of a final decision of the local government, a person may pursue available legal remedies in accordance with law and the matter must be considered on an expedited basis.

A local government's land development and construction regulations for electrical distribution substations and the local government's review of an application for the placement or construction of a new electrical substation may only address land development, zoning, or aesthetic compatibility-based issues. In such local government regulations or review, a local government may not require information or evaluate a utility's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the utility voluntarily offers this information to the local government.

If a local government has adopted substation siting standards within any land use category or zoning district, the local government must grant or deny a properly completed application within 90 days after the application is declared complete.[10] The application review process does not, however, address the situation whereby an applicant is not compliant with applicable federal or state laws or regulations, or applicable local land development regulations or building codes. If the local government fails to grant or deny a properly completed application within 90 days, the application is deemed automatically approved, and without penalty or interference, construction may proceed consistent with the application.

The section establishes time frames for determining whether an application for siting a substation is complete as follows:

- The local government must notify the permit applicant within 30 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and submitted.
- Further determination of completeness must be provided to the applicant within 15 days after the local government receives additional information; however, such determination is not considered approval of the application.

This section also provides that the timeframes may be waived if voluntarily agreed to by the utility applicant and the local government; however, a one-time waiver may be required by the local government in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government. A local government may establish a reasonable timeframe by which the required information to cure an application deficiency must be provided or the application will be considered withdrawn or closed.

Section 2. Creates s. 163.3209, F.S., relating to Right-of-Way Maintenance
Currently, ss. 337.401-337.404, F.S., provide that the Department of Transportation and local governmental entities with jurisdiction and control of public roads or publicly owned rail corridors may prescribe and enforce reasonable rules or regulations regarding the placing and maintaining along, across, or on any road or publicly owned rail corridors, under their respective jurisdictions, any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility." Currently, the majority of local governments require utilities to obtain a permit each time routine vegetation maintenance is conducted in any established electric utility right-of-way.

This bill creates s. 163.3209, F.S., providing that after a right-of-way for an electrical transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section

[10] Currently, there are varying timeframes for this process.

defines the term "vegetation maintenance and tree pruning or trimming" as the "mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way." This section requires a utility to provide five business days advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for emergencies, service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.

Local governments are authorized to request a meeting with a utility provider to discuss the utility's vegetation-maintenance plan, including the utility's trimming specifications and maintenance practices. In addition, vegetation maintenance performed by utilities must conform to ANSI[11] standards, and vegetation management activities must be supervised by qualified utility personnel, licensed contractors under the utility's control, or certified arborists. Consistent with the height provision in Section 1 of the bill, a local government may not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation in an established right-or-way that achieves a height greater than 14 feet or intrudes from the side closer than the clearance distance specified in referenced standards.

The section explicitly notes that it does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and must not be construed to limit a local government's franchising authority. In addition, this section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government's ordinances or regulations, or trees within designated canopied protection areas. This section does not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal and tree trimming by the utility within the local government's established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission. Provided, however, the plan does not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-way. Vegetation maintenance costs are considered recoverable costs.

Section 3. Creates s. 186.0201, F.S., relating to Electrical Substation Planning
This new section requires each electric utility to annually notify the local regional planning council, each June 1 beginning the year after the effective date of this bill, of the utility's current plans to site electrical substations, over a five year period, within the local government jurisdictions contained in each region.

The notification must identify whether each electric substation planned within a general area is a distribution or transmission electric substation, include a listing of the proposed substations' site acreage needs and anticipated capacity, and include maps showing general locations of the planned electric substations. The information is advisory only, must be included in the regional planning council's annual report prepared pursuant to s. 186.513, F.S., and must be supplied directly to local governments requesting the information.

Section 4. Amends s. 186.513, F.S., relating to Reports of Regional Planning Councils
Currently, s. 186.513, F.S., requires the regional planning councils to submit an annual report to "the department" and the local general purpose governments within its boundaries; however, current law does not identify the specific "department" to which the regional planning councils must provide the annual report. [12]

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[11] American National Standards Institute

[12] Historically, the term "department" was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: "'Department' means the department of community affairs."

The bill amends s. 186.513, F.S., to replace the word "department" with "state land planning agency as defined in s. 163.3164(20), F.S." The state land planning agency is defined as the Department of Community Affairs, which is the agency to which the reports have historically been submitted.

Section 5. Provides that nothing in this part is intended to supersede the provisions of ch. 403, pt. II, F.S., The Electrical Power Plant Siting Act, which is administered by the Department of Environmental Protection.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3208, F.S., relating to electrical substation approval process.

Section 2. Creates s. 163.3209, F.S., relating to electrical transmission and distribution line right-of-way maintenance.

Section 3. Creates s. 186.0201, F.S., relating to electrical substation planning.

Section 4. Amends s. 186.513, F.S., relating to regional planning council annual reports.

Section 5. Provides that nothing in this part is intended to supersede the provisions of ch. 403, pt. II, F.S.

Section 6. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line. There may also be some costs to the electric utilities for providing the regional planning councils with their substation siting plans.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: While some municipalities and counties may lose tree trimming permit fees paid by electric utilities, the amount of the permit fees paid to an individual municipality or county is expected to be negligible. Therefore, it appears that this bill likely qualifies for the "laws having an insignificant fiscal impact" exemption in Article VII, Section 18(d) of the Florida Constitution.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: Beginning on page 5, line 127, the Committee Substitute creates s.163.3208(6), F.S., to establish procedures applicable to the placement or construction of substations in residential areas. On line 127, the language provides that this paragraph "may" apply to the proposed placement or construction of a new distribution electric substation within a residential area. Use of the word "may," rather than "shall," suggests that the provision is optional, and raises the question as to whether the local government or the utility may elect to use some other procedures rather than those provided in new subsection (6).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. The strike-all did the following:

- Provides a siting exception for historic preservation and conservation lands;
- Sets minimum setback requirements, if such requirements are not adopted by the local government;
- Provides that siting standards are on a going forward basis;
- Provides a deadline for approving a siting application;
- Provides that the bill does not affect the applicability and enforceability of any existing local regulatory land use procedures for conditional use or special exceptions which provide for public input if such procedures are in effect as of the act's effective date. However, in land use, conditional use, or special-exception review, the local government is limited to the standards and conditions adopted under s. 163.3208(2), F.S.
- Requires five days notice to local government before an electric utility does vegetation management activities within a right-of-way;
- Provides standards for vegetation maintenance practices;
- Provides that local governments may not adopt ordinances to require planting vegetation on rights-of-way or below aerial access points to substations that will grow in excess of 14 feet;
- Provides side clearance standards;
- Provides that s. 163.3209, F.S., does not supersede current franchise agreements or limit franchise authority;
- Provides that s. 163.3209, F.S., does not supersede ordinances governing the removal of certain trees;
- Requires the electric utilities to file their current plans to site substations with regional planning councils, and that information is to be included in the regional planning council's annual report.

On March 14, 2006, the Growth Management Committee adopted a strike-all amendment. The strike-all does the following:

- Provides a definition of "distribution electric substation."
- Adds historical preservation land use classifications to the area excluded from the application of this bill.

- Provides new timeframes to be set by local governments with respect to the provision of additional information on the substation siting application.
- Provides a definition for "vegetation maintenance and tree pruning or trimming."
- Clarifies the notification requirements for vegetation maintenance.
- Limits the maintenance activities that can impact specimens or historical tress or trees located in a canopy road protection area.
- Authorizes local governments to adopt a written maintenance plan for vegetation located within its rights-of-way with the concurrence from the applicable utility provider.
- Authorizes local governments to request a copy of electrical utilities' annual substation siting plans, which were previously forwarded only to regional planning councils.
- Corrects a reference to the state land planning agency.

On April 11, 2006, the Local Government Council adopted three amendments offered by Representative Robaina, which may be summarized as follows:

- Amendment 1: Created procedures specifically applicable to the placement or construction of substations in residential areas.
- Amendment 2: Clarified that utilities must provide information to an official designated by a local government rather than to the local government generally.
- Amendment 3: Revises procedures regarding vegetation management and provides protection for historical and specimen trees or canopied designated areas.

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to electric transmission and distribution;
7 creating s. 163.3208, F.S.; providing legislative intent;
8 defining the term "distribution electric substation";
9 providing criteria for adoption and enforcement by a local
10 government of land development regulations for new
11 electric substations; providing that new substations are a
12 permitted use in all land use categories and zoning
13 districts within a utility's service territory; providing
14 for exceptions; providing standards which apply if a local
15 government does not adopt reasonable standards for
16 substation siting; providing for approval of an
17 application for development of a proposed distribution
18 electric substation when the application demonstrates that
19 the design is consistent with the local government's
20 applicable standards; providing alternative procedures for
21 site approval; providing for application of certain local
22 siting standards to applications received after public
23 notice of the adoption hearing on those standards;

24 providing a timeframe and procedures for a local
25 government to approve or deny an application for an
26 electric substation; providing that the application is
27 deemed approved if not acted on within the timeframe;
28 providing for waiver of timeframes; authorizing the local
29 government to establish timeframes for certain required
30 information to be furnished; creating s. 163.3209, F.S.;
31 prohibiting local governments from requiring any permits
32 or approvals for certain vegetation maintenance in an
33 established electric transmission or distribution line
34 right-of-way; defining the term "vegetation maintenance
35 and tree pruning or trimming"; providing for a utility to
36 give notice to the local government before conducting such
37 vegetation-maintenance activities; providing for
38 exceptions; requiring the utility to provide its
39 vegetation-maintenance plan to the local government and
40 discuss it with the local government; specifying standards
41 for vegetation maintenance and tree pruning or trimming
42 conducted by utilities; providing for supervision of
43 vegetation maintenance and tree pruning or trimming
44 activities; limiting the height and clearance distance of
45 vegetation that may be required by a local government in
46 an established right-of-way of certain lines; providing
47 for application and construction with respect to local
48 franchise authority and ordinances or regulations
49 governing planting, pruning, trimming, or removal of
50 certain trees; providing for application when a local
51 government adopts a described plan for vegetation

52 maintenance, tree pruning, tree removal, and tree trimming
53 within established rights-of-way; providing that
54 vegetation maintenance costs be considered recoverable;
55 creating s. 186.0201, F.S.; requiring electric utilities
56 to notify the regional planning council of plans to site
57 electric substations; providing for content of the
58 notification; requiring that the information be included
59 in the regional planning council's annual report and
60 supplied to local governments under certain conditions;
61 amending s. 186.513, F.S.; correcting a reference to a
62 specified agency; providing for application to the Florida
63 Electrical Power Plant Siting Act; providing an effective
64 date.
65
66 Be It Enacted by the Legislature of the State of Florida:
67
68 Section 1. Section 163.3208, Florida Statutes, is created
69 to read:
70 163.3208 Substation approval process.--
71 (1) It is the intent of the Legislature to maintain,
72 encourage, and ensure adequate and reliable electric
73 infrastructure in the state. It is essential that electric
74 infrastructure be constructed and maintained in various
75 locations in order to ensure the efficient and reliable delivery
76 of electric service. Electric infrastructure should be
77 constructed, to the maximum extent practicable, to achieve
78 compatibility with adjacent and surrounding land uses and the

79 criteria included in this section are intended to balance the
80 need for electricity with land use compatibility.
81 (2) The term "distribution electric substation" means an
82 electric substation which takes electricity from the
83 transmission grid and converts it to a lower voltage so it can
84 be distributed to customers in the local area on the local
85 distribution grid through one or more distribution lines less
86 than 69 kilovolts in size.
87 (3) Electric substations are a critical component of
88 electric transmission and distribution. Local governments may
89 adopt and enforce reasonable land development regulations for
90 new distribution electric substations addressing only setback,
91 landscaping, buffering, screening, lighting, and other aesthetic
92 compatibility-based standards. Vegetated buffers or screening
93 beneath aerial access points to the substation equipment shall
94 not be required to have a mature height in excess of 14 feet.
95 (4) New distribution electric substations shall be a
96 permitted use in all land use categories in the applicable local
97 government comprehensive plan and zoning districts within a
98 utility's service territory except those designated as
99 preservation, conservation, or historic preservation on the
100 future land use map or duly adopted ordinance. If a local
101 government has not adopted reasonable standards for substation
102 siting in accordance with subsection (3), the following
103 standards shall apply to new distribution electric substations:
104 (a) In nonresidential areas, the substation must comply
105 with the setback and landscaped buffer area criteria applicable
106 to other similar uses in that district, if any.

107 (b) Unless the local government approves a lesser setback
108 or landscape requirement, in residential areas, a setback of up
109 to 100 feet between the substation property boundary and
110 permanent equipment structures shall be maintained as follows:
111 1. For setbacks between 100 feet and 50 feet, an open
112 green space shall be formed by installing native landscaping,
113 including trees and shrub material, consistent with the relevant
114 local government's land development regulations. Substation
115 equipment shall be protected by a security fence consistent with
116 the relevant local government's land development regulations.
117 2. For setbacks of less than 50 feet, a buffer wall 8 feet
118 high or a fence 8 feet high with native landscaping consistent
119 with the relevant local government's regulations shall be
120 installed around the substation.
121 (5) If the application for a proposed distribution
122 electric substation demonstrates that the substation design is
123 consistent with the local government's applicable setback,
124 landscaping, buffering, screening, and other aesthetic
125 compatibility-based standards, the application for development
126 approval for the substation shall be approved.
127 (6)(a) This paragraph may apply to the proposed placement
128 or construction of a new distribution electric substation within
129 a residential area. Prior to submitting an application for the
130 location of a new distribution electric substation in
131 residential areas, the utility shall consult with the local
132 government regarding the selection of a site. The utility shall
133 provide information regarding the utility's preferred site and
134 as many as three alternative available sites, including sites

135 within nonresidential areas, that are technically and
136 electrically reasonable for the load to be served, if the local
137 government deems that the siting of a new distribution electric
138 substation warrants this additional review and consideration.
139 The final determination on the site application as to the
140 preferred and alternative sites shall be made solely by the
141 local government within 90 days of presentation of all the
142 necessary and required information on the preferred site and on
143 the alternative sites. In the event the utility and the local
144 government are unable to reach agreement on an appropriate
145 location, the substation site selection shall be submitted to
146 mediation conducted pursuant to ss. 44.401-44.406, unless
147 otherwise agreed to in writing by the parties, and the mediation
148 shall be concluded within 30 days unless extended by written
149 agreement of the parties. The 90-day time period for the local
150 government to render a final decision on the site application is
151 tolled from the date a notice of intent to mediate the site
152 selection issue is served on the utility or local government,
153 until the mediation is concluded, terminated, or an impasse is
154 declared. The local government and utility may agree to waive or
155 extend this 90-day time period. Upon rendition of a final
156 decision of the local government, a person may pursue available
157 legal remedies in accordance with law and the matter shall be
158 considered on an expedited basis.
159 (b) A local government's land development and construction
160 regulations for electrical distribution substations and the
161 local government's review of an application for the placement or
162 construction of a new electrical substation shall only address

163 land development, zoning, or aesthetic compatibility-based
164 issues. In such local government regulations or review, a local
165 government may not require information or evaluate a utility's
166 business decisions about its service, customer demand for its
167 service, or quality of its service to or from a particular area
168 or site, unless the utility voluntarily offers this information
169 to the local government.
170 (7) Substation siting standards adopted after the
171 effective date of this act shall not apply to electric utility
172 substation applications that were submitted prior to the notice
173 of the local government's adoption hearing.
174 (8)(a) If a local government has adopted standards for the
175 siting of electric substations within any of the local
176 government's land use categories or zoning districts, the local
177 government shall grant or deny a properly completed application
178 for a permit to locate an electric substation within the land
179 use category or zoning district within 90 days after the date
180 the properly completed application is declared complete in
181 accordance with the applicable local government application
182 procedures. If the local government fails to approve or deny a
183 properly completed application for an electric substation within
184 the timeframes set forth, the application shall be deemed
185 automatically approved and the applicant may proceed with
186 construction consistent with its application without
187 interference or penalty. Issuance of such local permit does not
188 relieve the applicant from complying with applicable federal or
189 state laws or regulations and other applicable local land
190 development or building regulations, if any.

191 (b) The local government shall notify the permit applicant
192 within 30 days after the date the application is submitted as to
193 whether the application is, for administrative purposes only,
194 properly completed and has been properly submitted. Further
195 completeness determinations shall be provided within 15 days
196 after the receipt of additional information. However, such
197 determination shall not be not deemed an approval of the
198 application.
199 (c) To be effective, a waiver of the timeframes set forth
200 in this subsection must be voluntarily agreed to by the utility
201 applicant and the local government. A local government may
202 request, but not require, a waiver of the timeframes by the
203 applicant, except that, with respect to a specific application,
204 a one-time waiver may be required in the case of a declared
205 local, state, or federal emergency that directly affects the
206 administration of all permitting activities of the local
207 government.
208 (d) The local government may establish reasonable
209 timeframes within which the required information to cure the
210 application deficiency is to be provided or the application will
211 be considered withdrawn or closed.
212 Section 2. Section 163.3209, Florida Statutes, is created
213 to read:
214 163.3209 Electric transmission and distribution line
215 right-of-way maintenance.--After a right-of-way for any electric
216 transmission or distribution line has been established and
217 constructed, no local government shall require or apply any
218 permits or other approvals or code provisions for or related to

219 vegetation maintenance and tree pruning or trimming within the
220 established right-of-way. The term "vegetation maintenance and
221 tree pruning or trimming" means the mowing of vegetation within
222 the right-of-way, removal of trees or brush within the right-of-
223 way, and selective removal of tree branches that extend within
224 the right-of-way. The provisions of this section do not include
225 the removal of trees outside the right-of-way, which may be
226 allowed in compliance with applicable local ordinances. Prior to
227 conducting scheduled routine vegetation maintenance and tree
228 pruning or trimming activities within an established right-of-
229 way, the utility shall provide the official designated by the
230 local government with a minimum of 5 business days' advance
231 notice. Such advance notice is not required for vegetation
232 maintenance and tree pruning or trimming required to restore
233 electric service or to avoid an imminent vegetation-caused
234 outage or when performed at the request of the property owner
235 adjacent to the right-of-way, provided that the owner has
236 approval of the local government, if needed. Upon the request of
237 the local government, the electric utility shall meet with the
238 local government to discuss and submit the utility's vegetation
239 maintenance plan, including the utility's trimming
240 specifications and maintenance practices. Vegetation maintenance
241 and tree pruning or trimming conducted by utilities shall
242 conform to ANSI A300 (Part I)--2001 pruning standards and ANSI
243 Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees,
244 and Cutting Brush--Safety Requirements. Vegetation maintenance
245 and tree pruning or trimming conducted by utilities must be
246 supervised by qualified electric utility personnel or licensed

247 contractors trained to conduct vegetation maintenance and tree
248 trimming or pruning consistent with this section or by Certified
249 Arborists certified by the Certification Program of the
250 International Society of Arboriculture. A local government shall
251 not adopt an ordinance or land development regulation that
252 requires the planting of a tree or other vegetation that will
253 achieve a height greater than 14 feet in an established electric
254 utility right-of-way or intrude from the side closer than the
255 clearance distance specified in Table 2 of ANSI Z133.1-2000 for
256 lines affected by the North American Electric Reliability
257 Council Standard, FAC 003.1 requirement R1.2. This section does
258 not supersede or nullify the terms of specific franchise
259 agreements between an electric utility and a local government
260 and shall not be construed to limit a local government's
261 franchising authority. This section does not supersede local
262 government ordinances or regulations governing planting,
263 pruning, trimming, or removal of specimen trees or historical
264 trees, as defined in a local government's ordinances or
265 regulations, or trees within designated canopied protection
266 areas. This section shall not apply if a local government
267 develops, with input from the utility, and the local government
268 adopts, a written plan specifically for vegetation maintenance,
269 tree pruning, tree removal, and tree trimming by the utility
270 within the local government's established rights-of-way and the
271 plan is not inconsistent with the minimum requirements of the
272 National Electrical Safety Code as adopted by the Public Service
273 Commission. Provided, however, such a plan shall not require the
274 planting of a tree or other vegetation that will achieve a

275 height greater than 14 feet in an established electric right-of-
276 way. Vegetation maintenance costs shall be considered
277 recoverable costs.
278 Section 3. Section 186.0201, Florida Statutes, is created
279 to read:
280 186.0201 Electric substation planning.--Electric utility
281 substations respond to development and, consequently, siting
282 locations cannot be precisely planned years in advance.
283 Nevertheless, on or before June 1 of every year after the
284 effective date of this act, the electric utilities with service
285 areas within each regional planning council shall notify the
286 regional planning council of the utilities' current plans over a
287 5-year period to site electric substations within the local
288 governments contained within each region, including an
289 identification of whether each electric substation planned
290 within a general area is a distribution or transmission electric
291 substation, a listing of the proposed substations' site acreage
292 needs and anticipated capacity, and maps showing general
293 locations of the planned electric substations. This information
294 is advisory, shall be included in the regional planning
295 council's annual report prepared pursuant to s. 186.513, and
296 shall be supplied directly to local governments requesting the
297 information.
298 Section 4. Section 186.513, Florida Statutes, is amended
299 to read:
300 186.513 Reports.--Each regional planning council shall
301 prepare and furnish an annual report on its activities to the
302 state land planning agency as defined in s. 163.3164(20)

303 ~~department~~ and the local general-purpose governments within its
304 boundaries and, upon payment as may be established by the
305 council, to any interested person. The regional planning
306 councils shall make a joint report and recommendations to
307 appropriate legislative committees.
308 Section 5. Nothing in this act is intended to supersede
309 the provisions of part II of chapter 403, Florida Statutes.
310 Section 6. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

1

Amendment No. (for drafter's use only)

Bill No. **431 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Littlefield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 160- 162 and insert:
6 regulations for new distribution electric substations and the
7 local government's review of an application for the placement or
8 construction of a new distribution electric substation shall
9 only address

000000

CA_Am_to_HB

2

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **431 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Littlefield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 171 and insert:
6 effective date of this act shall not apply to new distribution
7 electric utility
8
9

000000

Amend2 by Littlefield

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

3

Bill No. **431 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce

2 Representative(s) Littlefield offered the following:

3

4 **Amendment (with directory and title amendments)**

5 On Page 7, remove line 175, and insert:

6 siting of new distribution electric substations within any of

7 the local

000000

Amend3 by Littlefield

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

4

Amendment No. (for drafter's use only)

Bill No. **431 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Littlefield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line 178
6
7 for a permit to locate an electric substation within the land
8
9 and insert:
10 for a permit to locate a new distribution electric substation
11 within the land

000000

Amend4 by Littlefield

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

5

Amendment No. (for drafter's use only)

Bill No. **431 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Littlefield offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 183,
6
7 properly completed application for an electric substation within
8
9 and insert:
10
11 properly completed application for a new distribution electric
12 substation within

000000

Amend5 by Littlefield

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 CS Offenses Involving Insurance
SPONSOR(S): Rivera
TIED BILLS: IDEN./SIM. BILLS: SB 1596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	15 Y, 0 N, w/CS	Freire	Cooper
2) Criminal Justice Committee	6 Y, 0 N	Kramer	Kramer
3) Fiscal Council	23 Y, 0 N, w/CS	McAuliffe/Rayman	Kelly
4) Commerce Council		Freire	Randle
5)			

SUMMARY ANALYSIS

The bill relates primarily to insurance fraud in various types of insurance. The bill:

- requires specified information in police reports and creates a rebuttable presumption that only passengers mentioned in the police report were involved in the accident;
- provides an extra fee for reinstating a driver's license revoked because of insurance fraud;
- provides that any person convicted of certain insurance frauds will have their driver's license revoked;
- requires, and provides enforcement for, every health care clinic licensed under Chapter 400 to post a sign that indicates individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about crimes investigated by DIF that lead to arrest and conviction;
- eliminates a misdemeanor penalty for the violation of a stop work order to clarify that offense is a felony;
- updates the definition of "kickback" by broadening its scope;
- provides any willful violation of a rule of the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR), or the Financial Services Commission (FSC) would be a second degree misdemeanor;
- makes each willful violation of an emergency rule or emergency order of DFS, OIR, or FSC by an unlicensed or unauthorized person a third degree felony, with each willful violation considered a separate offense;
- clarifies that any person who knowingly engages in insurance activities without a license commits a third degree felony;
- clarifies independent procurement of coverage (IPC) to state that IPC is coverage which is not solicited, marketed, negotiated, or sold in Florida;
- clarifies that insurers must timely submit final acceptable anti-fraud plans, and provides for imposition of administrative fines for a violation of that requirement;
- provides that service providers cannot bill usual and customary charges if a provider agrees with a patient to waive the deductible or co-payment, and that a person may not participate in a scheme to create documentation of a motor vehicle crash that did not occur;
- clarifies that fraudulent proof of motor vehicle insurance is a third degree felony;
- requires insurers to provide a fraud advisory notice to an insured who filed a claim for reimbursement;
- provides an exception to the statute pertaining to fraudulently obtaining goods and services from a health care provider for investigative actions taken by law enforcement officers for law enforcement purposes;
- enhances the definition of patient brokering, and defines that a health care provider or facility is one that is licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health;
- includes falsely personating an officer of DFS in the list of officers it is unlawful to personate;
- creates a forfeiture account in the Insurance Regulatory Trust Fund for deposit of criminal and forfeiture proceeds obtained by DIF; and
- provides that if any provision of this act is found invalid, the invalidity does not affect the other provisions.

The fiscal impact on the private sector includes increased penalties, including criminal prosecution, for various acts specified in the bill. The fiscal impact on the state cannot be determined at this time, but the impact should not be significant (see Fiscal Comments). The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires a health care clinic to post a sign relating to rewards for information regarding insurance fraud. Enforcement of the sign posting requirement will be done by the Department of Financial Services (DFS).

Safeguard Individual Liberty & Promote Personal Responsibility: The bill creates new penalties for violations of a department rule, emergency rule or emergency order. It creates a new penalty for insurance licensees transacting insurance or engaging in insurance activities without a license. It creates a new penalty for fabrication of "paper" motor vehicle accidents. It adds new circumstances constituting unlawful patient brokering.

B. EFFECT OF PROPOSED CHANGES:

General Background

Insurance Fraud Investigations by the Division of Insurance Fraud: Currently, the Division of Insurance Fraud (DIF) within the Department of Financial Services (DFS) employs sworn law enforcement officers who investigate allegations of unauthorized insurance activities, fraudulent insurance acts, unfair methods of insurance competition or unfair or deceptive insurance acts or practices.[1] These officers may make warrantless arrests upon probable cause for criminal violations established as a result of an investigation.[2] The general laws applicable to arrests by state law enforcement officers apply to Division investigators.

As of 2005, the DIF had arrested over 900 people allegedly connected to more than $25 million in personal injury fraud in the past five years. More than 70 people faced or were serving the minimum prison sentence.[3]

Crash Report

Section 316.066, F.S., requires certain written reports of crashes to be filed with the Department of Highway Safety and Motor Vehicles. The section provides for a "short-form report" which is required to include the following information:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved;
- The names and addresses of all drivers and passengers in the vehicles involved;
- The names and addresses of witnesses;
- The name, badge number, and law enforcement agency of the officer investigating the crash; and
- The names of the insurance companies for the respective parties involved in the crash unless not available.

The bill amends s. 316.068(2), F.S., to provide that each crash report required to be made in writing must contain all of the information specified above. The bill provides that the absence of information

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[1] s. 626.989(2), F.S. (2004).
[2] s. 626.989(7), F.S. (2004).
[3] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005.

regarding the existence of a passenger in a police report creates a rebuttable presumption that no such passengers were involved in the reported crash.

Revocation of Licenses

Section 322.21(8), F.S., governs fees relating to applying for reinstatement of a suspended or revoked driver's license. It provides that a person must pay a $35 service fee to apply for reinstatement of a suspended driver's license and a $60 fee to apply for reinstatement of a revoked driver's license, in addition to the fee for a license. The fees are divided between the General Revenue Fund and the Highway Safety Operating Trust Fund.

The bill provides that if the revocation or suspension of the driver's license was for a conviction of patient brokering (s. 817.505, F.S.), or for solicitation (s. 817.234(8), F.S.), or for participating in a staged crash (s. 817.234(9), F.S.), there is an additional fee of $180 for each offense. The bill provides that the Department of Highway Safety and Motor Vehicles (DHSMV) will deposit the additional fee into the Highway Safety Operating Trust Fund.

The bill amends s. 322.21, F.S., to require the DHSMV to revoke the driving privileges of anyone convicted under s. 817, 505, F.S., or s. 817.234(8) or (9), F.S.

Health Care Clinics

Health care clinics are defined as entities at which health care services are provided to individuals and which tender charges for reimbursement for such services.[4]

Health care clinics are primarily licensed by the Agency for Health Care Administration (AHCA).[5] The term "medical director" means a physician, employed by or under contract with a clinic, who maintains an unencumbered physician license in accordance with chs. 458 (physicians), 459 (osteopathic physicians), 460 (chiropractors), or 461 (podiatrists), F.S.[6]

Under current law, there is no requirement in the health care licensure statute (ch. 400) for health care clinics to post signs relating to rewards for insurance fraud. Current law provides for an Anti-Fraud Reward Program to be established within the DFS which is funded from the Insurance Regulatory Trust Fund.[7] Under the program, the DFS may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from specified violations. Only a single reward amount may be paid out for claims arising from the same transaction.

Additionally, current law requires the AHCA to make inspections of health care clinics as part of the initial license application and renewal application procedures.[8] AHCA may also make unannounced inspections of licensed clinics as necessary to determine compliance with the Health Care Clinic Act under Part XIII of chapter 400, F.S.

The bill amends s. 400.9935, F.S., to require that every medical clinic licensed under Chapter 400 post a sign that indicates that individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about committing crimes investigated by DIF that lead to arrest and conviction. The sign must be posted in a conspicuous location visible to all patients. The crimes the posting would disclose are:

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[4] s. 400.9905(4), F.S. (2004).
[5] See s. 400.9905(4), F.S., for a listing of entities that are not required to be licensed by AHCA.
[6] s. 400.9905(5), F.S. (2004).
[7] s. 626.9892, F.S. (2004).
[8] s. 400.9915, F.S. (2004).

- s. 440.105, F.S., relating to prohibited activities under the workers' compensation law;
- s. 624.15, F.S., relating to willful violations of the Insurance Code;
- s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts under the Insurance Code;
- s. 626.989, F.S., relating to resisting an arrest or otherwise interfering with DIF investigators; or
- s. 817.234, F.S., relating to false and fraudulent insurance claims.

The DFS will enforce the posting requirement. Sworn law enforcement investigators of DIF would have the authority to make unannounced inspections of licensed clinics to ensure that such requirement is being met. The bill requires the clinics to allow "full and complete access to the premises" to DIF employees to determine whether the clinic is complying with the posting requirements.
The clinic would be required to post the sign in a conspicuous location visible to all patients.

Similarly, section 12 of the bill adds subsection 14 to s. 627.736, F.S., requiring an insurer to provide a person who has filed a claim of reimbursement to provide the insured with a Fraud Advisory Notice. The notice must state that the DFS may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from the crimes disclosed in the posted signs.

Workers' Compensation

The Division of Workers' Compensation (DWC) and the DIF both within DFS must work closely together to carry out their statutory duties. The DWC enforces administrative compliance with the workers' compensation law, pursuant to s. 440.107, F.S. The DIF enforces the criminal provisions of the workers' compensation law, pursuant to s. 440.105, F.S. The divisions have developed and implemented a referral program to facilitate the referral of cases between the divisions so that each division can determine if an investigation will be initiated from the referral. According to the DWC, referrals are made to each division within 24 hours of a suspected violation of the law, and are considered a priority to be acted upon immediately.

In 2003, the Legislature passed worker's compensation reform that made a violation of a stop work order a felony of the third degree.[9] However, a separate statutory provision making a violation of a stop work order a misdemeanor was not repealed.[10] The bill removes the conflicting statutory penalty provision for violation of a stop work order. Accordingly, a violation of a stop work order is punishable as a third degree felony.

Further, current law requires certain employers to carry workers compensation coverage. Section 440.105 (4)(a) 3., F.S., provides it is unlawful for any employer to knowingly "fail to secure payment of compensation if required to do so by this chapter." The bill changes the words "payment of compensation" to "workers compensation coverage" to clarify that it is unlawful for an employer to not secure workers compensation coverage.

Regulation of Professions and Occupations:

Chapter 456, F.S., regulates Health Professions and Occupations. Currently, s. 456.054, F.S., prohibits kickbacks. The bill expands the definition of "kickback" to mean a remuneration or payment by or on behalf of a provider of health care services or items to any person as incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

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[9] Ch. 2003-412, L.O.F.; see s. 440.105(4)(b)8., F.S. (2004).
[10] s. 440.105(2)(a)4., F.S. (2004).

Violations of Administrative Rules, Emergency Rules, or Emergency Orders

The Florida Insurance Code (Code) is contained in chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.[11] The Code contains numerous penalty provisions which are specific to a particular violation. However, the Code also contains general penalty provisions that apply for violations of the Code when no other penalty is provided in the Code or in other applicable laws. Section 624.15, F.S., is a general penalty provision in the Code. It makes any willful violation of the Code a second degree misdemeanor.

The bill amends the general penalty provision in s. 624.15, F.S. to include willful violations of an administrative rule of DFS, the Office of Insurance Regulation (OIR), or the Financial Services Commission. Therefore, any willful violation of an administrative rule of DFS, OIR, or the Financial Services Commission would be a second degree misdemeanor. Each instance of the willful violation will be considered a separate offense. According to DFS, this provision would allow DIF investigators to enforce violations of DFS rules (by misdemeanor arrest) the same way they may currently enforce violations of the Insurance Code. This provision would be in addition to current penalties pertaining to the denial, suspension, or revocation of a certificate of authority, license or permit.[12]

Under current law, the DFS may issue emergency rules after a natural disaster (hurricane) or other types of emergencies depending on the nature of the insurance issue.[13] During the 2004 hurricane season, the DFS issued approximately 12 emergency rules pertaining to public adjusters, mediation, and insurance agents.

The bill adds a provision to the general penalty provision in s. 624.15, F.S. The added provision makes each willful violation of an emergency rule or emergency order of DFS, OIR, or the Financial Services Commission by someone who is not licensed, authorized or eligible to engage in business in accordance with the Insurance Code a third degree felony with each willful violation considered a separate offense. There is no criminal penalty in current law for willful violations of emergency rules or emergency orders.

Unauthorized Insurers

Section 626.112, F.S., provides that no person may hold himself or herself out to be an insurance agent unless he or she is licensed by the department and appointed by an appropriate entity or person. The bill amends s. 622.112, F.S., to provide that "any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section commits a felony of the third degree."

Independently Procured Coverage:

Independently procured coverage (IPC) is insurance coverage that an insured in Florida, typically a business, obtains by directly contacting an unauthorized foreign or alien[14] insurer, or self insurer.[15] The insured must file specific information about the policy with the Florida Surplus Lines Service Office (Office) and must pay 5 percent of the gross amount of the premium and a 0.3 percent service fee to the Office.

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[11] s. 624.01, F.S. (2004).

[12] In Avatar Development Corporation v. State, 723 So.2d 199 (Fla. 1998), the Florida Supreme Court held that a statute making it a misdemeanor to willfully violate any administrative rule, regulation or permit condition promulgated by the Department of Environmental Protection was a constitutionally valid delegation of legislative authority to an administrative agency.

[13] Under s. 120.54, F.S., agencies are authorized to issue emergency rules if necessary to protect the public health, safety or welfare.

[14] Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must meet certain capital, surplus, and operational requirements.

[15] s. 626.938, F.S. (2004).

Currently, subsection (4) of s. 626.901, F.S., exempts *independently procured coverage* (IPC) from being included within the definition of unauthorized insurance. The bill clarifies that IPC coverage is *not coverage which is solicited, marketed, negotiated, or sold* in Florida. This clarification is necessary, according to OIR officials, because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions.

The bill amends s. 626.938, F.S., pertaining to reporting and taxing of IPC. The law currently allows persons in Florida to independently procure insurance from foreign (out of state) or alien (out of country) insurers that do not hold a Florida certificate of authority (COA) and to pay all necessary taxes and fees. The bill clarifies independently procured coverage to provide that every insured who "resides" in Florida and procures insurance "from another state or country" with an unauthorized insurer "legitimately licensed in that other jurisdiction," or any self-insurer who "resides" in this state and so procures insurance, must within 30 days file a report with the Florida Surplus Lines Service Office. This clarification is necessary because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions of the Insurance Code.

The bill also provides that IPC may not be secured for workers' compensation coverage.

Anti-fraud Investigative Unit

Section 626.9891, F.S., is entitled "Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance." The statute requires insurers who had $10 million or more in direct premiums in the previous calendar year to establish or contract a unit to investigate fraudulent claims. The bill amends s. 626.9891(7), F.S., to provide that an insurer must timely submit a final acceptable anti-fraud plan or anti-fraud investigative unit description, and it gives the department, office, or commission the right to impose fines if insurers fail to submit an acceptable anti-fraud plan.

Forfeiture Account

Under current law, unless otherwise provided in the law, proceeds of a state agency accrued under the Florida Contraband Forfeiture Act are put into the General Revenue Fund.[16] According to DFS, DIF is one of the few law enforcement organizations in the state not to have a forfeiture fund or account into which to deposit proceeds from criminal or forfeiture proceedings.[17] Thus, any proceeds DIF collects from such proceedings are deposited into the General Revenue Fund.

The bill creates a forfeiture account in the Insurance Regulatory Trust Fund into which proceeds derived from DFS' criminal and forfeiture proceedings are to be deposited. Thus, such proceeds will no longer be deposited into the General Revenue Fund. According to DFS, once the forfeiture account is created, it may be used to purchase special equipment and other non-budgeted items that enhance the DFS's ability to detect crime and enforce criminal laws.[18] The department also indicates that the existence of the forfeiture account would create the necessary incentive for officers or investigators to pursue forfeiture actions in conjunction with their cases, and for DFS to take on the considerable expense in seeing these actions to fruition.[19]

Notification of Insured's Rights

Section 627.7401, F.S., provides the Financial Services Commission must adopt a form to notify insureds of their rights to receive personal injury protection, and requires insurers to deliver this

[16] s. 932.7055(6), F.S. (2004). For example, under s. 626.9893, proceeds obtained by the Florida Department of Law Enforcement is deposited in the Forfeiture Investigative Support Trust Fund and proceeds obtained by the Department of Environmental Protection is deposited in the Internal Improvement Trust Fund.
[17] Personal communication from DFS on file with the Insurance Committee.
[18] Id..
[19] Id.

notification to an insured within 21 days of receiving notice from the insured of an automobile accident involving personal injury to the insured. The section provides such notice must include a description of the benefits provided by personal injury protection.

The bill provides this notification must also include:

- An advisory informing the insureds that the DFS may pay a reward of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by DIF.
- An advisory that if the insured notifies the insurer of a billing error, the insured may be entitled to a reduction in the amount paid by the insured's motor vehicle insurer.
- A notice that solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection tort claims could be in violation of Florida law or the rules of the Florida Bar, and should be immediately reported to the DIF.

False and Fraudulent Insurance Claims

Under current law, any physician and other healthcare provider (except hospitals) who waives deductibles or co-payments as a general business practice commits insurance fraud. The bill would extend the application of the statute to any "service" provider. The proposal also deletes the term 'patient' and inserts the term 'insured' pertaining to the waiver of deductibles or co-payments with the provider.[20]

Current law provides that it is a second degree felony (with a 2 year minimum term of imprisonment) to plan or organize an intentional motor vehicle crash for the purpose of making a tort claim.[21] The bill expands this provision to make it a second degree felony to plan or organize a "scheme to create documentation of a motor vehicle crash that did not occur" for purposes of a tort claim or personal injury protection benefits claim. According to representatives with DFS, adding the crime of a "paper accident" would deter motor vehicle insurance fraud. DFS officials estimate that bogus automobile insurance claims add $240 to every automobile insurance policy each year and increase costs for goods and services.[22]

Current law makes it a third degree felony to create, market, or present a false or fraudulent insurance card. The bill expands the applicability of the statute to provide that any person who presents false or fraudulent "proof of" motor vehicle insurance commits a third degree felony.[23]

Under current law, giving a false or fictitious name to a health care provider, giving a false or fictitious address to a health care provider, or assigning the proceeds of any health maintenance contract or insurance contract to a health care provider knowing the contract is invalid or void is prima facie evidence the person giving false information has intent to defraud the health care provider.[24] According to staff at DFS, during the course of an insurance fraud investigation a DFS investigator may give a false name or address or false information relating to a health insurance policy to a health care provider they are investigating. This information is given to a health care provider in order for DFS to obtain information about the medical treatment given by, and billing practices of, the health care provider.

There are no exceptions for activities of law enforcement officers giving false or fictitious information for law enforcement purposes under current law. The bill amends current law to provide such an exception. The bill's provision in this regard will protect investigators who are engaged in undercover police investigations.

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[20] s. 817.234(7)(a), F.S.
[21] s. 817.234(9), F.S.
[22] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005; Personal communication from DFS on file with the Insurance Committee.
[23] s. 817.2361, F.S.
[24] s. 817.50,(2), F.S. (2004).

Patient Brokering

Presently, it is a third degree felony for a person, health care provider or facility to pay or bribe in cash or in kind to induce the referral of patients from or to a health care provider or health care facility.[25] The bill would add a provision stating that it is a third degree felony to solicit or receive any commission, bonus, rebate, kickback, or bribe in cash or in kind or engage in a split-fee arrangement in any form whatsoever in return for the acceptance or acknowledgment of treatment from a health care provider or facility.

Under current law, for the purposes of patient brokering, a health care provider or health care facility is defined, in part, as "any person or entity licensed, certified, or registered." The bill amends the definition of a health care provider or health care facility to include providers "required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered" with the Agency for Health Care Administration.

Falsely Personating an Officer

A person who falsely assumes or pretends to be an officer and "takes upon himself or herself to act as such" commits a third degree felony pursuant to s. 843.08, F.S. The officers specified in s. 843.08, F.S., are:

- Sheriff,
- Officer of the Florida Highway Patrol,
- Officer of the Fish and Wildlife Conservation Commission,
- Office of the Department of Environmental Protection,
- Officer of the Department of Transportation,
- Officer of the Department of Corrections,
- Correctional Probation Officer,
- Deputy Sheriff,
- State Attorney,
- Assistant State Attorney,
- Statewide Prosecutor,
- Assistant Statewide Prosecutor,
- State Attorney Investigator,
- Coroner,
- Police Officer,
- Lottery Special Agent,
- Lottery Investigator,
- Beverage Enforcement Agent,
- Watchman,
- Any member of the Parole Commission,
- Any administrative aide of the Parole Commission,
- Any supervisor of the Parole Commission, or
- Any personnel or representative of the Florida Department of Law Enforcement.

The bill adds "officer of the Department of Financial Services" to the list of officers. Thus, falsely assuming or pretending to be an officer of DFS will be a third degree felony, unless the officer is personated during the commission of a felony, in which case personating an officer of DFS is a second degree felony. However, if the commission of a felony results in death or personal injury of another, then the penalty for personating a DFS officer becomes a first degree felony.[26]

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[25] s. 817.505, F.S.

[26] In State v. Alecia, 692 So.2d 263 (Fla. 5th DCA 1997), the Fifth District Court of Appeal held that the statute was not unconstitutionally vague or overbroad as applied to a defendant who identified himself as deputy sheriff while trying to obtain information about recent suspicious activity in his neighborhood.

Severability Clause

The bill provides that if any section of the bill is found to be invalid such invalidity does not affect other provisions or applications of the act which can be given effect. It declares each provision of the act severable.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.068(2), F.S., to specify what information is required in a police report, and creates a rebuttable presumption that passengers not mentioned in the report were not in the vehicle.

Section 2. Amends s. 322.21(8), F.S., to provide an additional fee for the reinstatement of a suspended or revoked driver's license when the license was suspended or revoked for violation of s. 817.234(8) or (9), insurance fraud, or s. 817.505, F.S., prohibiting patient brokering.

Section 3. Creates s. 322.26(9), F.S., providing the department shall revoke the license of any person convicted under s. 817.234 (8) or 9, F.S., or s. 817.505, F.S.

Section 4. Creates s. 400.9935(13), F.S., requiring clinics to post signs with information regarding insurance fraud.

Section 5. Amends s. 440.105, F.S., by removing a prohibited activity from subsection 2.

Section 6. Amends s. 456.054, F.S., defining "kickback."

Section 7. Amends s. 624.15, F.S., to include general penalties for violation of rules of the department, office, or commission.

Section 8. Amends s. 626.112, F.S., to provide a penalty for the violation of insurance license requirements.

Section 9. Amends s. 626.938, F.S., relating to the reporting and taxing of independently procured coverages.

Section 10. Amends s. 626.9891, F.S., concerning penalties for non-compliance of anti-fraud investigative units.

Section 11. Creates s. 626.9893, F.S., relating to the disposition of revenues from criminal or forfeiture proceedings.

Section 12. Creates s. 627.736(14), F.S., requiring insurance companies to provide a fraud advisory notice when an insured files a claim.

Section 13. Amends s. 627.7401, F.S., providing additional information that must be included in the form notifying insureds of their right to receive personal injury protection benefits.

Section 14. Amends s. 817.234, F.S., relating to false and fraudulent claims.

Section 15. Amends s. 817.2361, F.S., relating to false or fraudulent proof of motor vehicle insurance.

Section 16. Amends s. 817.50(2), F.S., relating to the fraudulent obtaining of goods and services.

Section 17. Amends s. 817.505, F.S., relating to patient brokering.

Section 18. Amends s. 843.08, F.S., relating to falsely personating an officer.

Section 19. Creates s. 932.7055(6)(n), F.S., relating to the disposition of liens and forfeited property.

Section 20. Provides that if any provision of this act in invalid, such invalidity does not affect other provisions in the act.

Section 21. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care clinics would be responsible for placing anti-fraud reward signs in conspicuous locations within their clinics and must allow complete access to their premises to law enforcement personnel within the DIF to make inspections to determine compliance with the signage requirement.

Persons would be subject to increased penalties, including criminal prosecution, for various acts specified by the bill. Criminal fines ordered by a Court pursuant to s. 775.083, F.S., must be deposited in the trust fund for the clerk of the circuit court for that particular county, such fund being created by s. 142.01, F.S.

D. FISCAL COMMENTS:

Representatives with DFS stated that the responsibilities set forth in the bill will be carried out within the existing resources of the agency. The DIF has not estimated at this time how much revenue will be received due to administrative fines imposed against insurers for failing to submit acceptable anti-fraud plans or anti-fraud unit descriptions.

The Criminal Justice Estimating Conference states that the penalty provisions of this legislation have an indeterminate, but likely insignificant, prison bed impact.

It is not known how much moneys would be deposited by the Division of Insurance Fraud into the Insurance Regulatory Trust Fund as a result of criminal proceedings or forfeiture proceedings under the bill. Such amounts would be deposited into the General Revenue Fund, but no money has been deposited because the DIF has not pursued any forfeiture proceedings.

The bill proposes a new surcharge ($180) when persons convicted on specific insurance fraud offenses seek reinstatement of their suspended or revoked driver's license. Representatives with the DHSMV

state that the amount to be collected is "indeterminate" since the number of such convictions is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DIF is authorized to adopt rules relating to the manner in which suspected fraudulent activity is reported to DIF in a standardized referral form.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 23, 2006 meeting, the Insurance Committee approved HB 561 with an amendment. The amendment amended s. 316.068(2), F.S., by requiring crash report forms to include certain information about the accident, specifically, the amendment requires a crash report to include the name of all passengers in a vehicle. The amendment makes the absence of information in a crash report concerning the existence of passengers in the vehicles a rebuttable presumption that no such passengers were in the vehicle. The bill as originally filed did not affect s. 316.068(2), F.S.

This analysis has been updated to reflect the changes made by the Insurance Committee at its March 23, 2006 meeting.

At the April 4, 2006 meeting, the Fiscal Council approved HB 561 with two amendments. The first amendment changed the words "payment of compensation " to "workers compensation coverage" to clarify that it is unlawful for an employer to not secure workers compensation coverage. The second amendment provided additional information that must be included in the form notifying insureds of their right to receive personal injury protection benefits.

This analysis has been updated to reflect the changed made by the Fiscal Council at its April 4, 2006 meeting.

CHAMBER ACTION

1 The Fiscal Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to offenses involving insurance; amending
7 s. 316.068, F.S.; specifying information to be included in
8 a crash report; creating a rebuttable presumption relating
9 to the absence of certain information in such reports;
10 amending s. 322.21, F.S.; providing an additional fee for
11 certain offenses relating to insurance crimes; providing
12 for deposit of the fee into the Highway Safety Operating
13 Trust Fund; amending s. 322.26, F.S.; providing an
14 additional circumstance relating to insurance crimes for
15 mandatory revocation of a person's driver's license;
16 amending s. 400.9935, F.S.; requiring health care clinics
17 to display signs containing certain information relating
18 to insurance fraud; authorizing compliance inspections by
19 the Division of Insurance Fraud; requiring clinics to
20 allow inspection access; amending s. 440.105, F.S.;
21 deleting the provision that a violation of a stop-work
22 order is a misdemeanor of the first degree; making
23 unlawful a failure to secure required workers'

24 compensation insurance coverage; providing criminal
25 penalties; amending s. 456.054, F.S.; revising the
26 definition of the term "kickback" for criminal prosecution
27 purposes; amending s. 624.15, F.S.; specifying violations
28 of rules of the Department of Financial Services, Office
29 of Insurance Regulation, or Financial Services Commission
30 as misdemeanors; specifying a violation of emergency rules
31 or orders as a felony of the third degree; providing
32 penalties; providing for nonapplication to certain
33 persons; amending s. 626.112, F.S.; providing a criminal
34 penalty for knowingly transacting insurance without a
35 license; amending s. 626.938, F.S.; revising provisions
36 requiring a report and taxation of independently procured
37 coverages; specifying nonauthorization of independent
38 procurement of workers' compensation, life, or health
39 insurance; amending s. 626.9891, F.S.; expanding
40 authorization to impose administrative fines on insurers
41 for failure to comply with certain anti-fraud plan or
42 anti-fraud investigative unit description requirements;
43 creating s. 626.9893, F.S.; authorizing the division to
44 deposit certain revenues into the Insurance Regulatory
45 Trust Fund; specifying accounting and uses of such
46 revenues; providing for appropriation and use of such
47 revenues; amending s. 627.736, F.S.; requiring insurers to
48 provide certain persons with notice of the department's
49 Anti-Fraud Reward Program and the criminal violations that
50 may be reported in pursuit of a reward; amending s.
51 627.7401, F.S.; specifying additional requirements for

52 Financial Services Commission notification of an insured's
53 rights; amending s. 817.234, F.S.; revising provisions
54 specifying material omission and insurance fraud;
55 prohibiting scheming to create documentation of a motor
56 vehicle crash that did not occur; providing a criminal
57 penalty; amending s. 817.2361, F.S.; providing that
58 creating, marketing, or presenting fraudulent proof of
59 motor vehicle insurance is a felony of the third degree;
60 amending s. 817.50, F.S.; specifying nonapplication of
61 provisions specifying evidence of intent to defraud to
62 certain investigative actions taken by law enforcement
63 officers; amending s. 817.505, F.S.; providing an
64 additional patient brokering prohibition, to which
65 penalties apply; revising a definition; amending s.
66 843.08, F.S.; providing a criminal penalty for falsely
67 assuming or pretending to be an officer of the Department
68 of Financial Services; amending s. 932.7055, F.S.;
69 requiring certain proceeds seized by the division under
70 the Florida Contraband Forfeiture Act to be deposited into
71 certain trust funds; providing severability; providing an
72 effective date.
73
74 Be It Enacted by the Legislature of the State of Florida:
75
76 Section 1. Subsection (2) of section 316.068, Florida
77 Statutes, is amended to read:
78 316.068 Crash report forms.--

79 (2) Every crash report required to be made in writing must
80 be made on the appropriate form approved by the department and
81 must contain all the information required therein, including:
82 (a) The date, time, and location of the crash;
83 (b) A description of the vehicles involved;
84 (c) The names and addresses of the parties involved;
85 (d) The names and addresses of all drivers and passengers
86 in the vehicles involved;
87 (e) The names and addresses of witnesses;
88 (f) The name, badge number, and law enforcement agency of
89 the officer investigating the crash; and
90 (g) The names of the insurance companies for the
91 respective parties involved in the crash,
92
93 unless not available. The absence of information in such written
94 crash reports regarding the existence of passengers in the
95 vehicles involved in the crash constitutes a rebuttable
96 presumption that no such passengers were involved in the
97 reported crash. Notwithstanding any other provisions of this
98 section, a crash report produced electronically by a law
99 enforcement officer must, at a minimum, contain the same
100 information as is called for on those forms approved by the
101 department.
102 Section 2. Subsection (8) of section 322.21, Florida
103 Statutes, is amended to read:
104 322.21 License fees; procedure for handling and collecting
105 fees.--

106 (8) Any person who applies for reinstatement following the
107 suspension or revocation of the person's driver's license shall
108 pay a service fee of $35 following a suspension, and $60
109 following a revocation, which is in addition to the fee for a
110 license. Any person who applies for reinstatement of a
111 commercial driver's license following the disqualification of
112 the person's privilege to operate a commercial motor vehicle
113 shall pay a service fee of $60, which is in addition to the fee
114 for a license. The department shall collect all of these fees at
115 the time of reinstatement. The department shall issue proper
116 receipts for such fees and shall promptly transmit all funds
117 received by it as follows:
118 (a) Of the $35 fee received from a licensee for
119 reinstatement following a suspension, the department shall
120 deposit $15 in the General Revenue Fund and $20 in the Highway
121 Safety Operating Trust Fund.
122 (b) Of the $60 fee received from a licensee for
123 reinstatement following a revocation or disqualification, the
124 department shall deposit $35 in the General Revenue Fund and $25
125 in the Highway Safety Operating Trust Fund.
126
127 If the revocation or suspension of the driver's license was for
128 a violation of s. 316.193, or for refusal to submit to a lawful
129 breath, blood, or urine test, an additional fee of $115 must be
130 charged. However, only one $115 fee may be collected from one
131 person convicted of violations arising out of the same incident.
132 The department shall collect the $115 fee and deposit the fee
133 into the Highway Safety Operating Trust Fund at the time of

134 reinstatement of the person's driver's license, but the fee may
135 not be collected if the suspension or revocation is overturned.
136 If the revocation or suspension of the driver's license was for
137 a conviction for a violation of s. 817.234(8) or (9) or s.
138 817.505, an additional fee of $180 is imposed for each offense.
139 The department shall collect and deposit the additional fee into
140 the Highway Safety Operating Trust Fund at the time of
141 reinstatement of the person's driver's license.
142 Section 3. Subsection (9) is added to section 322.26,
143 Florida Statutes, to read:
144 322.26 Mandatory revocation of license by department.--The
145 department shall forthwith revoke the license or driving
146 privilege of any person upon receiving a record of such person's
147 conviction of any of the following offenses:
148 (9) Conviction in any court having jurisdiction over
149 offenses committed under s. 817.234(8) or (9) or s. 817.505.
150 Section 4. Subsection (13) is added to section 400.9935,
151 Florida Statutes, to read:
152 400.9935 Clinic responsibilities.--
153 (13) The clinic shall display a sign in a conspicuous
154 location within the clinic readily visible to all patients
155 indicating that, pursuant to s. 626.9892, the Department of
156 Financial Services may pay rewards of up to $25,000 to persons
157 providing information leading to the arrest and conviction of
158 persons committing crimes investigated by the Division of
159 Insurance Fraud arising from violations of s. 440.105, s.
160 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
161 employee of the Division of Insurance Fraud may make unannounced

162 inspections of a clinic licensed under this part as necessary to
163 determine whether the clinic is in compliance with this
164 subsection. A licensed clinic shall allow full and complete
165 access to the premises to such authorized employee of the
166 division who makes an inspection to determine compliance with
167 this subsection.
168 Section 5. Paragraph (a) of subsection (2) and paragraph
169 (a) of subsection (4) of section 440.105, Florida Statutes, are
170 amended to read:
171 440.105 Prohibited activities; reports; penalties;
172 limitations.--
173 (2) Whoever violates any provision of this subsection
174 commits a misdemeanor of the first degree, punishable as
175 provided in s. 775.082 or s. 775.083.
176 (a) It shall be unlawful for any employer to knowingly:
177 1. Coerce or attempt to coerce, as a precondition to
178 employment or otherwise, an employee to obtain a certificate of
179 election of exemption pursuant to s. 440.05.
180 2. Discharge or refuse to hire an employee or job
181 applicant because the employee or applicant has filed a claim
182 for benefits under this chapter.
183 3. Discharge, discipline, or take any other adverse
184 personnel action against any employee for disclosing information
185 to the department or any law enforcement agency relating to any
186 violation or suspected violation of any of the provisions of
187 this chapter or rules promulgated hereunder.
188 ~~4. Violate a stop-work order issued by the department~~
189 ~~pursuant to s. 440.107.~~

190 (4) Whoever violates any provision of this subsection
191 commits insurance fraud, punishable as provided in paragraph
192 (f).
193 (a) It shall be unlawful for any employer to knowingly:
194 1. Present or cause to be presented any false, fraudulent,
195 or misleading oral or written statement to any person as
196 evidence of compliance with s. 440.38.
197 2. Make a deduction from the pay of any employee entitled
198 to the benefits of this chapter for the purpose of requiring the
199 employee to pay any portion of premium paid by the employer to a
200 carrier or to contribute to a benefit fund or department
201 maintained by such employer for the purpose of providing
202 compensation or medical services and supplies as required by
203 this chapter.
204 3. Fail to secure workers' ~~payment of~~ compensation
205 insurance coverage if required to do so by this chapter.
206 Section 6. Subsection (1) of section 456.054, Florida
207 Statutes, is amended to read:
208 456.054 Kickbacks prohibited.--
209 (1) As used in this section, the term "kickback" means a
210 remuneration or payment ~~back pursuant to an investment interest,~~
211 ~~compensation arrangement, or otherwise~~, by or on behalf of a
212 provider of health care services or items, ~~of a portion of the~~
213 ~~charges for services rendered~~ to any person ~~a referring health~~
214 ~~care provider~~ as an incentive or inducement to refer patients
215 for past or future services or items, when the payment is not
216 tax deductible as an ordinary and necessary expense.

217 Section 7. Section 624.15, Florida Statutes, is amended to
218 read:
219 624.15 General penalty.--
220 (1) Each willful violation of this code or rule of the
221 department, office, or commission as to which a greater penalty
222 is not provided by another provision of this code or rule of the
223 department, office, or commission or by other applicable laws of
224 this state is a misdemeanor of the second degree and is, in
225 addition to any prescribed applicable denial, suspension, or
226 revocation of certificate of authority, license, or permit,
227 punishable as provided in s. 775.082 or s. 775.083. Each
228 instance of such violation shall be considered a separate
229 offense.
230 (2) Each willful violation of an emergency rule or order
231 of the department, office, or commission by a person who is not
232 licensed, authorized, or eligible to engage in business in
233 accordance with the Florida Insurance Code is a felony of the
234 third degree, punishable as provided in s. 775.082, s. 775.083,
235 or s. 775.084. Each instance of such violation is a separate
236 offense. This subsection does not apply to licensees or
237 affiliated parties of licensees.
238 Section 8. Subsection (9) is added to section 626.112,
239 Florida Statutes, to read:
240 626.112 License and appointment required; agents, customer
241 representatives, adjusters, insurance agencies, service
242 representatives, managing general agents.--
243 (9) Any person who knowingly transacts insurance or
244 otherwise engages in insurance activities in this state without

245 a license in violation of this section commits a felony of the
246 third degree, punishable as provided in s. 775.082, s. 775.083,
247 or s. 775.084.
248 Section 9. Subsections (1), (2), and (9) of section
249 626.938, Florida Statutes, are amended to read:
250 626.938 Report and tax of independently procured
251 coverages.--
252 (1) Every insured who in this state procures or causes to
253 be procured or continues or renews insurance from another state
254 or country with an unauthorized foreign or alien insurer
255 legitimately licensed in that jurisdiction, or any self-insurer
256 who in this state so procures or continues excess loss,
257 catastrophe, or other insurance, upon a subject of insurance
258 resident, located, or to be performed within this state, other
259 than insurance procured through a surplus lines agent pursuant
260 to the Surplus Lines Law of this state or exempted from tax
261 under s. 626.932(4), shall, within 30 days after the date such
262 insurance was so procured, continued, or renewed, file a report
263 of the same with the Florida Surplus Lines Service Office in
264 writing and upon forms designated by the Florida Surplus Lines
265 Service Office and furnished to such an insured upon request, or
266 in a computer readable format as determined by the Florida
267 Surplus Lines Service Office. The report shall show the name and
268 address of the insured or insureds, the name and address of the
269 insurer, the subject of the insurance, a general description of
270 the coverage, the amount of premium currently charged therefor,
271 and such additional pertinent information as is reasonably
272 requested by the Florida Surplus Lines Service Office.

273 (2) Any insurance on a risk located in this state in an
274 unauthorized insurer legitimately licensed in another state or
275 country procured through solicitations, negotiations, or an
276 application~~, in whole or in part~~ occurring or made outside
277 ~~within or from within~~ this state~~, or for which premiums in whole~~
278 ~~or in part are remitted directly or indirectly from within this~~
279 ~~state,~~ shall be deemed to be insurance procured, continued, or
280 renewed in this state within the intent of subsection (1).
281 (9) This section does not authorize independent
282 procurement of workers' compensation insurance, ~~apply as to~~ life
283 insurance, or health insurance.
284 Section 10. Subsection (7) of section 626.9891, Florida
285 Statutes, is amended to read:
286 626.9891 Insurer anti-fraud investigative units; reporting
287 requirements; penalties for noncompliance.--
288 (7) If an insurer fails to timely submit a final
289 acceptable anti-fraud plan or anti-fraud investigative unit
290 description ~~otherwise fails to submit a plan~~, fails to implement
291 the provisions of a plan or an anti-fraud investigative unit
292 description, or otherwise refuses to comply with the provisions
293 of this section, the department, office, or commission may:
294 (a) Impose an administrative fine of not more than $2,000
295 per day for such failure by an insurer to submit an acceptable
296 anti-fraud plan or anti-fraud investigative unit description,
297 until the department, office, or commission deems the insurer to
298 be in compliance;
299 (b) Impose an administrative fine for failure by an ~~upon~~
300 ~~the~~ insurer to implement or follow the provisions of an anti-

301 fraud plan or anti-fraud investigative unit description ~~a fraud~~
302 ~~detection and prevention plan that is deemed to be appropriate~~
303 ~~by the department and that must be implemented by the insurer~~;
304 or
305 (c) Impose the provisions of both paragraphs (a) and (b).
306 Section 11. Section 626.9893, Florida Statutes, is created
307 to read:
308 626.9893 Disposition of revenues; criminal or forfeiture
309 proceedings.--
310 (1) The Division of Insurance Fraud of the Department of
311 Financial Services may deposit revenues received as a result of
312 criminal proceedings or forfeiture proceedings, other than
313 revenues deposited into the Department of Financial Services'
314 Federal Equitable Sharing Trust Fund under s. 17.43, into the
315 Insurance Regulatory Trust Fund. Moneys deposited pursuant to
316 this section shall be separately accounted for and shall be used
317 solely for the division to carry out its duties and
318 responsibilities.
319 (2) Moneys deposited into the Insurance Regulatory Trust
320 Fund pursuant to this section shall be appropriated by the
321 Legislature, pursuant to the provisions of chapter 216, for the
322 sole purpose of enabling the division to carry out its duties
323 and responsibilities.
324 (3) Notwithstanding the provisions of s. 216.301 and
325 pursuant to s. 216.351, any balance of moneys deposited into the
326 Insurance Regulatory Trust Fund pursuant to this section
327 remaining at the end of any fiscal year shall remain in the

328 trust fund at the end of that year and shall be available for
329 carrying out the duties and responsibilities of the division.
330 Section 12. Subsection (14) is added to section 627.736,
331 Florida Statutes, to read:
332 627.736 Required personal injury protection benefits;
333 exclusions; priority; claims.--
334 (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of a
335 claim under this section, an insurer shall provide a notice to
336 the insured or to a person for whom a claim for reimbursement
337 for diagnosis or treatment of injuries has been filed, advising
338 that:
339 (a) Pursuant to s. 626.9892, the Department of Financial
340 Services may pay rewards of up to $25,000 to persons providing
341 information leading to the arrest and conviction of persons
342 committing crimes investigated by the Division of Insurance
343 Fraud arising from violations of s. 440.105, s. 624.15, s.
344 626.9541, s. 626.989, or s. 817.234.
345 (b) Solicitation of a person injured in a motor vehicle
346 crash for purposes of filing personal injury protection or tort
347 claims could be a violation of s. 817.234, s. 817.505, or the
348 rules regulating The Florida Bar and should be immediately
349 reported to the Division of Insurance Fraud if such conduct has
350 taken place.
351 Section 13. Subsection (1) of section 627.7401, Florida
352 Statutes, is amended to read:
353 627.7401 Notification of insured's rights.--
354 (1) The commission, by rule, shall adopt a form for the
355 notification of insureds of their right to receive personal

356 injury protection benefits under the Florida Motor Vehicle No-
357 Fault Law. Such notice shall include:
358 (a) A description of the benefits provided by personal
359 injury protection, including, but not limited to, the specific
360 types of services for which medical benefits are paid,
361 disability benefits, death benefits, significant exclusions from
362 and limitations on personal injury protection benefits, when
363 payments are due, how benefits are coordinated with other
364 insurance benefits that the insured may have, penalties and
365 interest that may be imposed on insurers for failure to make
366 timely payments of benefits, and rights of parties regarding
367 disputes as to benefits.
368 (b) An advisory informing insureds that:
369 1. Pursuant to s. 626.9892, the Department of Financial
370 Services may pay rewards of up to $25,000 to persons providing
371 information leading to the arrest and conviction of persons
372 committing crimes investigated by the Division of Insurance
373 Fraud arising from violations of s. 440.105, s. 624.15, s.
374 626.9541, s. 626.989, or s. 817.234.
375 2. Pursuant to s. 627.736(5)(e)1., if the insured notifies
376 the insurer of a billing error, the insured may be entitled to a
377 certain percentage of a reduction in the amount paid by the
378 insured's motor vehicle insurer.
379 (c) A notice that solicitation of a person injured in a
380 motor vehicle crash for purposes of filing personal injury
381 protection or tort claims could be a violation of s. 817.234, s
382 817.505, or the rules regulating The Florida Bar and should be

383 immediately reported to the Division of Insurance Fraud if such
384 conduct has taken place.
385 Section 14. Paragraph (a) of subsection (7) and subsection
386 (9) of section 817.234, Florida Statutes, are amended to read:
387 817.234 False and fraudulent insurance claims.--
388 (7)(a) It shall constitute a material omission and
389 insurance fraud, punishable as provided in subsection (11), for
390 any service ~~physician or other~~ provider, other than a hospital,
391 to engage in a general business practice of billing amounts as
392 its usual and customary charge, if such provider has agreed with
393 the insured ~~patient~~ or intends to waive deductibles or
394 copayments, or does not for any other reason intend to collect
395 the total amount of such charge. With respect to a determination
396 as to whether a service ~~physician or other~~ provider has engaged
397 in such general business practice, consideration shall be given
398 to evidence of whether the physician or other provider made a
399 good faith attempt to collect such deductible or copayment. This
400 paragraph does not apply to physicians or other providers who
401 waive deductibles or copayments or reduce their bills as part of
402 a bodily injury settlement or verdict.
403 (9) A person may not organize, plan, or knowingly
404 participate in an intentional motor vehicle crash or a scheme to
405 create documentation of a motor vehicle crash that did not occur
406 for the purpose of making motor vehicle tort claims or claims
407 for personal injury protection benefits as required by s.
408 627.736. Any person who violates this subsection commits a
409 felony of the second degree, punishable as provided in s.
410 775.082, s. 775.083, or s. 775.084. A person who is convicted of

411 a violation of this subsection shall be sentenced to a minimum
412 term of imprisonment of 2 years.
413 Section 15. Section 817.2361, Florida Statutes, is amended
414 to read:
415 817.2361 False or fraudulent proof of motor vehicle
416 insurance ~~card~~.--Any person who, with intent to deceive any
417 other person, creates, markets, or presents a false or
418 fraudulent proof of motor vehicle insurance ~~card~~ commits a
419 felony of the third degree, punishable as provided in s.
420 775.082, s. 775.083, or s. 775.084.
421 Section 16. Subsection (2) of section 817.50, Florida
422 Statutes, is amended to read:
423 817.50 Fraudulently obtaining goods, services, etc., from
424 a health care provider.--
425 (2) If any person gives to any health care provider in
426 this state a false or fictitious name or a false or fictitious
427 address or assigns to any health care provider the proceeds of
428 any health maintenance contract or insurance contract, then
429 knowing that such contract is no longer in force, is invalid, or
430 is void for any reason, such action shall be prima facie
431 evidence of the intent of such person to defraud the health care
432 provider. However, this subsection does not apply to
433 investigative actions taken by law enforcement officers for law
434 enforcement purposes in the course of their official duties.
435 Section 17. Subsection (1) and paragraph (a) of subsection
436 (2) of section 817.505, Florida Statutes, are amended to read:
437 817.505 Patient brokering prohibited; exceptions;
438 penalties.--

439 (1) It is unlawful for any person, including any health
440 care provider or health care facility, to:
441 (a) Offer or pay any commission, bonus, rebate, kickback,
442 or bribe, directly or indirectly, in cash or in kind, or engage
443 in any split-fee arrangement, in any form whatsoever, to induce
444 the referral of patients or patronage to or from a health care
445 provider or health care facility;
446 (b) Solicit or receive any commission, bonus, rebate,
447 kickback, or bribe, directly or indirectly, in cash or in kind,
448 or engage in any split-fee arrangement, in any form whatsoever,
449 in return for referring patients or patronage to or from a
450 health care provider or health care facility; ~~or~~
451 (c) Solicit or receive any commission, bonus, rebate,
452 kickback, or bribe, directly or indirectly, in cash or in kind,
453 or engage in any split-fee arrangement, in any form whatsoever,
454 in return for the acceptance or acknowledgement of treatment
455 from a health care provider or health care facility; or
456 (d) ~~(c)~~ Aid, abet, advise, or otherwise participate in the
457 conduct prohibited under paragraph (a), ~~or~~ paragraph (b), or
458 paragraph (c).
459 (2) For the purposes of this section, the term:
460 (a) "Health care provider or health care facility" means
461 any person or entity licensed, certified, or registered;
462 required to be licensed, certified, or registered; or lawfully
463 exempt from being required to be licensed, certified, or
464 registered with the Agency for Health Care Administration or the
465 Department of Health; any person or entity that has contracted
466 with the Agency for Health Care Administration to provide goods

467 or services to Medicaid recipients as provided under s. 409.907;
468 a county health department established under part I of chapter
469 154; any community service provider contracting with the
470 Department of Children and Family Services to furnish alcohol,
471 drug abuse, or mental health services under part IV of chapter
472 394; any substance abuse service provider licensed under chapter
473 397; or any federally supported primary care program such as a
474 migrant or community health center authorized under ss. 329 and
475 330 of the United States Public Health Services Act.
476 Section 18. Section 843.08, Florida Statutes, is amended
477 to read:
478 843.08 Falsely personating officer, etc.--A person who
479 falsely assumes or pretends to be a sheriff, officer of the
480 Florida Highway Patrol, officer of the Fish and Wildlife
481 Conservation Commission, officer of the Department of
482 Environmental Protection, officer of the Department of
483 Transportation, officer of the Department of Financial Services,
484 officer of the Department of Corrections, correctional probation
485 officer, deputy sheriff, state attorney or assistant state
486 attorney, statewide prosecutor or assistant statewide
487 prosecutor, state attorney investigator, coroner, police
488 officer, lottery special agent or lottery investigator, beverage
489 enforcement agent, or watchman, or any member of the Parole
490 Commission and any administrative aide or supervisor employed by
491 the commission, or any personnel or representative of the
492 Department of Law Enforcement, and takes upon himself or herself
493 to act as such, or to require any other person to aid or assist
494 him or her in a matter pertaining to the duty of any such

495 officer, commits a felony of the third degree, punishable as
496 provided in s. 775.082, s. 775.083, or s. 775.084; however, a
497 person who falsely personates any such officer during the course
498 of the commission of a felony commits a felony of the second
499 degree, punishable as provided in s. 775.082, s. 775.083, or s.
500 775.084; except that if the commission of the felony results in
501 the death or personal injury of another human being, the person
502 commits a felony of the first degree, punishable as provided in
503 s. 775.082, s. 775.083, or s. 775.084.
504 Section 19. Paragraph (n) is added to subsection (6) of
505 section 932.7055, Florida Statutes, to read:
506 932.7055 Disposition of liens and forfeited property.--
507 (6) If the seizing agency is a state agency, all remaining
508 proceeds shall be deposited into the General Revenue Fund.
509 However, if the seizing agency is:
510 (n) The Division of Insurance Fraud of the Department of
511 Financial Services, the proceeds accrued pursuant to the
512 provisions of the Florida Contraband Forfeiture Act shall be
513 deposited into the Insurance Regulatory Trust Fund as provided
514 in s. 626.9893 or into the Department of Financial Services'
515 Federal Equitable Sharing Trust Fund as provided in s. 17.43, as
516 applicable.
517 Section 20. If any provision of this act or the
518 application thereof to any person or circumstance is held
519 invalid, the invalidity does not affect other provisions or
520 applications of the act which can be given effect without the
521 invalid provision or application, and, to this end, the
522 provisions of this act are declared severable.

523 Section 21. This act shall take effect July 1, 2006.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Rivera offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Delete lines 150 and 151, and insert:
6 Section 4. Paragraph (h) is added to subsection (1) and
7 subsection (13) is added to section 400.9935, Florida Statues,
8 to read:
9 400.9935 Clinic responsibilities.--
10 (1) Each clinic shall appoint a medical director or clinic
11 director who shall agree in writing to accept legal
12 responsibility for the following activities on behalf of the
13 clinic. The medical director or the clinic director shall:
14 (h) Not refer a patient to the clinic if the clinic
15 performs magnetic resonance imaging, static radiographs,
16 computed tomography, or positron emission tomography. "Refer a
17 patient" means the referral of one or more patients of the
18 medical or clinic director or a member of the medical or clinic
19 director's group practice to the clinic for magnetic resonance
20 imaging, static radiographs, computed tomography, or positron
21 emission tomography. A medical director who is found to violate

22 this part commits a felony of the third degree, punishable as
23 provided in s. 775.082, s. 775.083, or s. 775.084.
24
25
26
27 ========== T I T L E A M E N D M E N T ==========
28 Remove line(s) 16 and insert:
29 amending s. 400.9935, F.S.; allow inspection access; prohibiting
30 medical directors from referring specified patients for
31 specified medical examinations and tests; providing that such
32 referrals are a felony of the third degree; requiring health
33 care clinics

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Rivera offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 284 - 305 and insert:
6 Section 10. Subsection (7) of section 626.9891, Florida
7 Statutes, is amended, subsection (8) is renumbered as subsection
8 (9) and a new subsection (8) is added to said section to read:
9 626.9891 Insurer anti-fraud investigative units; reporting
10 requirements; penalties for noncompliance.—
11 (7) If an insurer fails to timely submit a final
12 acceptable anti-fraud plan or anti-fraud investigative unit
13 description ~~otherwise fails to submit a plan~~, fails to implement
14 the provisions of a plan or an anti-fraud investigative unit
15 description, or otherwise refuses to comply with the provisions
16 of this section, the department, office, or commission may:
17 (a) Impose an administrative fine of not more than $2,000
18 per day for such failure by an insurer to submit an acceptable
19 anti-fraud plan or anti-fraud investigative unit description,
20 until the department, office, or commission deems the insurer to
21 be in compliance;

22 (b) Impose an administrative fine for failure by an ~~upon~~
23 ~~the~~ insurer to implement or follow the provisions of an anti-
24 fraud plan or anti-fraud investigative unit description ~~a fraud~~
25 ~~detection and prevention plan that is deemed to be appropriate~~
26 ~~by t~~he department and that must be implemented by the insurer;
27 or
28 (c) Impose the provisions of both paragraphs (a) and (b).
29 (8)(a) No information furnished by an insurance company or
30 entity required to furnish information pursuant to s. 626.9891,
31 is discoverable or admissible in any civil proceeding, other
32 than administrative proceedings as provided by law, against the
33 reporting insurance company or entity.
34 (b) Further, any findings, statements, discussions,
35 reports, or documentation generated by the department or the
36 office relating to these reporting requirements are not
37 discoverable or admissible in any civil proceeding, other than
38 administrative proceedings as provided by law, against the
39 insurance company or entity so required to furnish this
40 information.
41 (9) ~~(8)~~ The department may adopt rules to administer this
42 section.
43
44
45
46 ========== T I T L E A M E N D M E N T ==========
47 Remove line(s) 20 and insert:
48 allow inspection access; prohibiting medical directors from
49 referring specified patients for medical examinations and tests;
50 providing criminal penalties; amending s. 440.105, F.S.;

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Rivera offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between line(s) 237 and 238 insert:
6 Section 8. Section 624.4094, Florida Statutes, is amended
7 to read:
8 624.4094 Bail bond premiums.--
9 (1) The Legislature finds that a significant portion of
10 bail bond premiums is retained by the licensed bail bond agents
11 or licensed managing general agents. For purposes of reporting
12 in financial statements required to be filed with the office
13 pursuant to s. 624.424, direct written premiums for bail bonds
14 by a domestic, foreign and alien insurer in this state shall be
15 reported net of any amounts retained by licensed bail bond
16 agents or licensed managing general agents. However, in no case
17 shall the direct written premiums for bail bonds be less than
18 6.5 percent of the total consideration received by the agent for
19 all bail bonds written by the agent. This subsection also
20 applies to any determination of compliance with s. 624.4095.

21 (2) Premiums assumed by a domestic, foreign and alien
22 insurer shall be reported consistent with subsections (1) and
23 (4) for purposes of filing financial statements with the office.
24 (3) Each domestic, foreign and alien bail bond insurer
25 shall keep complete and accurate records of the total
26 consideration paid for all bail bonds written by such insurer.
27 (4) Each domestic, foreign and alien bail bond insurer
28 shall disclose the following information in the notes to the
29 financial statement in the insurer's annual statement filed with
30 the office.
31 (a) The gross bail bond premiums written in each state by
32 agents for the company.
33 (b) The amount of premium taxes incurred by the company in
34 each state.
35 (c) Total consideration withheld by agents and not
36 reported as an expense by the insurer in financial statements
37 filed with the office.
38 (d) The amount of bail bond premium included on the surety
39 line of the annual statement filed with the office.
40 (5) This section does not affect the reporting or payment
41 of insurance premium taxes under ss. 624.509, 624.5091, and
42 624.5092, and the insurance premium tax and related excise taxes
43 shall continue to be calculated using gross bail bond premiums.
44
45
46 ========== T I T L E A M E N D M E N T ==========
47 Remove line 35 and insert:
48 license; amending s. 624.4094, F.S.; expanding the reporting
49 requirements of domestic bail bond insurers to include foreign

50 and alien insurers; amending s. 626.938, F.S.; revising
51 provisions

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Rivera offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between line(s) 329 and 330, insert:
6 Section 12. Section 627.06501, Florida Statutes, is
7 amended to read:
8
9 627.06501 Insurance discounts for certain persons completing
10 driver improvement course.--
11 (1) Any rate, rating schedule, or rating manual for the
12 liability, personal injury protection, and collision coverages
13 of a motor vehicle insurance policy filed with the office may
14 provide for a minimum 10 percent reduction in premium charges ~~an~~
15 ~~appropriate reduction in premium charges~~ as to such coverages
16 when the principal operator on the covered vehicle has
17 successfully completed a driver improvement course approved and
18 certified by the Department of Highway Safety and Motor Vehicles
19 which is effective in reducing crash or violation rates, or
20 both, as determined pursuant to s. 318.1451~~(5)~~. ~~Any discount,~~

21 ~~not to exceed 10 percent, used by an insurer is presumed to be~~
22 ~~appropriate unless credible data demonstrates otherwise.~~
23 (2) The premium reduction authorized by this section shall
24 be effective for an insured for a 3-year period after successful
25 completion of the approved course, except that the insurer may
26 require, as a condition of maintaining the reduction, that the
27 insured:
28 (a) Not be involved in an accident for which the insured
29 is at fault; and
30 (b) Not be convicted of or plead guilty or nolo contendere
31 to a moving traffic violation.
32 (3) The organization offering the course shall, upon a
33 person's successful completion of the course, issue the person a
34 certificate that the person may use to qualify for the premium
35 discount authorized by this section. The Department of Highway
36 Safety and Motor Vehicles shall require each person completing
37 the course for purposes of this section to pass a written test
38 given by the organization evaluating the person's knowledge of
39 the content of the course.
40 (4) This section does not apply if the driver improvement
41 course is taken in lieu of a court appearance for a traffic
42 infraction as provided for in s. 318.14(9). However, the five-
43 election restriction enumerated in that section is not
44 applicable to taking the course for the purposes of receiving
45 insurance premium reductions.
46 Note.--Repealed by s. 14, ch. 99-5.
47
48 ========== T I T L E A M E N D M E N T ==========
49 Remove line(s) 50 and insert:

50 may be reported in pursuit of a reward; amending s. 627.06501,
51 F.S.; authorizing the Department of Highway Safety and Motor
52 Vehicles to require a test in order for a policyholder to
53 qualify for an auto insurance discount for a driver improvement
54 course; amending s.
55

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1009 Real Estate Profession Regulation
SPONSOR(S): Cretul; Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	17 Y, 0 N	Livingston	Liepshutz
2) Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
3) State Administration Appropriations Committee	7 Y, 0 N	Rayman	Belcher
4) Commerce Council		Livingston	Randle
5)			

SUMMARY ANALYSIS

This bill makes a number of changes to the statutes addressing real estate brokers, sales associates and schools. Some of the significant changes are below.

- The bill provides licensure of a real estate broker or sale associate as a professional limited liability company.
- The bill increases the time limit for certification of an applicant from one to two years.
- The bill creates grounds for broker discipline while limiting the time period for the filing of an administrative complaint against a sales associate.
- The bill requires the Department of Business and Professional Regulation (DBPR) to notify a licensee's broker or employer in writing when a formal complaint has been filed.
- The bill removes the "Important Notice" header and warning language about disclosure of confidential information in the required agency disclosure forms.
- The bill repeals the prohibition against charging advance fees for listing real property, except for timeshares, and removes criminal penalties for failure to follow advance fee procedures.

The bill modifies commercial real estate sales and leasing commission liens. The significant changes include:

- defining "Owner's Net Proceeds;"
- providing that generally a commission notice expires one year after recording; and
- providing that leases mentioned in a notice of commercial lien are not a recorded conveyance under the relevant provisions of the marketable record title act.

The DBPR states that it is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill eliminates the restrictions on advance fees or commissions, and eliminates the corresponding misdemeanor offense. The DBPR points out the bill does "not [create] more, but different regulation."

Ensure lower taxes -- The bill increases the administrative fine that may be imposed on practitioners from $1,000 to $5,000.

Safeguard individual liberty -- This bill eliminates restrictions on advance fees.

B. EFFECT OF PROPOSED CHANGES:

Real Estate Brokers, Sales Associates, and Schools

The general regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission[1] ("commission") under the Division of Real Estate of the Florida Department of Business and Professional Regulation ("DBPR") administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from financial harm.

Section 1

Current Law

Several real estate terms are used in chapter 475, F.S., including the following:

- "Broker" is defined as a person who for compensation buys, sells, or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.
- "Broker associate" means "a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another."
- "Sales associate" means "a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person."

A broker associate or sales associate may be organized and licensed to operate as a "professional corporation" or a "limited liability company."

Partnerships, limited liability partnerships, limited liability companies, and corporations that act as a broker must register with the commission. Pursuant to s. 475.15, F.S., the commission requires every partnership to be registered and at least one of its partners to be licensed or registered as an active broker.

[1] "The Florida Real Estate Commission (FREC) consists of seven members and meets monthly in Orlando. The commission meeting is usually the third Wednesday of the month. The FREC administers and enforces the real estate license law, Chapter 475, Part I, Florida Statutes. The Commission is also empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities." Florida Real Estate Commission (last visited Mar. 20, 2006) <http://www.myflorida.com/dbpr/re/frec_welcome.shtml>.

Effect of Bill

The bill authorizes a professional limited liability company to be licensed as a broker or sales associate.

Section 2

Current Law

Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination. The commission is authorized to require satisfactorily completion of one or more approved educational courses before a person may become licensed.

When the commission certifies that a person qualifies to take the licensure examination, the applicant has 1 year to take the examination. If the exam is not taken within that 1 year the licensure expires and a new application process must be completed and approved by the commission.

Effect of Bill

The bill specifies that the application for licensure expires in "2 years" if the applicant "does not pass" the examination. It also specifies that if the applicant does not pass the examination "the applicant's successful course completion is invalid for licensure."

Section 3

Current Law

Currently, section 475.182, F.S., requires a licensee to biennially renew a license upon application and payment of the renewal fee by the practitioner. The renewal application must include proof satisfactory to the commission that the licensee has, since the issuance or renewal of her or his current license, satisfactorily completed at least 14 classroom hours of continuing education during each biennium of a license period. Failure to renew before the expiration of the term of the license causes the licensee to be in involuntary inactive status. Any license which has been involuntarily inactive for more than 2 years automatically expires and becomes null and void.

Effect of Bill

The bill authorizes a licensee to reactivate a license that has been involuntarily inactive for 12 months or less by completing at least 14 hours of continuing education. A licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by completing 28 hours of education courses.

Section 4

Current Law

Section 475.25, F.S., prescribes disciplinary guidelines for violations of the provisions of part I of chapter 475, F.S.

Effect of Bill

The bill increases the administrative fine that may be imposed on practitioners from $1,000 to $5,000. The bill creates additional violations if a broker fails to reasonably manage or supervise any broker or sales associate whose license is affiliated with that broker or if a broker has failed to review the brokerage's trust accounting practices. When a formal complaint is filed against a licensee, the bill requires the DBPR or the commission to notify a licensee's broker or employer.

Section 5

Current Law

The term "agency" describes the legal relationship between two persons when one person, known as the agent, acts on behalf of, or represents, the other person. The term "real estate agency law" (or "agency law") refers to laws regulating the legal relationship between real estate licensees and buyers and sellers of real estate.

A "transaction broker" is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent. A "single agent" is a broker who represents either the buyer or seller but not both in the same transaction.

A real estate licensee may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. Florida is a "presumption of transaction brokerage" state; s. 475.278(1)(b), F.S., specifies "[i]t shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer."

Effect of Bill

The bill deletes language in the disclosure requirements for a transaction broker, single agent, and where there is no brokerage relationship. Also removed is the disclosure that the buyer or seller should not assume that a licensee represents them.

Section 6

Amends s. 475.42, F.S., to correct a cross-reference to conform to changes made by the bill.

Section 7

Current Law

Currently, each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, conducting or teaching any course of study in real estate practice prescribed by the commission for licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure to pass examinations for such licensure is required to obtain a permit from the DBPR. The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

An applicant for a permit to operate a proprietary real estate school, to be a chief administrator of a proprietary real estate school or a state institution, or to be an instructor for a proprietary real estate school or a state institution must meet statutory qualifications for practice set forth in s. 475.17(1) and the following minimal requirements:

"School permitholder" means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor's examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching. "Chief administrative person" means the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. "School instructor" means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

Effect of Bill

The bill requires each person, school, or institution to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years. A copy of the classroom course roster of courses that require satisfactory completion of an examination is required to be delivered to the DBPR within 30 days after the course was completed.

Section 8

Current Law

Each broker or sales associate who attempts to negotiate a rental, or who furnishes rental information to a prospective tenant for a fee must provide the prospective tenant with a contract or receipt. The contract or receipt must conform to guidelines so material information is effectively disclosed to a prospective tenant.

Effect of Bill

The bill limits the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Commercial Real Estate Sales Commission Lien Act

Part III of ch. 475, F.S., is the Commercial Real Estate Sales Commission Lien Act enacted in 2005. The Act addresses various aspects of a broker's lien for a sales commission and describes a closing agent's obligations. The Act provides a sales broker with the power to place a lien on an owner's proceeds from a commercial real estate transaction when there is a dispute over the broker's commission. The proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property.

Section 9

Current Law

Section 475.701, F.S., specifies that the closing agent does not subtract the amount secured by a mortgage or lien that the buyer agrees to remain on the property. However, the buyer will receive credit against the purchase price for the amount of that lien thus reducing the amount to be paid to close. If the closing agent does not also subtract the continuing lien, then the closing agent may be reserving against net proceeds that are not a part of the transaction.

Effect of Bill

The bill provides that, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. Also see Section 14, below.

Section 10

Current Law

Section 475.707, F.S., provides that when there is a dispute over the broker's commission the proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property. A commission notice recorded

under this part expires 1 year after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that a commission notice will not expire in 1 year if the owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement.

Section 11

Current Law

Current law provides conditions that must be met by the closing agent prior to the release of reserved funds to the broker.

Effect of Bill

The bill amends s. 475.709, F.S., to provide that all of the conditions specified in each of the sections must be met by the closing agent to release the reserved funds to the broker.

Section 12

Current Law

The law provides that a closing agent may initiate legal action to determine the rights of the parties to disputed funds if the owner disputes the release of the reserved proceeds, if the owner and broker have not agreed in writing within 5 days, and if neither the owner nor the broker has initiated a civil action.

Effect of Bill

The bill amends s. 475.711, F.S., to provide that all of the conditions specified must be met before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13

Current Law

In civil actions involving commissions, the non-prevailing party is required to pay the costs and reasonable attorney's fees incurred in the action by the prevailing party.[2] However, if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the prevailing party and the closing agent will be divided equally between and paid by the owner and broker.[3]

Effect of Bill

The bill amends s.475.713, F.S., to revise the award of costs and attorney's fees in civil actions over a commission. Specifically, the bill provides that if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the closing agent and the amount of any costs, recording charges, and service charges of the court of court that were deducted from the disputed reserve proceeds will be divided equally between and paid by the owner and broker.

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[2] Section 475.713(5)(a), F.S.
[3] Section 475.713(5)(b), F.S.

Section 14

Effect of Bill

Amends s. 475.715, F.S., to provide, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. *Also see* section 9, above.

Commercial Real Estate Leasing Commission Lien Act

Part IV of ch. 475, F.S. is the "Commercial Real Estate Leasing Commission Lien Act," and provides a broker in a lease transaction with the power to place a lien on an owner's interest in commercial real estate for any commission earned by a broker under a brokerage agreement. The lien is on the commercial real estate itself. The Act provides legal procedures and requirements for filing a lawsuit to enforce a lien, resolve payment of commission owed, and release parties from liens. These provisions were enacted in 2005.

Section 15

Effect of Bill

The bill amends s.475.719, F.S., to delete a duplicative reference.

Section 16

Current Law

A lien notice recorded under this part expires 10 years after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that an owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement. Moreover, the bill specifies that neither the recording of a broker's lien notice or an extension nor the recording of any lis pendens[4] to foreclose a broker's lien constitutes notice to a creditor or subsequent purchaser of the existence of the lease.

Section 17

Effect of Bill

The bill amends s. 721.20, F.S., to correct a reference.

Advance Fees

Section 18

Current Law

[4] Lis pendens is defined as "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." Black's Law Dictionary 943 (7th ed. 1999).

Section 475.452, F.S., provides the procedures for advance fees collected by a broker in all situations. The commission is authorized to adopt rules to regulate the method of accounting to be used by brokers. The requirements of the section do not apply to real estate brokers who have entered into a written agreement providing how anticipated expenses are to be incurred and paid. The section also provides that anyone who violates the provisions is guilty of a misdemeanor of the first degree.

Effect of Bill

The bill repeals s. 475.452, F.S., relating to the advance fees, the deposit of those fees, and accounting procedures for the fees.

Section 19

Provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.161, F.S., to require a professional limited liability company to be licensed as a broker or sales associate.

Section 2. Amends s. 475.181, F.S., dealing with expired licenses.

Section 3. Amends s. 475.183, F.S., regarding reactivation of involuntary inactive licenses.

Section 4. Amends s. 475.25, F.S., by increasing an administrative fine.

Section 5. Amends s. 475.278, F.S., by deleting language in a broker disclosure agreement.

Section 6. Amends s. 475.42, F.S., to correct a cross-reference.

Section 7. Amends s. 475.451, F.S., relating to the retention of broker education records.

Section 8. Amends s. 475.453, F.S., by limiting the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Section 9. Amends s. 475.701, F.S., relating to the calculation of an owner's net proceeds.

Section 10. Amends s. 475.707, F.S., relating to the expiration of a commission notice.

Section 11. Amends s. 475.709, F.S., regarding what conditions must be met before a closing agent may release reserved funds.

Section 12. Amends s. 475.711, F.S., to provide that all of the conditions specified must be met in before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13. Amends s.475.713, F.S., to correct references.

Section 14. Amends s.475.715, F.S., relating to a closing agent's calculation of an owner's net proceeds.

Section 15. Amends s.475.719, F.S., to delete a duplicative reference.

Section 16. Amends s. 475.807, F.S., regarding an owner's obligation to pay a commission.

Section 17. Amends s. 721.20, F.S., to correct a reference.

Section 18. Repeals s, 475.452, F.S., relating to advance fee accounting procedures.

Section 19. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the administrative responsibilities for education providers and instructors related to the retention of education documentation. There may be a minimal effect on how certain licensees structure their business entities by allowing the licensure of a limited liability company or professional limited liability company. This would enable certain licensees to take advantage of certain tax benefits available to these business entities. The bill would also enable licensee to take advantage of certain professional protections against liability.

D. FISCAL COMMENTS:

The Florida Department of Business and Professional Regulation projects, "[i]t is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources." The bill would increase the amount of work for the FREC and department operations to perform to relative to continuing education and make it more likely that license holders request formal hearings before an administrative law judge rather than submitting to the enforcement of discipline at informal hearings before the FREC. The broadening of the scope of persons notified of the filing of administrative complaints will increase workload for staff supporting the actions of the FREC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Business and Professional Regulation notes, the bill "may require rule making by the FREC to carry out the additional duties prescribed."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to real estate profession regulation;
3 amending s. 475.161, F.S.; providing for broker associate
4 or sales associate licensure as a professional limited
5 liability company; amending s. 475.181, F.S.; revising and
6 adding conditions for licensure; amending s. 475.183,
7 F.S.; providing continuing education requirements for
8 certain license renewal; requiring the Florida Real Estate
9 Commission to prescribe certain continuing education
10 courses; amending s. 475.25, F.S.; increasing a maximum
11 disciplinary administrative fine; providing additional
12 grounds for discipline for brokers; providing filing
13 limitations for administrative complaints against sales
14 associates; requiring the Department of Business and
15 Professional Regulation or the commission to provide
16 notification to certain persons upon the department's or
17 commission's filing of a formal complaint against a
18 licensee; amending s. 475.278, F.S.; revising the required
19 information on a transaction broker notice, a single agent
20 notice, and a no brokerage relationship notice; amending
21 s. 475.42, F.S.; removing a cross-reference to conform to
22 changes made by the act; amending s. 475.451, F.S.;
23 requiring schools teaching real estate practice to keep
24 certain records and documents and make them available to
25 the department; requiring certain personnel of schools
26 teaching real estate practice to deliver course rosters to
27 the department by a certain date; specifying the
28 information required in a course roster; amending s.

29 475.453, F.S.; revising a provision relating to rental
30 information given by a broker or sales associate to a
31 prospective tenant; amending s. 475.701, F.S.; revising
32 definitions; amending s. 475.707, F.S.; revising a
33 provision relating to commission notice recording;
34 amending s. 475.709, F.S.; clarifying provisions relating
35 to claim of commission; amending s. 475.711, F.S.;
36 clarifying provisions relating to actions involving
37 disputed reserved proceeds; amending s. 475.713, F.S.;
38 revising the award of costs and attorney's fees in civil
39 actions concerning commission; amending s. 475.715, F.S.;
40 revising the method by which an owner's net proceeds are
41 computed; amending s. 475.719, F.S.; removing an exception
42 from a buyer's broker provision shielding the rights and
43 remedies available to an owner, a buyer, or a buyer's
44 broker; amending s. 475.807, F.S.; revising a provision
45 relating to the recordation of lien notices; providing
46 that the recording of a broker's lien notice or any
47 extension thereof and any lis pendens shall not constitute
48 notice of the existence of any lease; amending s. 721.20,
49 F.S.; removing a cross-reference to conform to changes
50 made by the act; repealing s. 475.452, F.S., relating to
51 advance fees, deposit, accounting, penalty, and damages;
52 providing an effective date.
53
54 Be It Enacted by the Legislature of the State of Florida:
55

56 Section 1. Section 475.161, Florida Statutes, is amended
57 to read:
58 475.161 Licensing of broker associates and sales
59 associates.--The commission shall license a broker associate or
60 sales associate as an individual or, upon the licensee providing
61 the commission with authorization from the Department of State,
62 as a professional corporation, limited liability company, or
63 professional limited liability company. A license shall be
64 issued in the licensee's legal name only and, when appropriate,
65 shall include the entity designation. This section shall not
66 operate to permit a broker associate or sales associate to
67 register or be licensed as a general partner, member, manager,
68 officer, or director of a brokerage firm under s. 475.15.
69 Section 2. Subsection (2) of section 475.181, Florida
70 Statutes, is amended to read:
71 475.181 Licensure.--
72 (2) The commission shall certify for licensure any
73 applicant who satisfies the requirements of ss. 475.17, 475.175,
74 and 475.180. The commission may refuse to certify any applicant
75 who has violated any of the provisions of s. 475.42 or who is
76 subject to discipline under s. 475.25. The application shall
77 expire 2 years ~~1 year~~ after the date received if the applicant
78 does not pass ~~fails to take~~ the appropriate examination.
79 Additionally, if an applicant does not pass the licensing
80 examination within 2 years after the successful course
81 completion date, the applicant's successful course completion is
82 invalid for licensure.

83 Section 3. Subsection (2) of section 475.183, Florida
84 Statutes, is amended to read:
85 475.183 Inactive status.--
86 (2)(a) A licensee may reactivate a license that has been
87 involuntarily inactive for 12 months or less by satisfactorily
88 completing at least 14 hours of a commission-prescribed
89 continuing education course. Notwithstanding the provisions of
90 s. 455.271, a licensee may reactivate a license that has been
91 involuntarily inactive for more than 12 months but fewer than 24
92 months by satisfactorily completing 28 hours of a commission-
93 prescribed education course.
94 (b) Any license that ~~which~~ has been involuntarily inactive
95 for more than 2 years shall automatically expire. Once a license
96 expires, it becomes null and void without any further action by
97 the commission or department. Ninety days prior to expiration of
98 the license, the department shall give notice to the licensee.
99 The commission shall prescribe by rule a fee not to exceed $100
100 for the late renewal of an involuntarily inactive license. The
101 department shall collect the current renewal fee for each
102 renewal period in which the license was involuntarily inactive
103 in addition to any applicable late renewal fee.
104 Section 4. Subsections (1) and (5) of section 475.25,
105 Florida Statutes, are amended, subsection (6) is renumbered as
106 subsection (7), and a new subsection (6) is added to that
107 section, to read:
108 475.25 Discipline.--
109 (1) The commission may deny an application for licensure,
110 registration, or permit, or renewal thereof; may place a

111 licensee, registrant, or permittee on probation; may suspend a
112 license, registration, or permit for a period not exceeding 10
113 years; may revoke a license, registration, or permit; may impose
114 an administrative fine not to exceed $5,000 ~~$1,000~~ for each
115 count or separate offense; and may issue a reprimand, and any or
116 all of the foregoing, if it finds that the licensee, registrant,
117 permittee, or applicant:
118 (a) Has violated any provision of s. 455.227(1) or s.
119 475.42. However, licensees under this part are exempt from the
120 provisions of s. 455.227(1)(i).
121 (b) Has been guilty of fraud, misrepresentation,
122 concealment, false promises, false pretenses, dishonest dealing
123 by trick, scheme, or device, culpable negligence, or breach of
124 trust in any business transaction in this state or any other
125 state, nation, or territory; has violated a duty imposed upon
126 her or him by law or by the terms of a listing contract,
127 written, oral, express, or implied, in a real estate
128 transaction; has aided, assisted, or conspired with any other
129 person engaged in any such misconduct and in furtherance
130 thereof; or has formed an intent, design, or scheme to engage in
131 any such misconduct and committed an overt act in furtherance of
132 such intent, design, or scheme. It is immaterial to the guilt of
133 the licensee that the victim or intended victim of the
134 misconduct has sustained no damage or loss; that the damage or
135 loss has been settled and paid after discovery of the
136 misconduct; or that such victim or intended victim was a
137 customer or a person in confidential relation with the licensee
138 or was an identified member of the general public.

139 (c) Has advertised property or services in a manner which
140 is fraudulent, false, deceptive, or misleading in form or
141 content. The commission may adopt rules defining methods of
142 advertising that violate this paragraph.
143 (d)1. Has failed to account or deliver to any person,
144 including a licensee under this chapter, at the time which has
145 been agreed upon or is required by law or, in the absence of a
146 fixed time, upon demand of the person entitled to such
147 accounting and delivery, any personal property such as money,
148 fund, deposit, check, draft, abstract of title, mortgage,
149 conveyance, lease, or other document or thing of value,
150 including a share of a real estate commission if a civil
151 judgment relating to the practice of the licensee's profession
152 has been obtained against the licensee and said judgment has not
153 been satisfied in accordance with the terms of the judgment
154 within a reasonable time, or any secret or illegal profit, or
155 any divisible share or portion thereof, which has come into the
156 licensee's hands and which is not the licensee's property or
157 which the licensee is not in law or equity entitled to retain
158 under the circumstances. However, if the licensee, in good
159 faith, entertains doubt as to what person is entitled to the
160 accounting and delivery of the escrowed property, or if
161 conflicting demands have been made upon the licensee for the
162 escrowed property, which property she or he still maintains in
163 her or his escrow or trust account, the licensee shall promptly
164 notify the commission of such doubts or conflicting demands and
165 shall promptly:

166 a. Request that the commission issue an escrow
167 disbursement order determining who is entitled to the escrowed
168 property;
169 b. With the consent of all parties, submit the matter to
170 arbitration;
171 c. By interpleader or otherwise, seek adjudication of the
172 matter by a court; or
173 d. With the written consent of all parties, submit the
174 matter to mediation. The department may conduct mediation or may
175 contract with public or private entities for mediation services.
176 However, the mediation process must be successfully completed
177 within 90 days following the last demand or the licensee shall
178 promptly employ one of the other escape procedures contained in
179 this section. Payment for mediation will be as agreed to in
180 writing by the parties. The department may adopt rules to
181 implement this section.
182
183 If the licensee promptly employs one of the escape procedures
184 contained herein and abides by the order or judgment resulting
185 therefrom, no administrative complaint may be filed against the
186 licensee for failure to account for, deliver, or maintain the
187 escrowed property. Under certain circumstances, which the
188 commission shall set forth by rule, a licensee may disburse
189 property from the licensee's escrow account without notifying
190 the commission or employing one of the procedures listed in sub-
191 subparagraphs a.-d. If the buyer of a residential condominium
192 unit delivers to a licensee written notice of the buyer's intent
193 to cancel the contract for sale and purchase, as authorized by

194 s. 718.503, or if the buyer of real property in good faith fails
195 to satisfy the terms in the financing clause of a contract for
196 sale and purchase, the licensee may return the escrowed property
197 to the purchaser without notifying the commission or initiating
198 any of the procedures listed in sub-subparagraphs a.-d.
199 2. Has failed to deposit money in an escrow account when
200 the licensee is the purchaser of real estate under a contract
201 where the contract requires the purchaser to place deposit money
202 in an escrow account to be applied to the purchase price if the
203 sale is consummated.
204 (e) Has violated any of the provisions of this chapter or
205 any lawful order or rule made or issued under the provisions of
206 this chapter or chapter 455.
207 (f) Has been convicted or found guilty of, or entered a
208 plea of nolo contendere to, regardless of adjudication, a crime
209 in any jurisdiction which directly relates to the activities of
210 a licensed broker or sales associate, or involves moral
211 turpitude or fraudulent or dishonest dealing. The record of a
212 conviction certified or authenticated in such form as to be
213 admissible in evidence under the laws of the state shall be
214 admissible as prima facie evidence of such guilt.
215 (g) Has had a broker's or sales associate's license
216 revoked, suspended, or otherwise acted against, or has had an
217 application for such licensure denied, by the real estate
218 licensing agency of another state, territory, or country.
219 (h) Has shared a commission with, or paid a fee or other
220 compensation to, a person not properly licensed as a broker,
221 broker associate, or sales associate under the laws of this

222 state, for the referral of real estate business, clients,
223 prospects, or customers, or for any one or more of the services
224 set forth in s. 475.01(1)(a). For the purposes of this section,
225 it is immaterial that the person to whom such payment or
226 compensation is given made the referral or performed the service
227 from within this state or elsewhere; however, a licensed broker
228 of this state may pay a referral fee or share a real estate
229 brokerage commission with a broker licensed or registered under
230 the laws of a foreign state so long as the foreign broker does
231 not violate any law of this state.
232 (i) Has become temporarily incapacitated from acting as a
233 broker or sales associate with safety to investors or those in a
234 fiduciary relation with her or him because of drunkenness, use
235 of drugs, or temporary mental derangement; but suspension of a
236 license in such a case shall be only for the period of such
237 incapacity.
238 (j) Has rendered an opinion that the title to any property
239 sold is good or merchantable, except when correctly based upon a
240 current opinion of a licensed attorney at law, or has failed to
241 advise a prospective purchaser to consult her or his attorney on
242 the merchantability of the title or to obtain title insurance.
243 (k) Has failed, if a broker, to immediately place, upon
244 receipt, any money, fund, deposit, check, or draft entrusted to
245 her or him by any person dealing with her or him as a broker in
246 escrow with a title company, banking institution, credit union,
247 or savings and loan association located and doing business in
248 this state, or to deposit such funds in a trust or escrow
249 account maintained by her or him with some bank, credit union,

250 or savings and loan association located and doing business in
251 this state, wherein the funds shall be kept until disbursement
252 thereof is properly authorized; or has failed, if a sales
253 associate, to immediately place with her or his registered
254 employer any money, fund, deposit, check, or draft entrusted to
255 her or him by any person dealing with her or him as agent of the
256 registered employer. The commission shall establish rules to
257 provide for records to be maintained by the broker and the
258 manner in which such deposits shall be made. A broker may place
259 and maintain up to $5,000 of personal or brokerage funds in the
260 broker's property management escrow account and up to $1,000 of
261 personal or brokerage funds in the broker's sales escrow
262 account. A broker shall be provided a reasonable amount of time
263 to correct escrow errors if there is no shortage of funds and
264 such errors pose no significant threat to economically harm the
265 public. It is the intent of the Legislature that, in the event
266 of legal proceedings concerning a broker's escrow account, the
267 disbursement of escrowed funds not be delayed due to any dispute
268 over the personal or brokerage funds that may be present in the
269 escrow account.
270 (l) Has made or filed a report or record which the
271 licensee knows to be false, has willfully failed to file a
272 report or record required by state or federal law, has willfully
273 impeded or obstructed such filing, or has induced another person
274 to impede or obstruct such filing; but such reports or records
275 shall include only those which are signed in the capacity of a
276 licensed broker or sales associate.

277 (m) Has obtained a license by means of fraud,
278 misrepresentation, or concealment.
279 (n) Is confined in any county jail, postadjudication; is
280 confined in any state or federal prison or mental institution;
281 is under home confinement ordered in lieu of institutional
282 confinement; or, through mental disease or deterioration, can no
283 longer safely be entrusted to competently deal with the public.
284 (o) Has been found guilty, for a second time, of any
285 misconduct that warrants her or his suspension or has been found
286 guilty of a course of conduct or practices which show that she
287 or he is so incompetent, negligent, dishonest, or untruthful
288 that the money, property, transactions, and rights of investors,
289 or those with whom she or he may sustain a confidential
290 relation, may not safely be entrusted to her or him.
291 (p) Has failed to inform the commission in writing within
292 30 days after pleading guilty or nolo contendere to, or being
293 convicted or found guilty of, any felony.
294 (q) Has violated any provision of s. 475.2755 or s.
295 475.278, including the duties owed under those sections.
296 (r) Has failed in any written listing agreement to include
297 a definite expiration date, description of the property, price
298 and terms, fee or commission, and a proper signature of the
299 principal(s); and has failed to give the principal(s) a legible,
300 signed, true and correct copy of the listing agreement within 24
301 hours of obtaining the written listing agreement. The written
302 listing agreement shall contain no provision requiring the
303 person signing the listing to notify the broker of the intention
304 to cancel the listing after such definite expiration date.

305 (s) Has had a registration suspended, revoked, or
306 otherwise acted against in any jurisdiction. The record of the
307 disciplinary action certified or authenticated in such form as
308 to be admissible in evidence under the laws of the state shall
309 be admissible as prima facie evidence of such disciplinary
310 action.
311 (t) Has violated any standard for the development or
312 communication of a real estate appraisal or other provision of
313 the Uniform Standards of Professional Appraisal Practice, as
314 defined in s. 475.611, as approved and adopted by the Appraisal
315 Standards Board of the Appraisal Foundation, as defined in s.
316 475.611. This paragraph does not apply to a real estate broker
317 or sales associate who, in the ordinary course of business,
318 performs a comparative market analysis, gives a broker price
319 opinion, or gives an opinion of value of real estate. However,
320 in no event may this comparative market analysis, broker price
321 opinion, or opinion of value of real estate be referred to as an
322 appraisal, as defined in s. 475.611.
323 (u) Has failed, if a broker, to reasonably manage or
324 supervise any broker associate or sales associate whose license
325 is affiliated with such broker.
326 (v) Has failed, if a broker, to review the brokerage's
327 trust accounting practices in order to ensure compliance with
328 this chapter.
329 (5) An administrative complaint against a broker, ~~or~~
330 broker associate, or sales associate shall ~~must~~ be filed within
331 5 years after the time of the act giving rise to the complaint

332 or within 5 years after the time the act is discovered or should
333 have been discovered with the exercise of due diligence.
334 (6) The department shall promptly notify a licensee's
335 broker or employer, as defined in this part, in writing any time
336 the department files a formal complaint against a licensee. The
337 notice required in this subsection shall be provided by the
338 commission in those instances where the commission files a
339 formal complaint against a licensee.
340 (7) ~~(6)~~ The commission shall promptly report to the proper
341 prosecuting authority any criminal violation of any statute
342 relating to the practice of a real estate profession regulated
343 by the commission.
344 Section 5. Paragraph (c) of subsection (2), paragraph (c)
345 of subsection (3), and paragraph (c) of subsection (4) of
346 section 475.278, Florida Statutes, are amended to read:
347 475.278 Authorized brokerage relationships; presumption of
348 transaction brokerage; required disclosures.--
349 (2) TRANSACTION BROKER RELATIONSHIP.--
350 (c) Contents of disclosure.--The required notice given
351 under paragraph (b) must include the following information in
352 the following form:
353
354 ~~IMPORTANT NOTICE~~
355
356 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
357 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
358

359 ~~You should not assume that any real estate broker or sales~~
360 ~~associate represents you unless you agree to engage a real~~
361 ~~estate licensee in an authorized brokerage relationship, either~~
362 ~~as a single agent or as a transaction broker. You are advised~~
363 ~~not to disclose any information you want to be held in~~
364 ~~confidence until you make a decision on representation.~~
365
366 TRANSACTION BROKER NOTICE
367
368 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS~~
369 ~~TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE~~
370 ~~AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.~~
371
372 As a transaction broker, (insert name of Real Estate Firm and
373 its Associates) , provides to you a limited form of
374 representation that includes the following duties:
375 1. Dealing honestly and fairly;
376 2. Accounting for all funds;
377 3. Using skill, care, and diligence in the transaction;
378 4. Disclosing all known facts that materially affect the
379 value of residential real property and are not readily
380 observable to the buyer;
381 5. Presenting all offers and counteroffers in a timely
382 manner, unless a party has previously directed the licensee
383 otherwise in writing;
384 6. Limited confidentiality, unless waived in writing by a
385 party. This limited confidentiality will prevent disclosure that
386 the seller will accept a price less than the asking or listed

387 price, that the buyer will pay a price greater than the price
388 submitted in a written offer, of the motivation of any party for
389 selling or buying property, that a seller or buyer will agree to
390 financing terms other than those offered, or of any other
391 information requested by a party to remain confidential; and
392 7. Any additional duties that are entered into by this or
393 by separate written agreement.
394
395 Limited representation means that a buyer or seller is not
396 responsible for the acts of the licensee. Additionally, parties
397 are giving up their rights to the undivided loyalty of the
398 licensee. This aspect of limited representation allows a
399 licensee to facilitate a real estate transaction by assisting
400 both the buyer and the seller, but a licensee will not work to
401 represent one party to the detriment of the other party when
402 acting as a transaction broker to both parties.
403

_____ _____

Date Signature

404

_____

Signature

405
406 This paragraph expires July 1, 2008.
407 (3) SINGLE AGENT RELATIONSHIP.--
408 (c) Contents of disclosure.--

409 1. Single agent duties disclosure.--The notice required
410 under subparagraph (b)1. must include the following information
411 in the following form:
412
413 ~~IMPORTANT NOTICE~~
414
415 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
416 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
417
418 ~~You should not assume that any real estate broker or sales~~
419 ~~associate represents you unless you agree to engage a real~~
420 ~~estate licensee in an authorized brokerage relationship, either~~
421 ~~as a single agent or as a transaction broker. You are advised~~
422 ~~not to disclose any information you want to be held in~~
423 ~~confidence until you make a decision on representation.~~
424
425 SINGLE AGENT NOTICE
426
427 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
428 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.
429
430 As a single agent, (insert name of Real Estate Entity and
431 its Associates) owe to you the following duties:
432 1. Dealing honestly and fairly;
433 2. Loyalty;
434 3. Confidentiality;
435 4. Obedience;
436 5. Full disclosure;

437 6. Accounting for all funds;
438 7. Skill, care, and diligence in the transaction;
439 8. Presenting all offers and counteroffers in a timely
440 manner, unless a party has previously directed the licensee
441 otherwise in writing; and
442 9. Disclosing all known facts that materially affect the
443 value of residential real property and are not readily
444 observable.
445

_____ _____

Date Signature

446
447 2. Transition disclosure.--To gain the principal's written
448 consent to a change in relationship, a licensee must use the
449 following disclosure:
450
451 CONSENT TO TRANSITION TO
452 TRANSACTION BROKER
453
454 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
455 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
456 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
457 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
458 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
459 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
460 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.
461

462 As a transaction broker, (insert name of Real Estate Firm and
463 its Associates) , provides to you a limited form of
464 representation that includes the following duties:
465 1. Dealing honestly and fairly;
466 2. Accounting for all funds;
467 3. Using skill, care, and diligence in the transaction;
468 4. Disclosing all known facts that materially affect the
469 value of residential real property and are not readily
470 observable to the buyer;
471 5. Presenting all offers and counteroffers in a timely
472 manner, unless a party has previously directed the licensee
473 otherwise in writing;
474 6. Limited confidentiality, unless waived in writing by a
475 party. This limited confidentiality will prevent disclosure that
476 the seller will accept a price less than the asking or listed
477 price, that the buyer will pay a price greater than the price
478 submitted in a written offer, of the motivation of any party for
479 selling or buying property, that a seller or buyer will agree to
480 financing terms other than those offered, or of any other
481 information requested by a party to remain confidential; and
482 7. Any additional duties that are entered into by this or
483 by separate written agreement.
484
485 Limited representation means that a buyer or seller is not
486 responsible for the acts of the licensee. Additionally, parties
487 are giving up their rights to the undivided loyalty of the
488 licensee. This aspect of limited representation allows a
489 licensee to facilitate a real estate transaction by assisting

490 both the buyer and the seller, but a licensee will not work to
491 represent one party to the detriment of the other party when
492 acting as a transaction broker to both parties.
493
494 _____I agree that my agent may assume the role
495 and duties of a transaction broker. [must be initialed or
496 signed]
497 (4) NO BROKERAGE RELATIONSHIP.--
498 (c) Contents of disclosure.--The notice required under
499 paragraph (b) must include the following information in the
500 following form:
501
502 ~~IMPORTANT NOTICE~~
503
504 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
505 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
506
507 ~~You should not assume that any real estate broker or sales~~
508 ~~associate represents you unless you agree to engage a real~~
509 ~~estate licensee in an authorized brokerage relationship, either~~
510 ~~as a single agent or as a transaction broker. You are advised~~
511 ~~not to disclose any information you want to be held in~~
512 ~~confidence until you decide on representation.~~
513
514 NO BROKERAGE RELATIONSHIP NOTICE
515

516 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
517 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
518 THEIR DUTIES TO SELLERS AND BUYERS.
519
520 As a real estate licensee who has no brokerage relationship
521 with you, (insert name of Real Estate Entity and its
522 Associates) owe to you the following duties:
523
524 1. Dealing honestly and fairly;
525 2. Disclosing all known facts that materially affect the
526 value of residential real property which are not readily
527 observable to the buyer.
528 3. Accounting for all funds entrusted to the licensee.
529
530 (Date) (Signature)
531
532 Section 6. Paragraph (n) of subsection (1) of section
533 475.42, Florida Statutes, is amended to read:
534 475.42 Violations and penalties.--
535 (1) VIOLATIONS.--
536 (n) A broker or sales associate may not enter into any
537 listing or other agreement regarding her or his services in
538 connection with the resale of a timeshare period unless the
539 broker or sales associate fully and fairly discloses all
540 material aspects of the agreement to the owner of the timeshare
541 period ~~and fully complies with the provisions of s. 475.452~~.
542 Further, a broker or sales associate may not use any form of
543 contract or purchase and sale agreement in connection with the

544 resale of a timeshare period unless the contract or purchase and
545 sale agreement fully and fairly discloses all material aspects
546 of the timeshare plan and the rights and obligations of both
547 buyer and seller. The commission is authorized to adopt rules
548 pursuant to chapter 120 as necessary to implement, enforce, and
549 interpret this paragraph.
550 Section 7. Subsections (8) and (9) are added to section
551 475.451, Florida Statutes, to read:
552 475.451 Schools teaching real estate practice.--
553 (8) Beginning October 1, 2006, each person, school, or
554 institution permitted under this section is required to keep
555 registration records, course rosters, attendance records, a file
556 copy of each examination and progress test, and all student
557 answer sheets for a period of at least 3 years subsequent to the
558 beginning of each course and make them available to the
559 department for inspection and copying upon request.
560 (9)(a) Each school permitholder of a proprietary real
561 estate school, each chief administrative person of such an
562 institution, or each course sponsor shall deliver to the
563 department, in a format acceptable to the department, a copy of
564 the classroom course roster of courses that require satisfactory
565 completion of an examination no later than 30 days beyond the
566 end of the calendar month in which the course was completed.
567 (b) The course roster shall consist of the institution or
568 school name and permit number, if applicable, the instructor's
569 name and permit number, if applicable, course title, beginning
570 and ending dates of the course, number of course hours, course
571 location, if applicable, each student's full name and license

572 number, if applicable, each student's mailing address, and the
573 numerical grade each student achieved. The course roster shall
574 also include the signature of the school permitholder, the chief
575 administrative person, or the course sponsor.
576 Section 8. Subsection (1) of section 475.453, Florida
577 Statutes, is amended to read:
578 475.453 Rental information; contract or receipt; refund;
579 penalty.--
580 (1) Each broker or sales associate who ~~attempts to~~
581 ~~negotiate a rental, or who~~ furnishes a rental information list
582 to a prospective tenant, for a fee paid by the prospective
583 tenant, shall provide such prospective tenant with a contract or
584 receipt, which contract or receipt contains a provision for the
585 repayment of any amount over 25 percent of the fee to the
586 prospective tenant if the prospective tenant does not obtain a
587 rental. If the rental information list provided by the broker or
588 sales associate to a prospective tenant is not current or
589 accurate in any material respect, the full fee shall be repaid
590 to the prospective tenant upon demand. A demand from the
591 prospective tenant for the return of the fee, or any part
592 thereof, shall be made within 30 days following the day on which
593 the real estate broker or sales associate has contracted to
594 perform services to the prospective tenant. The contract or
595 receipt shall also conform to the guidelines adopted by the
596 commission in order to effect disclosure of material information
597 regarding the service to be provided to the prospective tenant.
598 Section 9. Subsections (10) and (12) of section 475.701,
599 Florida Statutes, are amended to read:

600 475.701 Definitions.--As used in this part:
601 (10) "Disputed reserved proceeds" means the portion of the
602 owner's net proceeds reserved by a closing agent under s.
603 475.709 that the owner disputes the broker's right to receive
604 ~~such reserved proceeds~~ under s. 475.709(5).
605 (12) "Owner's net proceeds" means the gross sales proceeds
606 that the owner is entitled to receive from the disposition of
607 any commercial real estate specified in a brokerage agreement,
608 less all of the following:
609 (a) The amount of ~~Any~~ money secured by ~~that is required to~~
610 ~~pay~~ any encumbrance, claim, or lien that has priority over the
611 recorded commission notice as provided in s. 475.715 ~~other than~~
612 ~~an encumbrance, claim, or lien that the buyer of the commercial~~
613 ~~real estate authorizes to remain after the disposition~~.
614 (b) Any costs incurred by the owner to close the
615 disposition, including, but not limited to, real estate transfer
616 tax, title insurance premiums, ad valorem taxes and assessments,
617 and escrow fees payable by the owner pursuant to an agreement
618 with the buyer.
619 Section 10. Subsection (3) of section 475.707, Florida
620 Statutes, is amended to read:
621 475.707 Recording commission notice; effectiveness.--
622 (3) A commission notice recorded under this part expires 1
623 year after the date of recording, unless the owner remains
624 obligated to pay a commission to the broker ~~brokerage agreement~~
625 ~~remains effective~~ after the expiration date of the commission
626 notice and the broker records an extension notice in the same
627 public records within the last 60 days before such expiration

628 date. An extension notice shall refer to the recording
629 information of the original commission notice, shall state that
630 the owner remains obligated to pay a commission to the broker
631 ~~brokerage agreement remains effective~~, and shall include the
632 information and be executed in the manner as required by s.
633 475.705(1) for the original commission notice. A timely recorded
634 extension notice shall extend the expiration date of the
635 original recorded commission notice by 1 additional year.
636 Successive extension notices may be recorded for so long as the
637 owner remains obligated to pay a commission to the broker
638 ~~brokerage agreement remains effective between the broker and the~~
639 ~~owner~~. Within 10 days after recording an extension notice, the
640 broker shall deliver a copy thereof to the owner.
641 Section 11. Subsection (6) of section 475.709, Florida
642 Statutes, is amended to read:
643 475.709 Duties of closing agent; reservation of owner's
644 net proceeds.--
645 (6) The commission claimed in the commission notice shall
646 be deemed confirmed by the owner, and the closing agent shall
647 release the reserved proceeds to the broker, if the closing
648 agent is required pursuant to subsection (1) to reserve any or
649 all of the owner's net proceeds~~,~~ and if all of the following
650 conditions have been met:
651 (a) Five days have passed after the closing.
652 (b) The owner has neither confirmed nor disputed the
653 claimed commission to the closing agent.

654 (c) The closing agent receives reasonably satisfactory
655 evidence that the broker delivered a copy of the commission
656 notice to the owner in accordance with s. 475.705.
657 Section 12. Subsection (1) of section 475.711, Florida
658 Statutes, is amended to read:
659 475.711 Interpleader or other proceedings; deposit of
660 reserved proceeds in court registry; discharge of closing agent
661 from further liability.--
662 (1) The closing agent shall, by interpleader action or
663 other legal proceeding, seek adjudication of the rights of the
664 parties with respect to disputed reserved proceeds by the county
665 court or circuit court, whichever may have jurisdiction of
666 controversies in the amount of the disputed reserved proceeds,
667 in a county where all or a portion of the commercial real estate
668 is located if, after the closing of a transaction for the
669 disposition of the commercial real estate, all of the following
670 conditions are met:
671 (a) The closing agent has reserved all or a portion of the
672 owner's net proceeds pursuant to s. 475.709 and the owner
673 disputes the release to the broker of all or any portion of the
674 reserved proceeds.
675 (b) The owner and the broker have not agreed in writing,
676 within 5 days after the closing, regarding the closing agent's
677 release of the disputed reserved proceeds.
678 (c) Neither the owner nor the broker have commenced a
679 civil action to determine the rights of the parties with respect
680 to the disputed reserved proceeds.

681 Section 13. Subsection (5) of section 475.713, Florida
682 Statutes, is amended to read:
683 475.713 Civil action concerning commission; order to show
684 cause; hearing; release of proceeds; award of costs and
685 attorney's fees.--
686 (5)(a) In a civil action commenced by the owner or the
687 broker under this section or in an interpleader action or other
688 proceeding commenced by the closing agent under s. 475.711, the
689 owner or the broker that is not the prevailing party shall be
690 required to pay:
691 1. The costs and reasonable attorney's fees incurred in
692 the action by the prevailing party.
693 2. The costs and reasonable attorney's fees incurred in
694 the action by the closing agent.
695 3. The amount of any costs, recording charges, and service
696 charges of the clerk of court that were deducted from the
697 disputed reserved proceeds under s. 475.711(2) in determining
698 the net amount thereof deposited into the registry of the court.
699 (b) If the court determines that neither the owner nor the
700 broker is the prevailing party, the amounts set forth in
701 subparagraphs (a)2.~~1.~~ and 3.~~2.~~ shall be divided equally between
702 and paid by the owner and the broker.
703 Section 14. Section 475.715, Florida Statutes, is amended
704 to read:
705 475.715 Priority of recorded commission notice.--All
706 statutory liens, consensual liens, mortgages, deeds of trust,
707 assignments of rents, and other encumbrances, including all
708 advances or charges made or accruing thereunder, whether

709 voluntary or obligatory, and all modifications, extensions,
710 renewals, and replacements thereof, recorded prior to the
711 recording of a commission notice pursuant to the provisions of
712 s. 475.707, have priority over the commission notice. The
713 closing agent shall compute the owner's net proceeds by
714 subtracting from the gross sales proceeds~~, and~~ the amount
715 required to discharge any such prior recorded lien and the
716 amount of money secured by any such prior recorded lien that
717 ~~liens shall be subtracted from gross sales proceeds in computing~~
718 ~~the owner's net proceeds unless~~ the buyer permits ~~the same~~ to
719 remain a lien against the title to the commercial real estate. A
720 prior recorded lien includes, without limitation, a valid
721 construction lien claim that is recorded after the recording of
722 the broker's commission notice but which relates back to a
723 notice of commencement recorded under s. 713.13 prior to the
724 recording date of the broker's commission notice.
725 Section 15. Subsection (3) of section 475.719, Florida
726 Statutes, is amended to read:
727 475.719 Buyer's broker.--As used in this section, the term
728 "buyer's broker" means a broker that is entitled to receive
729 payment from the buyer of commercial real estate of any fee or
730 other compensation for licensed services, as specified in a
731 written contract made between the buyer and the broker on or
732 after the effective date of this act relating to the buyer's
733 purchase of the commercial real estate.
734 (3) No such notice given by the buyer's broker pursuant to
735 subsection (2) shall constitute a tortious interference with the
736 sale or disposition or financing of the commercial real estate~~,~~

737 ~~except this section shall not affect the rights and remedies~~
738 ~~otherwise available to the owner, the buyer, or the buyer's~~
739 ~~broker under other applicable law~~.
740 Section 16. Paragraph (b) of subsection (8) of section
741 475.807, Florida Statutes, is amended, and subsection (9) is
742 added to that section, to read:
743 475.807 Recording lien notice; effectiveness.--
744 (8)
745 (b) To the extent that a lien notice recorded by a broker
746 under this part claims an automatic renewal commission that is
747 earned but not then payable, the lien notice expires 10 years
748 after the date of recording, unless within that time the broker
749 commences an action to foreclose the lien under s. 475.809 and
750 records a notice of lis pendens in the public records of the
751 county where the lien notice was recorded. If the owner remains
752 obligated to pay a commission to the broker ~~brokerage agreement~~
753 ~~remains effective~~, the broker may extend the expiration date of
754 a lien notice for an automatic renewal commission by recording
755 an extension notice in the same public records within the last 6
756 months before such expiration date. An extension notice shall
757 refer to the recording information of the original lien notice,
758 shall state that the owner remains obligated to pay a commission
759 to the broker ~~brokerage agreement remains effective~~, and shall
760 include the same information and be executed in the same manner
761 as required by s. 475.805(1) for the original lien notice. A
762 timely recorded extension notice shall extend the expiration
763 date of the original recorded lien notice by 10 additional
764 years. Successive extension notices may be recorded for so long

765 as the owner remains obligated to pay a commission to the broker
766 ~~brokerage agreement remains effective between the broker and the~~
767 ~~owner~~. Within 10 days after recording an extension notice, the
768 broker shall deliver a copy thereof to the owner.
769 (9) Neither the recording of a broker's lien notice or any
770 extension thereof nor the recording of any lis pendens to
771 foreclose a broker's lien thereunder shall constitute notice to
772 any creditor or subsequent purchaser pursuant to s. 695.01 or
773 chapter 712 of the existence of any lease described in the lien
774 notice, extension notice, or lis pendens.
775 Section 17. Subsection (6) of section 721.20, Florida
776 Statutes, is amended to read:
777 721.20 Licensing requirements; suspension or revocation of
778 license; exceptions to applicability; collection of advance fees
779 for listings unlawful.--
780 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It is
781 unlawful for any real estate broker, broker associate, or sales
782 associate to collect any advance fee for the listing of any
783 timeshare estate or timeshare license.
784 Section 18. Section 475.452, Florida Statutes, is
785 repealed.
786 Section 19. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 1009

COUNCIL/COMMITTEE 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 Council/Committee hearing bill:
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line(s) 323-339 and insert:
6
7 (u) Has failed, if a broker, to manage or supervise a
8 broker associate or sales associate employed by such broker or
9 who is registered with the department as employed by such
10 broker.
11 (v) Has failed, if a broker, to review the brokerage's
12 trust accounting procedures in order to ensure compliance with
13 this chapter.
14 (5) An administrative complaint against a broker, ~~or~~ broker
15 associate, or sales associate shall ~~must~~ be filed within 5 years
16 after the time of the act giving rise to the complaint or within
17 5 years after the time the act is discovered or should have been
18 discovered with the exercise of due diligence.
19 (6) The department or commission shall promptly notify a
20 licensee's broker or employer, as defined in this part, in
21 writing, when a formal complaint is filed against the licensee

22 alleging violations of this chapter or chapter 455. The
23 department shall not issue a notification to the broker or
24 employer until 10 days after a finding of probable cause has
25 been found to exist by the probable cause panel, or by the
26 department, or until the licensee waives his or her privilege of
27 confidentiality under section 455.225, whichever occurs first.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1079 CS Exemption from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Carlson	Carlson
2) Finance & Tax Committee	6 Y, 1 N	Rice	Diez-Arguelles
3) Commerce Council		Carlson MFC	Randle
4)			
5)			

SUMMARY ANALYSIS

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly or other regular basis.

The Revenue Estimating Conference has estimated the impact of the bill on state revenues to be ($0.7) million in FY 2006-07 and ($0.7) million in FY 2007-08. For local revenues the impact is estimated to be ($0.2) million in FY 2006-2007 and ($0.2) million in FY 2007-2008.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will exempt from sales and use tax advertising materials distributed free of charge in an envelope under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 212.08(7)(w), F.S., provides an exemption from the sales and use tax for newspaper, magazine, and newsletter subscriptions in which the product is delivered to the customer by mail and for free, circulated publications that are published on a regular basis, the content of which is primarily advertising, and that are distributed through the mail, home delivery, or newsstands. The exemption for newspaper, magazine, and newsletter subscriptions applies only to subscriptions entered into after March 1, 1997.

The Second District Court of Appeal has ruled that the exemption from sales and use tax for advertising publications provided in s. 212.08(7)(w), F.S., does not apply to advertising materials provided free of charge in an envelope because such advertising materials are not in a "publication" under s. 212.08(7)(w).[1]

Effect of Proposed Changes:

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly, or other regular basis.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.08(7)(ccc), relating to sales and use tax, providing a tax exemption.
Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimated the following impact of the bill:

	FY 2006-07	FY 2007-08
General Revenue:	($0.7)m	($0.7)m
State Trust:	(Insignificant)	(Insignificant)
Total:	($0.7)m	($0.7)m

2. Expenditures:

None

[1] See *Dep't of Revenue v. Val-Pak Direct Marketing Systems, Inc.*, 863 So.2d 1 (Fla. 2d DCA 2003).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference Estimated the following impact of the bill:

	FY 2006-07	FY 2007-08
Local Government Half Cent	($0.1)m	($0.1)m
Local Option	($0.1)m	($0.1)m
Total	($0.2)m	($0.2)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill will provide an exemption to any entity that provides advertising materials through the mail in an envelope under certain circumstances.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill reduces the authority that municipalities or counties have to raise revenues in the aggregate through local option sales taxes. However, the reduction in authority is insignificant. Therefore, this bill is not a mandate.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a technical amendment that replaces the word "to" with the word "for" on line 40.

CHAMBER ACTION

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1 The Economic Development, Trade & Banking Committee recommends
2 the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to an exemption from the tax on sales,
8 use, and other transactions; amending s. 212.08, F.S.;
9 exempting certain advertising materials distributed free
10 of charge by mail in an envelope; providing an effective
11 date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (ccc) is added to subsection (7) of
16 section 212.08, Florida Statutes, to read:
17 212.08 Sales, rental, use, consumption, distribution, and
18 storage tax; specified exemptions.--The sale at retail, the
19 rental, the use, the consumption, the distribution, and the
20 storage to be used or consumed in this state of the following
21 are hereby specifically exempt from the tax imposed by this
22 chapter.

23 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
24 entity by this chapter do not inure to any transaction that is
25 otherwise taxable under this chapter when payment is made by a
26 representative or employee of the entity by any means,
27 including, but not limited to, cash, check, or credit card, even
28 when that representative or employee is subsequently reimbursed
29 by the entity. In addition, exemptions provided to any entity by
30 this subsection do not inure to any transaction that is
31 otherwise taxable under this chapter unless the entity has
32 obtained a sales tax exemption certificate from the department
33 or the entity obtains or provides other documentation as
34 required by the department. Eligible purchases or leases made
35 with such a certificate must be in strict compliance with this
36 subsection and departmental rules, and any person who makes an
37 exempt purchase with a certificate that is not in strict
38 compliance with this subsection and the rules is liable for and
39 shall pay the tax. The department may adopt rules to administer
40 this subsection.
41 (ccc) Advertising materials distributed free of charge by
42 mail in an envelope.--Likewise exempt are materials consisting
43 exclusively of advertisements, such as individual coupons or
44 other individual cards, sheets, or pages of printed advertising,
45 that are distributed free of charge by mail in an envelope for
46 10 or more persons on a monthly, bimonthly, or other regular
47 basis.
48 Section 2. This act shall take effect July 1, 2006.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Altman offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (33) is added to section 212.02,
7 Florida Statutes, to read:
8 212.02 Definitions.--The following terms and phrases when
9 used in this chapter have the meanings ascribed to them in this
10 section, except where the context clearly indicates a different
11 meaning:
12 (33) "Qualified aircraft" means any aircraft having a
13 maximum certified takeoff weight of less than 10,000 pounds
14 equipped with twin turbofan engines that meet Stage IV noise
15 requirements that are used by a business operating as an "on-demand
16 air carrier" under Federal Aviation Administration Regulation Title
17 14, chapter I, part 135, Code of Federal Regulations, that owns and
18 operates a fleet of at least 25 of such aircraft in Florida. To be
19 eligible to receive an exemption under this subsection, a purchaser
20 or lessee must enter into a flight training and research
21 partnership with a Florida based technological university that
22 offers a doctoral program in aeronautical engineering and that

23 offers flight training through a school of aeronautics. No
24 exemption provided in this chapter for the lease, purchase, repair
25 or maintenance of a qualified aircraft shall be allowed unless the
26 purchaser or lessee furnishes the dealer with a certificate stating
27 that the lease, purchase, repair or maintenance to be exempted is
28 for the exclusive use designated therein. If a purchaser or
29 lessee makes tax-exempt purchases or leases on a continual
30 basis, the purchaser or lessee may tender the certificate once
31 and allow the dealer to keep a certificate on file. The
32 purchaser or lessee is required to inform the dealer which has a
33 certificate on file when the purchaser or lessee no longer
34 qualifies for the exemption. The department shall determine the
35 format of the certificate.

36 Section 2. Paragraphs (ee), (rr), and (ss) of
37 subsection (7) of section 212.08, Florida Statutes, are
38 amended, and paragraph (ccc) is added to that subsection,
39 to read:

40 212.08 Sales, rental, use, consumption, distribution,
41 and storage tax; specified exemptions.--The sale at retail,
42 the rental, the use, the consumption, the distribution, and
43 the storage to be used or consumed in this state of the
44 following are hereby specifically exempt from the tax imposed
45 by this chapter.

46 (7) MISCELLANEOUS EXEMPTIONS.-Exemptions provided to
47 any entity by this chapter do not inure to any transaction
48 that is otherwise taxable under this chapter when payment is
49 made by a representative or employee of the entity by any
50 means, including, but not limited to, cash, check, or credit
51 card, even when that representative or employee is
52 subsequently reimbursed by the entity. In addition, exemptions
53 provided to any entity by this subsection do not inure to any

54 transaction that is otherwise taxable under this chapter
55 unless the entity has obtained a sales tax exemption
56 certificate from the department or the entity obtains or
57 provides other documentation as required by the department.
58 Eligible purchases or leases made with such a certificate must
59 be in strict compliance with this subsection and departmental
60 rules, and any person who makes an exempt purchase with a
61 certificate that is not in strict compliance with this
62 subsection and the rules is liable for and shall pay the tax.
63 The department may adopt rules to administer this
64 subsection.
65 (ee) Aircraft repair and maintenance labor
66 charges.--There shall be exempt from the tax imposed by this
67 chapter all labor charges for the repair and maintenance of
68 qualified aircraft, aircraft of more than 15,000 pounds maximum
69 certified takeoff weight, and rotary wing aircraft of more than
70 10,000 pounds maximum certified takeoff weight. Except as
71 otherwise provided in this chapter, charges for parts and
72 equipment furnished in connection with such labor charges are
73 taxable.
74 (rr) Equipment used in aircraft repair and
75 maintenance.--There shall be exempt from the tax imposed by this
76 chapter replacement engines, parts, and equipment used in the
77 repair or maintenance of qualified aircraft, aircraft of more
78 than 15,000 pounds maximum certified takeoff weight, and rotary
79 wing aircraft of more than 10,300 pounds maximum certified
80 takeoff weight, when such parts or equipment are installed on
81 such aircraft that is being repaired or maintained in this state.
82 (ss) Aircraft sales or leases.--The sale or lease of a
83 qualified aircraft or an aircraft of more than 15,000 pounds
84 maximum certified takeoff weight for use by a common carrier is
85 exempt from the tax imposed by this chapter. As used in this
86 paragraph, "common carrier" means an airline operating under
000000

87 Federal Aviation Administration regulations contained in Title
88 14, chapter I, part 121 or part 129 of the Code of Federal
89 Regulations.
90 (ccc) Advertising materials distributed free of charge by
91 mail in an envelope.--Likewise exempt are materials consisting
92 exclusively of advertisements, such as individual coupons or
93 other individual cards, sheets, or pages of printed advertising,
94 which are distributed free of charge by mail in an envelope for
95 10 or more persons on a monthly, bimonthly, or other regular
96 basis.
97
98
99 ========== T I T L E A M E N D M E N T ==========
100 Remove line(s) 8-11 and insert:
101 use, and other transactions; amending s. 212.02, F.S.;
102 defining the term "qualified aircraft"; providing
103 eligibility requirements; amending s. 212.08, F.S.;
104 exempting labor charges for repair and maintenance of
105 qualified aircraft and equipment used in such repair and
106 maintenance; exempting sales and leases of qualified
107 aircraft; exempting certain advertising materials
108 distributed free of charge by mail in an envelope;
109 providing an effective date.

HB 1329 CS / Grant

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1329 CS Insurance; Filing Required Information Electronically
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Tinney	Cooper
2) Commerce Council		Tinney	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes the Office of Insurance Regulation (OIR) to collect electronic financial statements and other information from viatical settlement providers, life expectancy providers, premium finance companies, and continuing care retirement communities. Currently, such entities submit these statements or filings only by hard copy. The bill authorizes the Financial Services Commission (Governor and Cabinet) to require by rule that certain statements or filings be submitted by electronic means in a computer-readable form, compatible with the electronic data format specified by the Commission. The bill also authorizes OIR to require that records of a particular transaction of an insurer be submitted by remote electronic access. OIR reports that electronic filings facilitate efficient financial statement analysis and provide uniformity for insurance entities regulated by the office.

There is no direct fiscal impact either to OIR or its regulated entities as a result of the bill. The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—Under current law, insurers are required to file documents with OIR periodically. The law also authorizes OIR to examine specific records if the office wishes to audit a licensee or otherwise investigate a specific issue or complaint. Under the bill, specified records may be filed with OIR electronically, rather than by hard copy.

B. EFFECT OF PROPOSED CHANGES:

Financial Services Commission

The Financial Services Commission (FSC) is composed of the Governor, the Attorney General, the Chief Financial Officer and the Commissioner of Agriculture. The FSC serves as the agency head of both the Office of Insurance Regulation and the Office of Financial Regulation (OFR) for purposes of rulemaking and for selecting the director of each of these offices and authorizing their organizational structure.[1]

Office of Insurance Regulation

In FY 2004-05, the Legislature appropriated $2.4 million to the Office of Insurance Regulation (OIR) to develop a system to receive electronic financial filings from insurance entities regulated by the office.[2] As a result, OIR is developing the Financial Analysis and Monitoring/Electronic Document Management (FAME) system to accept and process these electronic filings. Under the bill, OIR seeks to expand this program to capture the electronic financial filings from viatical settlement providers, premium finance companies, and continuing care providers. Under current law, the annual filings of these entities are submitted as paper documents and manually keypunched by staff of OIR into computer spreadsheets.

Current law authorizes the following regulated entities to provide electronic filings, rather than hard copy submissions, to OIR:

- Insurance administrators under s. 626.89(5), F.S.
- Motor vehicle service agreement companies under s. 634.137(5), F.S.
- Home warranty associations under s. 634.313(5), F.S.
- Service warranty associations under s. 634.415(6), F.S., and
- Legal expense insurance corporations under s. 642.032, F.S., (referencing s. 624.424(1)(c), F.S.)[3]

Staff of OIR reports that approximately 400 financial filings currently are submitted electronically by these companies. The OIR also seeks legislative authority to view specified insurer transaction records electronically; current law requires an insurer to provide paper copies of records to OIR upon request of the office.

Representatives of OIR assert that electronic filings facilitate efficient financial statement analysis and provide uniformity for insurance entities regulated by the office. In addition, the FAME system permits the office to best utilize the expertise of its financial review staff that presently must devote a portion of

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[1] Section 20.121(3), F.S., 2005.
[2] Chapter 2004-268, L.O.F., section 6.
[3] Legislative Bill Analysis of HB 1329 from OIR; dated March 31, 2006; on file with the committee.

its work hours manually entering financial data. The office reports that using electronic filing formats has reduced the number of errors associated with manually entering such data. Further, the regulated entities presently using electronic filings report that filing required forms electronically with OIR is more convenient and it saves money when compared to providing hard copies of the records.

Viatical Settlements

In general, a viatical settlement transaction is an agreement under which the owner of a life insurance policy ("viator") sells the policy to another person ("viatical settlement provider") in exchange for an up-front payment, which is generally less than the expected death benefit under the policy.[4] Rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors ("viatical settlement purchasers"). In return for providing funds, these investors receive the death benefit, or a proportionate share, when the insured dies.

In determining the value of viatical contract, i.e., life insurance policy, viatical settlement providers may rely upon information provided by a life expectancy provider. A life expectancy provider is a person who determines life expectancies or mortality ratings used to determine life expectancies.[5] This information provides the data necessary for a viatical settlement provider to assess the value of life insurance policies prior to selling them or selling interest in the viated policies. Pursuant to s. 626.99175, F.S., life expectancy providers must register with OIR providing specified background, financial, audit, and other information, and must file other specified records and information with the office.

Under s. 626.9913, F.S., a viatical settlement provider licensee[6] must file annually, by March 1st, with OIR, a statement containing specified financial and other information. The viatical settlement provider is also required to pay OIR an annual license fee of $500. The annual records submitted to OIR must include an audited financial statement, or, if such statement is not completed, an unaudited financial statement and an affidavit from an officer of the licensee stating that the audit has not been completed.[7] Additionally, the annual statement must include a report of all life expectancy providers who have provided information to the provider for use in connection with a viatical settlement contract or investment. Further, information regarding a related provider trust[8] established by the viatical settlement provider must be submitted. Failure to timely file the annual statement or pay the license fee is grounds for immediate license suspension.

Premium Finance Companies

A premium finance company is a business that enters into a premium finance agreement with an insured under which the insured agrees to pay the company the amount advanced under the agreement to an insurer, in payment of premiums on an insurance contract, together with a service charge.[9] Under s. 627.836, F.S., a licensed premium finance company must annually submit to OIR, by March 1st, a report under oath containing information specified by OIR.

Stock and Mutual Insurers

Part I of chapter 628, F.S., pertains to the regulation of stock and mutual insurers by OIR. A stock insurer is an incorporated insurer with its capital divided into shares and owned by its stockholders while a mutual insurer is an incorporated insurer without permanent capital stock and its governing body is elected pursuant to the provisions contained in Part I. Under s. 628.281, F.S., an insurer is

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[4] The regulation of viatical settlements is authorized under Part X of chapter 626, F.S., 2005.
[5] *See* definition of life expectancy provider in s. 626.9911(4), F.S., 2005.
[6] A viatical settlement provider licensee is a person who is licensed to effectuate a viatical settlement contract.
[7] The licensee must file the audited financial statement by June 1.
[8] A related provider trust is a titling trust established by a licensed viatical settlement provider for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financial transaction.
[9] Premium finance companies are regulated under Part XV of chapter 627, F.S., 2005.

required to produce at its principal corporate offices in Florida, upon written request by OIR, any records relating to a particular transaction or transactions of the insurer.

Continuing Care Retirement Communities

Chapter 651, F.S., provides for the licensure and regulation of Continuing Care Retirement Communities (CCRCs) by OIR. Under s. 651.026, F.S., a CCRC must submit its annual report to OIR by May 1st annually. Further, under s. 651.0261, F.S., if OIR determines that information is needed to monitor the financial condition of a CCRC or to protect the public interest, OIR is authorized by law to require a CCRC to submit a statement within 45 days after the end of each fiscal quarter.

C. SECTION DIRECTORY:

Section 1 amends s. 626.9913, F.S. to authorize the Financial Services Commission (FSC) to prescribe by rule the format for viatical settlement providers to submit information and records to OIR electronically.

Section 2 amends s. 626.99175, F.S., to authorize the FSC to prescribe by rule the format for life expectancy providers to submit information and records to OIR electronically.

Section 3 amends s. s. 627.836, F.S., to authorize the FSC to prescribe by rule the format for premium finance companies to submit information and records to OIR electronically.

Section 4 amends s. 628.281, F.S., to authorize the FSC to prescribe by rule the format for stock and mutual insurers to submit information and records to OIR electronically.

Section 5 amends s. 651.026, F.S., to authorize the FSC to prescribe by rule the format for continuing care contract providers to submit information and records to OIR electronically.

Section 6 amends s. 651.0261, F.S., to authorize the FSC to prescribe by rule the format for continuing care contract providers to submit information and records to OIR electronically.

Section 7 provides the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Office of Insurance Regulation reports that authority to accept electronic filings, rather than handling paper records, saves time and labor for OIR staff. When records are submitted using computers, OIR staff is not required to enter the data into spreadsheets manually, thus saving time and increasing efficiency.[10]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[10] Legislative Bill Analysis of HB 1329 from OIR; dated March 31, 2006; on file with the committee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to OIR, some of the companies currently authorized to submit forms and information to the office electronically have reported that electronic filings are more efficient, thus saving some administrative expense over preparing hard copies of forms and having them delivered to OIR by mail or delivery service.

D. FISCAL COMMENTS:

In the FY 2004-2005 General Appropriations Act, OIR was authorized to spend $2.4 million for development of a system to receive electronic financial filings from insurance entities. The Financial Analysis and Monitoring/Electronic Document Management System (FAME) is currently under development using those funds. OIR reports FAME will collect electronic filings of financial reports from the regulated entities the law currently authorizes to file electronically. The bill authorizes OIR to collect specified forms and documents electronically from additional regulated entities. Currently, such records are submitted by hard copy to OIR and subsequently manually keypunched by OIR staff into computer spreadsheets.[11]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the Financial Services Commission to adopt rules specifying the form and content of information to be submitted to OIR electronically by specified regulated entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 5, 2006 meeting, the Insurance Committee adopted an amendment to HB 1329. The change amends s. 626.99175, F.S., to authorize the Financial Services Commission also to adopt rules specifying the form and content of information submitted electronically to OIR by registered life expectancy providers. This analysis has been updated to reflect the changes adopted in the amendment.

[11] *See supra*, Note 10.

CHAMBER ACTION

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1 The Insurance Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to filing insurer information
7 electronically; amending ss. 626.9913, 626.99175, 627.836,
8 651.026, and 651.0261, F.S., relating to viatical
9 settlement providers, life expectancy providers, premium
10 finance companies, and continuing care providers;
11 authorizing the Financial Services Commission to require
12 by rule that certain statements or filings be submitted by
13 electronic means in a certain format; amending s. 628.281,
14 F.S.; authorizing the Office of Insurance Regulation to
15 require that certain records or copies be submitted by
16 remote electronic access; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Subsection (2) of section 626.9913, Florida
21 Statutes, is amended to read:
22 626.9913 Viatical settlement provider license continuance;
23 annual report; fees; deposit.--

24 (2) Annually, on or before March 1, the viatical
25 settlement provider licensee shall file a statement containing
26 information the commission requires and shall pay to the office
27 a license fee in the amount of $500. The annual statement shall
28 include audited financial statements prepared in accordance with
29 generally accepted accounting principles by an independent
30 certified public accountant as of the last day of the preceding
31 calendar year. If the audited financial statement has not been
32 completed, however, the licensee shall include in its annual
33 statement an unaudited financial statement and an affidavit from
34 an officer of the licensee stating that the audit has not been
35 completed. In this event, the licensee shall submit the audited
36 statement on or before June 1. The annual statement shall also
37 provide the office with a report of all life expectancy
38 providers who have provided life expectancies directly or
39 indirectly to the viatical settlement provider for use in
40 connection with a viatical settlement contract or a viatical
41 settlement investment. A viatical settlement provider shall
42 include in all statements filed with the office all information
43 requested by the office regarding a related provider trust
44 established by the viatical settlement provider. The office may
45 require more frequent reporting. Failure to timely file the
46 annual statement or to timely pay the license fee is grounds for
47 immediate suspension of the license. The commission may require
48 by rule all or part of the statements or filings required under
49 this section to be submitted by electronic means in a computer-
50 readable form compatible with the electronic data format
51 specified by the commission.

52 Section 2. Subsection (13) is added to section 626.99175,
53 Florida Statutes, to read:
54 626.99175 Life expectancy providers; registration
55 required; denial, suspension, revocation.--
56 (13) The commission may require by rule all or part of the
57 statements or filings required under this section to be
58 submitted by electronic means in a computer-readable format
59 specified by the commission.
60 Section 3. Subsection (2) of section 627.836, Florida
61 Statutes, is amended to read:
62 627.836 Licensee's books and records; reports.--
63 (2) Each licensee shall annually, on or before March 1,
64 file a report with the office giving such information as the
65 office may require. The report shall be made under oath and in
66 the form prescribed by the commission and shall be accompanied
67 by the annual report filing fee specified in s. 627.849. The
68 office may make and publish annually an analysis and
69 recapitulation of such reports. In addition, the office may
70 require such additional regular or special reports as it deems
71 ~~may deem~~ necessary. The commission may require by rule all or
72 part of the statements or filings required under this section to
73 be submitted by electronic means in a computer-readable form
74 compatible with the electronic data format specified by the
75 commission.
76 Section 4. Paragraph (c) of subsection (1) of section
77 628.281, Florida Statutes, is amended to read:
78 628.281 Exceptions to requirement that office, records,
79 and assets be maintained in this state.--

80 (1) The provisions of s. 628.271 shall not be deemed to
81 prohibit or prevent an insurer from:
82 (c) Establishing and maintaining its principal operations
83 offices, its usual operations records, and such of its assets as
84 may be necessary or convenient for the purpose, in another state
85 in which the insurer is authorized to transact insurance in
86 order that general administration of its affairs may be combined
87 with that of an affiliated insurer or insurers, but subject to
88 the following conditions:
89 1. That the office consent in writing to the ~~such~~ removal
90 of offices, records, and assets from this state upon evidence
91 satisfactory to it that the same will facilitate and make more
92 economical the operations of the insurer and will not
93 unreasonably diminish the service or protection thereafter to be
94 given the insurer's policyholders in this state and elsewhere;
95 2. That the insurer will continue to maintain in this
96 state its principal corporate office or place of business, and
97 maintain therein available to the inspection of the office
98 complete records of its corporate proceedings and a copy of each
99 financial statement of the insurer current within the preceding
100 5 years, including a copy of each interim financial statement
101 prepared for the information of the insurer's officers or
102 directors;
103 3. That, upon the written request of the office, the
104 insurer will with reasonable promptness provide the office
105 remote electronic access to or produce at its principal
106 corporate offices in this state for examination or for subpoena
107 its records or copies thereof relative to a particular

108 transaction or transactions of the insurer as designated by the
109 office in its request; and
110 4. That, if at any time the office finds that the
111 conditions justifying the maintenance of the ~~such~~ offices,
112 records, and assets outside this state no longer exist, or that
113 the insurer has willfully and knowingly violated any of the
114 conditions stated in subparagraphs 2. and 3., the office may
115 order the return of the ~~such~~ offices, records, and assets to
116 this state within such reasonable time, not less than 6 months,
117 as may be specified in the order; and that for failure to comply
118 with the ~~such~~ order, as thereafter modified or extended, if any,
119 the office shall suspend or revoke the insurer's certificate of
120 authority.
121 Section 5. Subsection (9) is added to section 651.026,
122 Florida Statutes, to read:
123 651.026 Annual reports.--
124 (9) The commission may require by rule all or part of the
125 statements or filings required under this section to be
126 submitted by electronic means in a computer-readable form
127 compatible with the electronic data format specified by the
128 commission.
129 Section 6. Section 651.0261, Florida Statutes, is amended
130 to read:
131 651.0261 Quarterly statements.--If the office finds,
132 pursuant to rules of the commission, that such information is
133 needed to properly monitor the financial condition of a provider
134 or facility or is otherwise needed to protect the public
135 interest, the office may require the provider to file, within 45

136 days after the end of each fiscal quarter, a quarterly unaudited
137 financial statement of the provider or of the facility in the
138 form prescribed by the commission by rule. The commission may
139 require by rule all or part of the statements or filings
140 required under this section to be submitted by electronic means
141 in a computer-readable form compatible with the electronic data
142 format specified by the commission.
143 Section 7. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1329 CS**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Grant offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 27-46 and insert:
6 a license fee in the amount of $500. After December 1, 2007,
7 the annual statement shall include audited financial statements
8 prepared in accordance with generally accepted accounting
9 principles by an independent certified public accountant as of
10 the last day of the preceding calendar year. If the audited
11 financial statement has not been completed, however, the
12 licensee shall include in its annual statement an unaudited
13 financial statement for the preceding calendar year and an
14 affidavit from an officer of the licensee stating that the audit
15 has not been completed. In this event, the licensee shall submit
16 the audited statement on or before June 1. The annual statement
17 due on or before June 1 each year, shall also provide the office
18 with a report of all life expectancy providers who have provided
19 life expectancies directly or indirectly to the viatical
20 settlement provider for use in connection with a viatical
21 settlement contract or a viatical settlement investment. A

22 viatical settlement provider shall include in all statements
23 filed with the office all information requested by the office
24 regarding a related provider trust established by the viatical
25 settlement provider. The office may require more frequent
26 reporting. Failure to timely file the annual statement <u>or the</u>
27 <u>audited financial statement</u> or to timely pay the license fee is
28 grounds for
29
30 ========== T I T L E A M E N D M E N T ==========
31 Remove line(s) 6-13 and insert:
32 An act relating to information specified insurers must file;
33 amending s. 626.9913, F.S., relating to viatical settlement
34 providers; specifying a beginning date for submission of the
35 annual statement; specifying the information to be provided in
36 the annual statement; specifying time periods; specifying
37 administrative action for failing to file the annual statement;
38 authorizing the Financial Services Commission to require by rule
39 that certain statements or filings from viatical settlement
40 providers be submitted by electronic means in a certain format;
41 amending ss. 626.99175, 627.836, 651.026, and 651.0261, F.S.,
42 relating to life expectancy providers, premium finance
43 companies, and continuing care providers; authorizing the
44 Financial Services Commission to require by rule that certain
45 statements or filings be submitted by electronic means in a
46 certain format; amending s. 628.281,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7153 PCB EDTB 06-02 Financial Entities Licensing
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) State Administration Appropriations Committee	7 Y, 0 N	Rayman	Belcher
2) Commerce Council		Olmedillo	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The Financial Services Commission (the Commission) and its Office of Financial Regulation (the Office) administer the regulation of mortgage brokers and lenders, consumer finance companies, retail installment sellers, money transmitters and title loan and securities businesses. A number of provisions under each of these program areas have been identified by the Office for clarification and revision to achieve more efficient governance.

The bill makes editorial changes, adjusts cross-references, reorganizes certain sections and removes superfluous language to achieve uniformity, clarification and streamline the processes.

This bill revises a number of regulatory provisions governing mortgage brokers and lenders. The bill provides for:

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the fee for a credit check of a loan applicant from $10 to $25;
- Elimination of the registration fee ($30) for Canadian agents if the Canadian Dealer is registered. (Florida is following the national trend, which is not to require registration of Canadian agents.);
- Approval for branch application license;
- Revised accounting standards;
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes; and
- An award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference between a lapsed insurance policy and a new policy required by law.

The bill appropriates $700,515 from the Regulatory Trust Fund for the Office of Financial Regulation for mortgage broker testing for Fiscal Year 2006-07 which will be funded by fees from applicants. Eliminating the registration fee for Canadian agents will result in a recurring loss of $53,250 in General Revenue.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records.

Ensure Lower Taxes - The bill allows for an increase in the fee for a credit check of a loan applicant from $10 to $25. In addition, it grants the Office rulemaking authority to charge a fee, not to exceed $100 for electronic testing persons seeking licensure as a mortgage broker.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Commission consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Commission is an independent entity housed within the Department of Financial Services. The Office of Insurance Regulation and the Office of Financial Regulation are under the Commission.[1] The Office is responsible for all activities of the Commission relating to the regulation of financial institutions, finance companies, securities industries, and money transmitters.[2]

Mortgage brokers and mortgage lenders are regulated under the provisions of ch. 494, F.S. Chapter 516, F.S., regulates consumer finance loans, which are loans of $25,000 or less and for which the lender charges an interest rate of 18 percent or greater. Securities transactions are regulated under ch. 517, F.S., which also includes the administration of the Securities Guaranty Fund (fund). This fund provides compensation to persons who have suffered monetary damages due to acts committed by a dealer or investment advisor and who meet the statutory requirements for compensation. The Office also has regulatory authority over the following types of retail installment sales covered by ch. 520, F.S.: motor vehicle sales financing, retail installment sales (the purchase of retail goods via installment payments), sales finance companies (companies that acquire installment loan contracts), and home improvement contracts (financing for home improvement through home improvement contracts). Presently, if a mortgage lender fails to timely pay an insurance premium of a property owner, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years. There is no provision for the recovery of attorney's fees and costs by the property owner.

Chapter 537, F.S., the Florida Title Loan Act, regulates loans secured by the title to a motor vehicle. Chapter 560, F.S., the Money Transmitters' Code, regulates various money transmitters including payment instrument (check) sellers, foreign currency exchangers, check cashing, funds transmissions (via wire, electronic transfer, etc.), and deferred presentment (providing money in exchange for a person's check, which is to be held for a certain period of time).

The Office currently licenses over 380,000 individuals and businesses in the areas of securities and finance.

Over the past five years, the number of persons seeking licensure through the Office has significantly increased. The number of staff to process applications and renewals, however, has remained constant.

The most significant increases have been in the finance area.

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[1] The Office of Insurance Regulation is responsible for the licensure and regulation of insurers and other risk bearing entities. s. 20.121(3), F.S.

[2] See s. 20.121(3), F.S.

For example:

	FY 2000-01	FY 2004-05	Increase
Mortgage Broker Applications	4,960	19,710	297%
Active Mortgage Broker Licenses	34,128	71,729	110%
Active Finance Licenses (All types)	52,281	90,256	73%

To keep pace with demand, the Office's licensing functions need to be streamlined and technology needs to be used to a greater extent. This bill will fulfill both of these goals.

Effects of proposed changes

GENERAL LICENSING PROVISIONS APPLICABLE TO MULTIPLE CHAPTERS

1) Electronic Filing of Forms and Fees. The bill grants the Office rulemaking authority to require electronic filing of forms, documents, and fees. However, it provides that the Commission must reasonably accommodate technological or financial hardship and requirements and procedures for obtaining a technological or financial hardship exemption. Without requiring the industries to use the technology the Office must maintain dual processes, one for paper filings and another for electronic filings.

2) Fee. Provides that applications are not deemed received until all required fees are received. Authorizes disciplinary action if fees paid with bad check.

   The application fees are as follows:
   - Mortgage business schools $500 (current)
   - Mortgage business $425 (current)
   - Mortgage brokers $200 (current)
   - Mortgage business branch offices $225 (current)
   - Mortgage lenders $575 (current)
   - Correspondent mortgage lenders $500 (current)
   - Mortgage lenders' branch offices $325 (current)
   - Transfer of lender's license $500 (current)
   - Consumer finance loans $625 (current)
   - Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses $175 (current)
   - Money transmitters fee not to exceed $1,000 (current). Renewal fee, not to exceed $500 (current)

3) Required documents and destruction of records. Authorizes the Commission to prescribe rules for the destruction of records maintained by licensees. There has been at least one instance of a licensee disposing of intact records by placing them in a dumpster. The Office seeks to prescribe the proper method of disposing of records to protect sensitive consumer information.

   All documents required by Commission rule, including training curriculum and materials from mortgage business schools, must be submitted at the time the applicant submits the application or recertification.

4) Paper Permits. Eliminates requirement that licensed businesses display their permits. License information is available via the Office's website. (Chapters 494, 516, and 520.)

5) "Control person and controlling interest". Provides a definition of "control person" and "controlling interest" as follows:

   "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

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

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

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

"Controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

6) Current Information about Licensees. Requires licensees to keep the application information current. (Chapters 494, 516, 520, and 560)

7) Background checks. Provides authority to inquire into the backgrounds of applicants, officers, directors, and other persons with the power to direct the management of the licensee. (Chapters 494, 516, and 520)

8) Fingerprinting. This bill clarifies that the Commission is authorized to prescribe, by rule, that fingerprint cards are required from each officer, director, control person, member, partner, or joint venturer of the applicant and each ultimate equitable owner of 10% or greater interest in the business. The fingerprint cards are required to be taken by an authorized law enforcement agency, not an officer. Presently, the law does not specifically authorize the Commission to prescribe by rule the fingerprint submission process. The bill provides a procedure for fingerprint card processing by the Office. It provides that fingerprint processing costs may be borne by the Office, the employer, or the person subject to the background check. It authorizes the Department of Law Enforcement to submit monthly invoices for fingerprint processing.

9) Change in Control. The bill clarifies the procedures with regard to change in control of a business. Currently, a licensee must notify the Office of any change in the form of business or any change in the Officers or directors. The bill authorizes the Office to obtain background information from persons who have not previously undergone review by the Office. The bill also requires any person who intends to obtain a controlling interest in a licensed entity must file a new application. The Commission may prescribe by rule provisions to waive this requirement for individuals who are already licensed or have undergone review by Office. (Chapters 494, 516, 520, and 560).

10) Exemptions.
The bill provides that in order to be exempt from the chapter requirements, a state or federal chartered bank, trust company, savings and loan, savings bank, credit union or bank holding company must be regulated under the laws of any state or the federal government of the United States. Banks, bank holding companies, and their subsidiaries that are not regulated by the federal or state government of the United States will no longer qualify for exemptions.

The bill also clarifies that there is no licensing requirement for wholly-owned subsidiaries of state or federal chartered banks or savings and loans whose sole activity is to distribute the lending programs of state or federal chartered banks.

11) Licensing requirements:
The bill requires permit and licensing from the Office, unless specifically exempt, for the following:

- Mortgage business schools that offer or conduct mortgage business training for the purpose of meeting professional continuing education requirements.
- Persons who act as a mortgage brokerage businesses.
- Natural person who acts as an associate for a mortgage lender or correspondent mortgage lender.
- Mortgage lender.
- Correspondent mortgage lender.
- Mortgage lender's branch offices.

- Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses
- Money transmitters.

OVERVIEW OF FEES

1. Mortgage Brokerage Test. Authorizes the Office to outsource the mortgage broker test at a cost to the applicant not to exceed $100. Currently, the cost of the test is included in the application fee and Office staff administers the test once a month at limited locations. The fee will be used to contract with a vendor to develop an electronic version of the test to be given at testing centers located throughout the state.

In 2004, the Office participated in a competitive procurement with the Department of Financial Services to secure a vendor for this test in anticipation of last year's bill passing. The three responses for the mortgage broker test were $42, $43 and $53. The State of North Carolina recently entered into a contract with a vendor to provide a similar test at a cost of $100. It is estimated the cost of the computerized test will be $60-75 per test based on the previous bids and the experience of North Carolina.

2. Investigation Fee – Consumer Finance. Increases the investigation fee that consumer finance companies can charge their customers from $10 to $25. This fee has not been increased since it took effect on 7-1-1994.

3. Registration Fee - Canadian Securities Agents. Eliminates the registration fee ($30) for Canadian agents if the Canadian Dealer is registered. Florida is following the national trend, which is not to require registration of Canadian agents. Other states:

- 19 states: no filing required/exemption self-executing/no fees collected by state
- 19 states: notice filing required for the dealer only/no fees collected by state
- 7 states: require registration of both dealer and agents/initial application and renewal fees apply
- 5 states: exemption under consideration

4. Investment Adviser Registration through IARD. State-registered investment advisers will be required to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Since the IARD system came online in 2001, forty-seven (47) states have mandated electronic filing through the system. Applicants will pay the NASD an initial system fee of $150 and an annual fee of $70, which is collected to operate and maintain the IARD system, in addition to the annual state application fee of $200. Revenues to the State will be unchanged. Florida currently has 1,100 state-registered Investment Advisers. Six hundred and eighty (680) of these advisers have already voluntarily converted their information to the IARD and paid the initial fee. Therefore, there are only 420 licensees that will need to register with the IARD.

5. Fingerprinting. Currently the Office may require each Officer, director or ultimate equitable owner to submit a fingerprint card. The bill expands this requirement to include a control person, member, partner or joint venturer of the applicant. It is not possible to estimate the number of individuals that would be impacted by the requirement. The cost per person would be established at the cost charged by FDLE, which is currently $47 each for processing criminal history checks.

INDUSTRY SPECIFIC ISSUES

Chapter 494 - Mortgage Brokerage and Lending

1. Disciplinary Action. Provides grounds for disciplinary action in the event of a final judgment in a civil action for fraud, embezzlement, misrepresentation, or deceit. The bill also provides grounds for disciplinary action in the event of any adverse finding or decision as the result of any administrative or civil action against the applicant or licensee that relates to the financial services industry.

2. Continuing Education. Waives continuing education requirements for the first renewal cycle immediately following licensure for mortgage brokers and principal representatives. The bill clarifies that the educational requirements contained in this section for mortgage lenders, correspondent mortgage lenders, and

mortgage lenders pursuant to a savings clause are for "continuing" education and must occur before the renewal of their respective licenses.

3. Principal Representative. Allows a newly designated principal representative 90 days in which to complete classroom and testing requirements. The continuing education requirements for a principal representative are waived for the license renewal of a correspondent mortgage lender, mortgage lender, or mortgage lender pursuant to a savings clause for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.

4. Application for waiver. The bill provides the Commission with rulemaking authority to adopt rules for the waiver of the application required by the relevant chapters if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the provisions of the applicable chapters with respect to the same legal entity or is currently licensed by the Office under this chapter.

5. Mortgage Business Schools. Requires permitted mortgage business schools to electronically report the names of students who have successfully completed required training courses. Clarifies the renewal process by specifying the renewal cycle. The permit expires on September 30th of each year. The bill requires that the license for a branch office be renewed in conjunction with a mortgage brokerage business license.

6. Transfer applications. As of October 1, 2006, new requirements are mandated for transfer applications on or after that date. The requirements are as follows: 1) To provide proof that the applicant's principal representative qualifies for waiver; and 2) An applicant's principal representative must pass all testing requirements for lenders.

Chapter 516 – Consumer Finance

1. Liquid Assets. Clarifies that applicants must provide evidence of liquid assets of at least $25,000. (See amendments to s. 516.03, F.S.) The failure to meet this requirement is currently grounds for denial of licensure and disciplinary action under s. 516.07(1)(b).

Chapter 517 – Securities

1. Branch Office. Amends the definition of "branch office" to conform to uniform federal standard recently adopted by the Securities and Exchange Commission.

2. Registration. Amends s. 517.12, F.S., to remove the requirement that the registration form be verified under oath.

3. Securities Guaranty Fund. Amends ch. 517, F.S., to authorize the Office to prescribe rules for the procedures, form of submissions and guidelines of notices and claims.

4. Payment from the Fund. Requires a claimant who satisfies a judgment described in s. 517.131(3)(a), F.S., to reimburse the fund all amounts paid to the claimant on the claim and gives the Commission rulemaking authority to specify the procedures for complying with this section.

5. Branch Offices - Renewal Cycle. Changes renewal deadline for branch offices from March 31st to December 31st to allow renewal fees to be submitted through NASD.

6. Uniform Forms. Authorizes the Commission to adopt by rule uniform forms that have been approved by the Securities and Exchange Commission. A list of uniform forms is provided in the bill (e.g., Uniform Branch Office Form). These provisions are needed to address recent concerns by the Joint Administrative Procedures Committee.

7. Canadian Dealers. Revises the registration process for Canadian Dealers and eliminates the registration requirements for Canadian agents under certain conditions.

8. Investment Advisers. Requires filings through Investment Adviser Registration Depository (IARD) for state registered Investment Advisers.

Chapter 560 – Money Transmitters

1. Control of money transmitter. Provides that a person has control over a money transmitter if the individual, partnership, corporation, trust, or other organization: 1) possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. It also creates a presumption that a person has control of a company under certain circumstances; 2) The Office determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.

2. Permissible investments. Clarifies that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States.

3. Registration terms. Provides for a 24-month renewal of a registration by furnishing information and fees required by Commission rule. Currently, the section requires the Office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

Miscellaneous

1. Safe Deposit Boxes. Reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes.

2. Escrow Accounts. Provides an award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay insurance premiums from an escrow account, and subsequently refuses to pay the difference between a lapsed insurance policy and a new one.

3. Appropriation. Provide an appropriation amount for the Fiscal Year 2006-2007 from the Regulatory Trust Fund to the Office of Financial Regulation for the purpose of implementing the provisions of s. 494.033(2)(d), F.S., for third party administration of the mortgage broker test.

C. SECTION DIRECTORY:

Section 1: Amends s. 494.001, F.S., to create a definition for "control person."

Section 2: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings; allowing alternate means for hardships; and providing that the granting of a license must be pursuant to s. 120.60, F.S.

Section 3: Amends s. 494.0016, F.S., prescribing rules for the destruction of records.

Section 4: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 5: Amends s. 494.00295, F.S., providing clarification and waiver relating to continuing education programs.

Section 6: Amends s. 494.003, F.S., providing exemptions from mortgage broker provisions for certain institutions.

Section 7: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.

Section 8: Amends s. 494.0032, F.S., relating to renewal of mortgage business license or branch office license.

Section 9: Amends s. 494.0033, F.S., relating to mortgage broker's license.

Section 10: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 11: Amends s. 494.0039, F.S., relating to mortgage brokerage business principal place of business requirement.

Section 12: Amends s. 494.004, F.S., relating to requirements of mortgage brokerage licensees.

Section 13: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.

Section 14: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.

Section 15: Amends s. 494.0061, F.S., to provide licensing, exemptions, fingerprinting, and testing requirements for mortgage lenders.

Section 16: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.

Section 17: Amends s. 494.0064, F.S., relating to educational requirements of mortgage lender's license.

Section 18: Amends s. 494.0065 F.S., relating to transfer applications.

Section 19: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.

Section 20: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.

Section 21: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.

Section 22: Amends s. 494.00721, F.S., relating to mortgage lender net worth.

Section 23: Amends s. 501.137, F.S., relating to mortgage lender's payment of insurance premiums from escrow funds.

Section 24: Amends s. 516.01, F.S., to create a definition of "control person".

Section 25: Amends s. 516.03, F.S., relating to consumer finance loan applications.

Section 26: Amends s. 516.031, F.S., increasing the fee for a credit check for a loan applicant.

Section 27: Amends s. 516.05, F.S., relating to consumer finance loan licensing, removing a requirement for the Office to return fees under certain circumstances.

Section 28: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.

Section 29: Repeals s. 516.08, F.S., relating to posting licenses.

Section 30: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.

Section 31: Amends s. 516.19, F.S., relating to penalties.

Section 32: Amends s. 517.021, F.S., to provide a new definition of "branch office."

Section 33: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.

Section 34: Amends s. 517.061, F.S., relating to exempt securities transactions.

Section 35: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.

Section 36: Amends s. 517.12, F.S., relating to fingerprinting provisions, renewing branch office registrations, and revising requirements relating to activities of Canadian dealers.

Section 37: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.

Section 38: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.

Section 39: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

Section 40: Amends s. 520.02, F.S., to provide a definition for "control person".

Section 41: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.

Section 42: Amends s. 520.31, F.S., to provide a definition for "control person".

Section 43: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.

Section 44: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.

Section 45: Amends s. 520.61, F.S., to provide a definition for "control person."

Section 46: Amends s. 520.63, F.S., relating to applications for home improvement sales finance licensees.

Section 47: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.

Section 48: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicant's financial institution.

Section 49: Amends s. 520.997, F.S., relating to destruction of books, accounts and records retained by a retail installment sales licensee.

Section 50: Amends s. 520.999, F.S., relating to requirements of licensees, waivers, and providing a definition for "control interest."

Section 51: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.

Section 52: Amends s. 559.9232, F.S., relating to correction of cross references.

Section 53: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.

Section 54: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.

Section 55: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.

Section 56: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.

Section 57: Amends s. 560.127, F.S., relating to control of money transmitters.

Section 58: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.

Section 59: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.

Section 60: Amends s. 560.210, F.S., relating to permissible investments.

Section 61: Amends s. 560.211, F.S., relating to money transmitters' records.

Section 62: Amends s. 560.305, F.S., gives Commission rulemaking authority to require certain information from applicant.

Section 63: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.

Section 64: Amends s.560.308, F.S., relating to registration renewal for check cashers.

Section 65: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.

Section 66: Amends s. 560.403, F.S., relating to reinstatement of application for deferred presentment providers.

Section 67: Amends s. 655.935, F.S., relating to the initial opening of a safe deposit box.

Section 68: Amends s. 655.936, F.S., relating to delivery of safe deposit box contents.

Section 69: Amends s. 655.937, F.S., relating to access to a safe deposit box leased or rented in two or more names.

Section 70: Amends s. 733.6065, F.S., relating to opening of a safe deposit box.

Section 71: Appropriates $700,515 to the Office.

Section 72: Provides an effective date of October 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 2006-07	FY 2007-08
1. Revenues:		
Recurring		
Regulatory Trust Fund		
Mortgage Broker Test Fees	$ 700,515	$1,401,030
General Revenue		
Canadian Securities Agent Registration Fees	($ 53,250)	($ 53,250)
(Canadian Securities agents will no longer be required to register – 1775 x $30 annually)		

2. Expenditures:	FY 2006-07	FY 2007-08
Recurring		
Regulatory Trust Fund		
OPS (Mortgage Broker Test)	$ 700,515	$1,401,030
Non-Recurring	None	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mortgage Broker Testing (cost to applicants if transferred to a third party vendor for administration)

FY 2006-07	FY 2007-08
$ 700,515	$1,401,030

It is not possible to predict the offsetting benefit to the private sector of allowing quicker entry into business due to more frequent testing and immediate scoring. However, it is estimated that each additional day to get registered costs the individual $98.63 in income (average salary of $36,000 divided by 365 days = $98.63). During first quarter of fiscal year 05-06, an average of 2,339 applicants took the test each month, so each 1-day delay costs a total of $230,696 in lost wages, or $6,920,867 for the 30-day delay currently between tests. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

IARD Registration

The proposed language will require all state-registered investment advisers (IAs) to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Applicants will pay the NASD an initial system fee of $150 and an annual fee of $70 which is collected to operate and maintain the IARD system, in addition to the state application fee of $200 annually. Revenues to the State will be unchanged. Florida currently has 1100 state-registered IAs, of which 680 have already converted their information to IARD and paid the initial fee. The remaining 420 will be required to file (total cost $63,000) and all 1100 will be required to pay $70

annually, a total of $77,000. Additionally, the Office received 182 new applications for state-registered IAs last year, of which 150 were approved. This represents an additional cost to the industry of $27,300 (182 x $150) in their first year and $10,500 (150 x $70) on an on-going basis. Filing the information with IARD allows the Office to share registration information with other states and federal authorities related to state-registered IAs, and allows faster processing of applications and "one-stop" filing for the industry.

Canadian Dealers and Agents
The fees will remain unchanged for Canadian dealers, although the registration process will change. However, the Canadian agents currently registered with the State, will no longer be required to register. Currently there are 1775 Canadian agents registered. This will represent a savings to them of $30 each, or $53,250, with a resulting loss to the State General Revenue Fund.

Increase in Maximum Fee Permitted to Be Charged by Lender
Language is being proposed to allow an increase in the fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current $10 to $25 (ss. 516.03(3), F.S.). Potential volume of customers affected is not known.

Fee Increase for Credit Check of a Loan Applicant
The bill authorizes an increase in the fee for a credit check of a loan applicant from $10 to $25. The Office has not evaluated the effects of this increase.

D. FISCAL COMMENTS:

Mortgage Broker Testing

Under current statute, the Office only administers the Mortgage Broker test once a month. Under the proposed language, the Office may promulgate a rule to allow a third party to administer the test via computer. This would allow applicants to schedule a date, time and location more convenient to them. The applicant would immediately receive their score to know whether they need to retake the test. Under the proposal, the applicant could reschedule an immediate retake if necessary, rather than waiting until the following month to retake the test. This would allow them to obtain their mortgage broker license more quickly and enter business without unnecessary delays.

During Fiscal Year 2004-05, a total of 20,756 applicants took the test. The possible range based on $60 to $75 per test is $1,245,360 to $1,556700, with an average cost of $67.50 x 20,756 equal to $1,401,030 (reduced to $700,515 in the first year based on a January 1 effective date). It is anticipated the fee will be established equal to the cost charged by the vendor for the test. Thus, the anticipated revenue and expenditures should offset each other. The issue will be self-funding and not produce any excess revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULEMAKING AUTHORITY:

The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to financial entities and transactions;
3 amending s. 494.001, F.S.; defining the term "control
4 person"; amending s. 494.0011, F.S.; authorizing the
5 Financial Services Commission to require electronic
6 submission of forms, documents, or fees; providing a
7 limitation; authorizing the commission to adopt rules
8 accommodating a technological or financial hardship;
9 requiring that a grant or denial of a license be in
10 accordance with ch. 120, F.S.; amending s. 494.0016, F.S.;
11 authorizing the commission to prescribe requirements for
12 destroying books, accounts, records, and documents;
13 amending s. 494.0029, F.S.; requiring that certain
14 entities who offer or conduct mortgage business training
15 obtain a permit; providing requirements and procedures for
16 obtaining a permit; specifying that permits are not
17 transferable or assignable; providing for expiration and
18 recertification of permits; authorizing permit fees;
19 requiring that curriculum, training, and training
20 materials be available for inspection; requiring
21 electronic notification to the office of persons who have
22 successfully completed certain education requirements;
23 requiring the commission to adopt rules; amending s.
24 494.00295, F.S.; revising professional education
25 provisions to apply to continuing education; providing
26 requirements; waiving such requirements for license
27 renewals for certain persons under certain circumstances;
28 amending s. 494.003, F.S.; revising the list of entities

29 exempt from certain mortgage broker licensure
30 requirements; amending s. 494.0031, F.S.; requiring
31 licensure of mortgage brokerage businesses; revising
32 requirements and procedures for issuing licenses;
33 providing duties and authority of the commission and
34 office; providing duties of the Department of Law
35 Enforcement; specifying that certain licenses are not
36 transferable or assignable; revising the grounds on which
37 a license may be denied; deleting certain provisions
38 relating to cancellation and reinstatement of licenses;
39 amending s. 494.0032, F.S.; requiring renewal of branch
40 office licenses with renewal of mortgage brokerage
41 business licenses; amending s. 494.0033, F.S.; revising
42 mortgage broker licensure requirements and procedures;
43 authorizing the commission to prescribe additional testing
44 fees; authorizing the commission to waive certain
45 examination requirements under specified circumstances;
46 providing duties and authority of the commission and
47 office; providing duties of the Department of Law
48 Enforcement; deleting provisions relating to cancellation
49 and reinstatement of licenses; amending s. 494.0036, F.S.;
50 revising mortgage brokerage business branch office
51 licensure requirements and procedures; deleting a
52 requirement for displaying licenses; amending s. 494.0039,
53 F.S.; deleting mortgage brokerage business change of
54 address reporting and license display requirements;
55 amending s. 494.004, F.S.; revising mortgage broker
56 licensee requirements; providing requirements for

57 acquiring a controlling interest in a licensee; providing
58 a definition; providing duties and authority of the
59 commission; authorizing the office to bring an
60 administrative action under certain circumstances;
61 amending s. 494.0041, F.S.; specifying additional grounds
62 for taking disciplinary action; amending s. 494.006, F.S.;
63 revising the list of entities exempt from mortgage lender
64 licensure requirements; amending s. 494.0061, F.S.;
65 requiring the licensure of mortgage lenders; revising
66 mortgage lender license requirements and procedures;
67 providing duties and authority of the commission and
68 office; providing duties of the Department of Law
69 Enforcement; providing for commission rules; revising
70 provisions governing grounds for imposing discipline;
71 deleting certain provisions relating to cancellation and
72 reinstatement of licenses; authorizing the commission to
73 prescribe additional testing fees; revising provisions
74 governing principal representatives; amending s. 494.0062,
75 F.S.; requiring licensure of correspondent mortgage
76 lenders; revising correspondent mortgage lender license
77 requirements and procedures; providing duties and
78 authority of the commission and office; providing duties
79 of the Department of Law Enforcement; providing
80 educational requirements for principal representatives;
81 revising grounds for disciplinary action; deleting certain
82 provisions relating to cancellation and reinstatement of
83 licenses; authorizing the commission to prescribe
84 additional testing fees; providing for commission rules;

85 amending s. 494.0064, F.S.; revising mortgage lender
86 branch office licensee professional continuing education
87 requirements; amending s. 494.0065, F.S.; revising saving
88 clause requirements and procedures; revising the duties
89 and authority of the office and commission; providing
90 duties of the Department of Law Enforcement; providing for
91 commission rules; providing requirements for education and
92 testing for certain principal representatives and for
93 transfer applications; authorizing the commission to
94 prescribe additional testing fees; revising provisions
95 governing the denial of transfers; providing personal
96 representative designation requirements; amending s.
97 494.0066, F.S.; revising branch office licensure
98 requirements; providing for commission rules; amending s.
99 494.0067, F.S.; deleting a license display requirement;
100 providing information reporting requirements; providing
101 requirements for acquiring a controlling interest in a
102 licensee; providing a definition; providing duties and
103 authority of the commission; authorizing the office to
104 bring an administrative action under certain
105 circumstances; revising professional continuing education
106 requirements; amending s. 494.0072, F.S.; providing
107 additional grounds for taking disciplinary action;
108 amending s. 494.00721, F.S.; conforming cross-references;
109 amending s. 501.137, F.S.; providing mortgage lender
110 liability for attorney's fees and costs for certain
111 violations; amending s. 516.01, F.S.; defining the term
112 "control person"; amending s. 516.03, F.S.; revising

113 requirements and procedures for issuing consumer finance
114 loan licenses; specifying certain fees as nonrefundable;
115 authorizing the commission to adopt rules; revising
116 certain fee requirements; providing for technological or
117 financial hardship exemptions under certain circumstances;
118 amending s. 516.031, F.S.; increasing a reimbursement
119 charge for certain investigation costs; amending s.
120 516.05, F.S.; revising investigation procedures; deleting
121 provisions relating to certain fees for licenses that have
122 been denied; providing licensee information reporting
123 requirements; providing requirements for acquiring a
124 controlling interest in a licensee; providing a
125 definition; providing duties and authority of the
126 commission and office; providing for commission rules;
127 authorizing the office to bring an administrative action
128 under certain circumstances; deleting provisions
129 authorizing the office to grant temporary licenses;
130 amending s. 516.07, F.S.; providing an additional ground
131 for taking disciplinary action; repealing s. 516.08, F.S.,
132 relating to requirements for posting a license; amending
133 s. 516.12, F.S.; authorizing the commission to adopt rules
134 specifying the minimum information to be shown in a
135 licensee's books, accounts, records, and documents and the
136 requirements for destroying a licensee's books, accounts,
137 records, and documents; amending s. 516.19, F.S.;
138 correcting cross-references; amending s. 517.021, F.S.;
139 redefining the term "branch office"; authorizing the
140 commission to adopt rules; amending s. 517.051, F.S.;

141 revising required accounting principles; amending s.
142 517.061, F.S.; revising a provision governing exempt
143 transactions; amending s. 517.081, F.S.; revising required
144 accounting principles; amending s. 517.12, F.S.; revising
145 requirements and procedures for registration of dealers,
146 associated persons, investment advisers, and branch
147 offices; revising duties and authority of the commission
148 and office; providing for commission rules; providing
149 duties of the Department of Law Enforcement; revising
150 requirements, procedures, and exemptions relating to
151 activities of Canadian dealers and associated persons;
152 providing for certain fees; providing that certain fees
153 are nonrefundable; providing for the collection of fees;
154 amending s. 517.131, F.S.; revising criteria under which
155 recovery can be made from the Securities Guaranty Fund;
156 authorizing the commission to adopt rules; amending s.
157 517.141, F.S.; revising requirements for claimant
158 reimbursements to the fund; authorizing the commission to
159 adopt rules; amending s. 517.161, F.S.; revising a ground
160 for a registration adverse action; providing an additional
161 ground; amending ss. 520.02, 520.31, and 520.61, F.S.;
162 defining the term "control person"; amending ss. 520.03,
163 520.32, 520.52, and 520.63, F.S.; revising requirements
164 and procedures for licensing motor vehicle retail
165 installment sellers, retail installment transaction retail
166 sellers, sales finance companies, and home improvement
167 finance sellers; revising duties and authority of the
168 commission and office; specifying certain fees as

169 nonrefundable; amending s. 520.994, F.S.; revising
170 commission authority to adopt rules to include electronic
171 submissions; providing for accommodating a technological
172 or financial hardship; amending s. 520.995, F.S.;
173 providing an additional ground for taking disciplinary
174 action; revising a provision applying disciplinary actions
175 to certain persons; amending s. 520.997, F.S.; revising
176 commission authority to adopt rules relating to a
177 licensee's books, accounts, records, and documents;
178 creating s. 520.999, F.S.; providing additional
179 requirements of licensees in sales and finance;
180 authorizing the office to bring an administrative action
181 under certain circumstances; authorizing the commission to
182 adopt rules; amending s. 537.009, F.S., relating to the
183 Florida Title Loan Act; revising provisions relating to a
184 licensee's books, accounts, records, and documents;
185 amending s. 559.9232, F.S.; correcting cross-references;
186 amending s. 560.105, F.S., relating to the Money
187 Transmitters' Code; authorizing the commission to adopt
188 rules for electronic submission of money transmitter
189 licensee forms, documents, or fees; providing for
190 exemptions due to technological or financial hardship;
191 amending s. 560.114, F.S.; providing an additional ground
192 for taking disciplinary action; amending s. 560.121, F.S.;
193 authorizing the commission to adopt rules relating to a
194 licensee's books, accounts, records, and documents;
195 amending s. 560.126, F.S.; revising information reporting
196 requirements; providing requirements for acquiring a

197 controlling interest; authorizing the office to bring an
198 administrative action under certain circumstances;
199 authorizing the commission to adopt rules; amending s.
200 560.127, F.S.; revising criteria for determining control
201 over a money transmitter; deleting provisions regulating
202 the acquisition or purchase of a money transmitter;
203 amending s. 560.205, F.S.; revising requirements and
204 procedures for registering money transmitters; revising
205 duties of the commission and office; providing duties of
206 the Department of Law Enforcement; amending s. 560.207,
207 F.S.; revising requirements and procedures for renewing a
208 registration; authorizing the commission to adopt rules;
209 providing that specified fees are nonrefundable; providing
210 conditions for reinstating a registration; providing an
211 additional fee; providing for expiration of registration;
212 amending s. 560.210, F.S.; revising required accounting
213 principles; amending s. 560.211, F.S.; revising certain
214 recordkeeping requirements; amending s. 560.305, F.S.,
215 relating to the Check Cashing and Foreign Currency
216 Exchange Act; revising requirements and procedures for
217 registration; amending s. 560.306, F.S.; revising
218 fingerprinting requirements and procedures; providing
219 duties of the office and Department of Law Enforcement;
220 amending s. 560.308, F.S.; revising requirements for
221 renewal of registration; providing for expiration of
222 registration; providing that specified fees are
223 nonrefundable; providing conditions for reinstatement of a
224 registration; amending s. 560.310, F.S.; revising certain

225 recordkeeping requirements; amending s. 560.403, F.S.;
226 revising requirements for registration renewal notices of
227 intent; providing that specified fees are nonrefundable;
228 providing conditions for reinstatement of a notice of
229 intent; amending s. 655.935, F.S.; authorizing the search
230 of a safe-deposit box co-leased by a decedent; providing
231 construction; amending s. 655.936, F.S.; providing for the
232 delivery of a safe-deposit box to a court-appointed
233 personal representative; amending s. 655.937, F.S.;
234 revising provisions for access to safe-deposit boxes;
235 providing a penalty; amending s. 733.6065, F.S.; revising
236 provisions relating to the initial opening of certain
237 safe-deposit boxes; providing an appropriation; providing
238 an effective date.
239
240 Be It Enacted by the Legislature of the State of Florida:
241
242 Section 1. Present subsections (9) through (30) of section
243 494.001, Florida Statutes, are redesignated as subsections (10)
244 through (31), respectively, and a new subsection (9) is added to
245 that section to read:
246 494.001 Definitions.--As used in ss. 494.001-494.0077, the
247 term:
248 (9) "Control person" means an individual, partnership,
249 corporation, trust, or other organization that possesses the
250 power, directly or indirectly, to direct the management or
251 policies of a company, whether through ownership of securities,
252 by contract, or otherwise. A person is presumed to control a

253 company if, with respect to a particular company, that person:
254 (a) Is a director, general partner, or officer exercising
255 executive responsibility or having similar status or functions;
256 (b) Directly or indirectly may vote 10 percent or more of
257 a class of voting securities or sell or direct the sale of 10
258 percent or more of a class of voting securities; or
259 (c) In the case of a partnership, may receive upon
260 dissolution or has contributed 10 percent or more of the
261 capital.
262 Section 2. Subsection (2) of section 494.0011, Florida
263 Statutes, is amended, and subsection (6) is added to that
264 section, to read:
265 494.0011 Powers and duties of the commission and office.--
266 (2) The commission may ~~has authority to~~ adopt rules
267 pursuant to ss. 120.536(1) and 120.54 to implement ss. 494.001-
268 494.0077. The commission may adopt rules requiring ~~to allow~~
269 electronic submission of any forms, documents, or fees required
270 by this act if such rules reasonably accommodate technological
271 or financial hardship. The commission may prescribe by rule
272 requirements and procedures for obtaining an exemption due to a
273 technological or financial hardship. The commission may also
274 adopt rules to accept certification of compliance with
275 requirements of this act in lieu of requiring submission of
276 documents.
277 (6) The grant or denial of any license under this chapter
278 must be in accordance with s. 120.60.
279 Section 3. Subsection (4) of section 494.0016, Florida
280 Statutes, is amended to read:

281 494.0016 Books, accounts, and records; maintenance;
282 examinations by the office.--
283 (4) The commission may prescribe by rule the minimum
284 information to be shown in the books, accounts, records, and
285 documents of licensees so that such records will enable the
286 office to determine the licensee's compliance with ss. 494.001-
287 494.0077. In addition, the commission may prescribe by rule
288 requirements for the destruction of books, accounts, records,
289 and documents retained by the licensee after completion of the
290 time period specified in subsection (3).
291 Section 4. Section 494.0029, Florida Statutes, is amended
292 to read:
293 494.0029 Mortgage business schools.--
294 (1)(a) Each person, school, or institution, except
295 accredited colleges, universities, community colleges, and
296 career centers in this state, which offers or conducts mortgage
297 business training for the purpose of meeting professional
298 continuing education requirements or as a condition precedent to
299 licensure as a mortgage broker, mortgage ~~or~~ lender, or ~~a~~
300 correspondent mortgage lender must ~~shall~~ obtain a permit from
301 the office to operate as a mortgage business school before
302 offering or conducting mortgage business training and must abide
303 by the regulations imposed upon such person, school, or
304 institution by this chapter and rules adopted pursuant to this
305 chapter. The commission may require by rule that each applicant
306 for a mortgage business school permit provide any information
307 reasonably necessary to determine the applicant's eligibility.
308 Each person, school, or institution that applies for a permit

309 under this section must do so on forms adopted by the commission
310 by rule ~~The commission shall, by rule, recertify the permits~~
311 ~~annually with initial and renewal permit fees that do not exceed~~
312 ~~$500 plus the cost of accreditation~~.
313 (b) An application is considered received for purposes of
314 s. 120.60 upon receipt of a completed application form as
315 prescribed by commission rule, a nonrefundable application fee
316 of $500, the cost of accreditation as defined by commission
317 rule, and any other fee prescribed by law.
318 (c) A permit issued under this section is not transferable
319 or assignable.
320 (d) Each permitted mortgage business school shall report,
321 on a form prescribed by the commission, any change in the
322 information contained in the initial application form or any
323 amendment to such form not later than 30 days after the change
324 is effective.
325 (e) A permit issued under this section expires on
326 September 30th of each year. The office shall recertify a permit
327 annually upon submission of information the commission requires
328 by rule, together with a nonrefundable permit fee of $500, and
329 the cost of accreditation as defined by commission rule, which
330 shall be for the annual period beginning October 1 of each year.
331 ~~(2) All such schools shall maintain curriculum and~~
332 ~~training materials necessary to determine the school's~~
333 ~~compliance with this chapter and rules adopted pursuant to this~~
334 ~~chapter. Any school that offers or conducts mortgage business~~
335 ~~training shall at all times maintain an operation of training,~~
336 ~~materials, and curriculum which is open to review by the office~~

337 ~~to determine compliance and competency as a mortgage business~~
338 ~~school.~~
339 (2) ~~(3)~~ (a) It is unlawful for any such person, school, or
340 institution to offer or conduct mortgage business courses,
341 regardless of the number of pupils, without first procuring a
342 permit or to guarantee that the pupils will pass any mortgage
343 business examination given on behalf of the office or to
344 represent that the issuance of a permit is any recommendation or
345 endorsement of the person, school, or institution to which it is
346 issued or of any course of instruction given thereunder. Any
347 person who violates this paragraph commits a misdemeanor of the
348 second degree, punishable as provided in s. 775.082 or s.
349 775.083.
350 (b) The location of classes and the frequency of class
351 meetings shall be in the discretion of the school offering the
352 courses, if such courses conform to this chapter and related
353 rules adopted by the commission.
354 (c) A mortgage business school may not use advertising of
355 any nature which is false, inaccurate, misleading, or
356 exaggerated. Publicity and advertising of a mortgage business
357 school, or of its representative, shall be based upon relevant
358 facts and supported by evidence establishing their truth.
359 (d) A representative of a mortgage business school subject
360 to the provisions of this chapter may not promise or guarantee
361 employment or placement of any pupil or prospective pupil, using
362 information, training, or skill purported to be provided or
363 otherwise enhanced by a course or school as inducement to enroll
364 in the school, unless such person offers the pupil or

365 prospective pupil a bona fide contract of employment.
366 (e) A school shall advertise only as a school and under
367 the permitted name of such school as recognized by the office.
368 (f) Reference may not be made in any publication or
369 communication medium as to a pass/fail ratio on mortgage
370 business examinations by any school permitted by the office.
371 (3) Each person, school, or institution that is required
372 to be permitted as a mortgage business school under this section
373 shall maintain and make available for the office's review,
374 inspection, and observation any training, curriculum, and
375 training materials necessary for the office to determine
376 compliance with this chapter and the rules adopted under this
377 chapter. All documents prescribed by commission rule must be
378 submitted with the initial application or recertification.
379 (4) Each person, school, or institution that is required
380 to be permitted as a mortgage business school under this section
381 must provide electronic notification to the office, in a manner
382 prescribed by commission rule, of any pupils who have
383 successfully completed the 24-hour prelicensure classroom
384 instruction for mortgage brokers and principal representatives
385 and any pupils who have completed the 14-hour professional
386 continuing education for mortgage brokers.
387 Section 5. Section 494.00295, Florida Statutes, is amended
388 to read:
389 494.00295 Professional continuing education.--
390 (1) Mortgage brokers, and the principal representatives
391 and loan originators of a mortgage lender, correspondent
392 mortgage lender, or mortgage lender pursuant to s. 494.0065,

393 must successfully complete at least 14 hours of professional
394 continuing education covering primary and subordinate mortgage
395 financing transactions and the provisions of this chapter during
396 the 2-year period immediately preceding the renewal deadline for
397 a mortgage broker, mortgage lender, correspondent mortgage
398 lender, or mortgage lender pursuant to s. 494.0065. At the time
399 of license renewal, a licensee must certify to the office that
400 the professional continuing education requirements of this
401 section have been met. Licensees shall maintain records
402 documenting compliance with this subsection for a period of 4
403 years. The requirements for professional continuing education
404 are waived for the license renewal of a mortgage broker for the
405 biennial license period immediately following the period in
406 which the person became licensed as a mortgage broker. The
407 requirements for professional continuing education for a
408 principal representative are waived for the license renewal of a
409 mortgage lender, correspondent mortgage lender, or mortgage
410 lender pursuant to s. 494.0065 for the biennial license period
411 immediately following the period in which the principal
412 representative completed the 24 hours of classroom education and
413 passed a written test in order to qualify to be a principal
414 representative ~~Each mortgage broker, mortgage lender, and~~
415 ~~correspondent mortgage lender must certify to the office at the~~
416 ~~time of renewal that during the 2 years prior to an application~~
417 ~~for license renewal, all mortgage brokers and the principal~~
418 ~~representative, loan originators, and associates of a mortgage~~
419 ~~lender or correspondent mortgage lender have successfully~~
420 ~~completed at least 14 hours of professional education programs~~

421 ~~covering primary and subordinate mortgage financing transactions~~
422 ~~and the provisions of this chapter. Licensees shall maintain~~
423 ~~records documenting compliance with this subsection for a period~~
424 ~~of 4 years~~.
425 (2) Professional continuing education programs must
426 contribute directly to the professional competency of the
427 participants, may only be offered by permitted mortgage business
428 schools or entities specifically exempted from permitting as
429 mortgage business schools, and may include electronically
430 transmitted or distance education courses.
431 (3) The commission shall adopt rules necessary to
432 administer this section, including rules governing qualifying
433 hours for professional continuing education programs and
434 standards for electronically transmitted or distance education
435 courses, including course completion requirements.
436 Section 6. Paragraphs (b) and (c) of subsection (1) and
437 paragraph (e) of subsection (2) of section 494.003, Florida
438 Statutes, are amended to read:
439 494.003 Exemptions.--
440 (1) None of the following persons is subject to the
441 requirements of ss. 494.003-494.0043:
442 (b) A state or federal chartered bank, ~~bank holding~~
443 ~~company,~~ trust company, savings and loan association, savings
444 bank or~~,~~ credit union, bank holding company regulated under the
445 laws of any state or the United States, or consumer finance
446 company licensed pursuant to chapter 516.
447 (c) A wholly owned bank holding company subsidiary or a
448 wholly owned savings and loan association holding company

449 subsidiary formed and regulated under the laws of any state or
450 the United States that is approved or certified by the
451 Department of Housing and Urban Development, the Veterans
452 Administration, the Government National Mortgage Association,
453 the Federal National Mortgage Association, or the Federal Home
454 Loan Mortgage Corporation.
455 (2) None of the following persons is required to be
456 licensed under ss. 494.003-494.0043:
457 (e) A wholly owned subsidiary of a state or federal
458 chartered bank or savings and loan association the sole activity
459 of which is to distribute the lending programs of such state or
460 federal chartered bank or savings and loan association to
461 persons who arrange loans for, or make loans to, borrowers.
462 Section 7. Section 494.0031, Florida Statutes, is amended
463 to read:
464 494.0031 Licensure as a mortgage brokerage business.--
465 (1) Each person who acts as a mortgage brokerage business
466 must be licensed under this section unless otherwise exempt from
467 licensure.
468 (2) ~~(1)~~ Each initial application for a mortgage brokerage
469 business license must be in the form prescribed by rule of the
470 commission. The commission may require each applicant to provide
471 any information reasonably necessary to determine the
472 applicant's eligibility for licensure. The office shall issue a
473 mortgage brokerage business license to each person who:
474 (a) Has submitted a completed application form and a
475 nonrefundable application fee of $425. An application is
476 considered received for purposes of s. 120.60 upon receipt of a

477 completed application form as prescribed by commission rule, a
478 nonrefundable application fee of $425, and any other fee
479 prescribed by law.~~; and~~
480 (b) Has a qualified principal broker pursuant to s.
481 494.0035.
482 (c)~~(2)~~ Has provided a complete set of fingerprints as the
483 commission may require by rule for ~~that~~ each officer, director,
484 control person, member, partner, or joint venturer of the
485 applicant and each ultimate equitable owner of a 10-percent or
486 greater interest in the mortgage brokerage business. A
487 fingerprint card submitted to the office must be ~~submit a~~
488 ~~complete set of fingerprints~~ taken by an authorized law
489 enforcement agency ~~officer~~. The office shall submit the
490 fingerprints to the Department of Law Enforcement for state
491 processing and the Department of Law Enforcement shall forward
492 the fingerprints to the Federal Bureau of Investigation for
493 federal processing. The cost of the fingerprint processing may
494 be borne by the office, the employer, or the person subject to
495 the background check. The Department of Law Enforcement shall
496 submit an invoice to the office for the fingerprints received
497 each month. The office shall screen the background results to
498 determine if the applicant meets licensure requirements.
499 (d) Has provided information that the commission requires
500 by rule concerning any designated principal mortgage broker; any
501 officer, director, control person, member, partner, or joint
502 venturer of the applicant; or any individual who is the ultimate
503 equitable owner of a 10-percent or greater interest in the
504 mortgage brokerage business. The commission may require

505 information about any such applicant or person, including, but
506 not limited to, his or her full name or other names by which he
507 or she may have been known, age, social security number,
508 qualifications, educational and business history, and
509 disciplinary and criminal history.
510 (3) Notwithstanding ~~the provisions of~~ subsection (2) ~~(1)~~,
511 it is a ground for denial of licensure if the applicant;
512 designated principal mortgage broker; any officer, director,
513 control person, member, partner, or joint venturer of the
514 applicant; ~~any natural person owning a 10-percent or greater~~
515 ~~interest in the mortgage brokerage business;~~ or any individual
516 ~~natural~~ person who is the ultimate equitable owner of a 10-
517 percent or greater interest in the mortgage brokerage business
518 has committed any violation specified in ss. 494.001-494.0077 or
519 has pending against him or her in any jurisdiction any criminal
520 prosecution or administrative enforcement action that~~, in any~~
521 ~~jurisdiction, which~~ involves fraud, dishonest dealing, or any
522 other act of moral turpitude.
523 (4) A mortgage brokerage business or branch office license
524 may be canceled if it was issued through mistake or inadvertence
525 of the office. A notice of cancellation must be issued by the
526 office within 90 days after the issuance of the license. A
527 notice of cancellation is ~~shall be~~ effective upon receipt. The
528 notice of cancellation must ~~shall~~ provide the applicant with
529 notification of the right to request a hearing within 21 days
530 after the applicant's receipt of the notice of cancellation. A
531 license must ~~shall~~ be reinstated if the applicant can
532 demonstrate that the requirements for obtaining the license

533 under ~~pursuant to~~ this chapter have been satisfied.
534 ~~(5) If an initial mortgage brokerage business or branch~~
535 ~~office license has been issued but the check upon which the~~
536 ~~license is based is returned due to insufficient funds, the~~
537 ~~license shall be deemed canceled. A license deemed canceled~~
538 ~~pursuant to this subsection shall be reinstated if the office~~
539 ~~receives a certified check for the appropriate amount within 30~~
540 ~~days after the date the check was returned due to insufficient~~
541 ~~funds.~~
542 Section 8. Subsection (1) of section 494.0032, Florida
543 Statutes, is amended to read:
544 494.0032 Renewal of mortgage brokerage business license or
545 branch office license.--
546 (1) The office shall renew a mortgage brokerage business
547 license upon receipt of a completed renewal form and payment of
548 a nonrefundable renewal fee of $375. Each licensee shall pay at
549 the time of renewal a nonrefundable renewal fee of $225 for the
550 renewal of each branch office license. The license for a branch
551 office must be renewed in conjunction with the renewal of the
552 mortgage brokerage business license.
553 Section 9. Subsections (1), (2), and (7) of section
554 494.0033, Florida Statutes, are amended to read:
555 494.0033 Mortgage broker's license.--
556 (1) Each natural person who acts as a mortgage broker for
557 a mortgage brokerage business or acts as an associate for a
558 mortgage lender or correspondent mortgage lender must be
559 licensed under ~~pursuant to~~ this section. To act as a mortgage
560 broker, an individual must be an associate of a mortgage

561 brokerage business, a mortgage lender, or a correspondent
562 mortgage lender. A mortgage broker may not be ~~is prohibited from~~
563 ~~being~~ an associate of more than one mortgage brokerage business,
564 mortgage lender, or correspondent mortgage lender.
565 (2) Each initial application for a mortgage broker's
566 license must be in the form prescribed by rule of the
567 commission. The commission may require each applicant to provide
568 any information reasonably necessary to make a determination of
569 the applicant's eligibility for licensure. The office shall
570 issue an initial license to any natural person who:
571 (a) Is at least 18 years of age.~~;~~
572 (b) Has passed a written test adopted and administered by
573 the office, or has passed an electronic test adopted and
574 administered by the office or a third party approved by the
575 office, which is designed to determine competency in primary and
576 subordinate mortgage financing transactions as well as to test
577 knowledge of ss. 494.001-494.0077 and the rules adopted pursuant
578 thereto. The commission may prescribe by rule an additional fee
579 that may not exceed $100 for the electronic version of the
580 mortgage broker test. The commission may waive by rule the
581 examination requirement for any person who has passed a test
582 approved by the Conference of State Bank Supervisors, the
583 American Association of Residential Mortgage Regulators, or the
584 United States Department of Housing and Urban Development if the
585 test covers primary and subordinate mortgage financing
586 transactions.~~;~~
587 (c) Has submitted a completed application and a
588 nonrefundable application fee of $200. An application is

589 considered received for purposes of s. 120.60 upon receipt of a
590 completed application form as prescribed by commission rule, a
591 nonrefundable application fee of $200, and any other fee
592 prescribed by law. ~~The commission may set by rule an additional~~
593 ~~fee for a retake of the examination; and~~
594 (d) Has filed a complete set of fingerprints~~, taken by an~~
595 ~~authorized law enforcement officer,~~ for submission by the office
596 to the Department of Law Enforcement or the Federal Bureau of
597 Investigation for processing. A fingerprint card submitted to
598 the office must be taken by an authorized law enforcement
599 agency. The office shall submit the fingerprints to the
600 Department of Law Enforcement for state processing and the
601 Department of Law Enforcement shall forward the fingerprints to
602 the Federal Bureau of Investigation for federal processing. The
603 cost of the fingerprint processing may be borne by the office,
604 the employer, or the person subject to the background check. The
605 Department of Law Enforcement shall submit an invoice to the
606 office for the fingerprints received each month. The office
607 shall screen the background results to determine if the
608 applicant meets licensure requirements.
609
610 The commission may require by rule information concerning any
611 such applicant or person, including, but not limited to, his or
612 her full name and any other names by which he or she may have
613 been known, age, social security number, qualifications and
614 educational and business history, and disciplinary and criminal
615 history.
616 ~~(7) If an initial mortgage broker license has been issued~~

617 ~~but the check upon which the license is based is returned due to~~
618 ~~insufficient funds, the license shall be deemed canceled. A~~
619 ~~license deemed canceled pursuant to this subsection shall be~~
620 ~~reinstated if the office receives a certified check for the~~
621 ~~appropriate amount within 30 days after the date the check was~~
622 ~~returned due to insufficient funds.~~
623 Section 10. Subsections (2) and (3) of section 494.0036,
624 Florida Statutes, are amended to read:
625 494.0036 Mortgage brokerage business branch offices.--
626 (2) The office shall issue a mortgage brokerage business
627 branch office license to a mortgage brokerage business licensee
628 after the office determines that the licensee has submitted ~~upon~~
629 ~~receipt of~~ a completed application for a branch office in a form
630 as prescribed by commission rule and payment of an initial
631 nonrefundable branch office license fee of $225. ~~Branch office~~
632 ~~licenses must be renewed in conjunction with the renewal of the~~
633 ~~mortgage brokerage business license.~~ The branch office license
634 shall be issued in the name of the mortgage brokerage business
635 that maintains the branch office. An application is considered
636 received for purposes of s. 120.60 upon receipt of a completed
637 application form as prescribed by commission rule, a
638 nonrefundable application fee of $225, and any other fee
639 prescribed by law.
640 ~~(3) Each branch office must prominently display the~~
641 ~~license issued for such branch office. Each person licensed as a~~
642 ~~mortgage broker must prominently display his or her license in~~
643 ~~the office where such person acts as a mortgage broker.~~
644 Section 11. Section 494.0039, Florida Statutes, is amended

645 to read:
646 494.0039 Principal place of business requirements.--
647 ~~(1)~~ Each mortgage brokerage business licensee shall
648 maintain and transact business from a principal place of
649 business.
650 ~~(2) A licensee under ss. 494.003-494.0043 shall report any~~
651 ~~change of address of the principal place of business or any~~
652 ~~branch office within 15 days after the change.~~
653 ~~(3) Each mortgage brokerage business must prominently~~
654 ~~display its license at the principal place of business. Each~~
655 ~~licensed mortgage broker must prominently display his or her~~
656 ~~license in the office where such person acts as a mortgage~~
657 ~~broker.~~
658 Section 12. Section 494.004, Florida Statutes, is amended
659 to read:
660 494.004 Requirements of licensees.--
661 (1) Each licensee under ss. 494.003-494.0043 shall report,
662 in writing, any conviction of, or plea of nolo contendere to,
663 regardless of adjudication, any crime or administrative
664 violation that involves fraud, dishonest dealing, or any other
665 act of moral turpitude, in any jurisdiction, by the licensee or
666 any natural person named in s. 494.0031(2)(d) ~~(3)~~, not later than
667 30 days after the date of conviction, entry of a plea of nolo
668 contendere, or final administrative action.
669 (2) Each licensee under ss. 494.003-494.0043 shall report,
670 in a form prescribed by rule of the commission, any conviction
671 of, or plea of nolo contendere to, regardless of whether
672 adjudication is withheld, any felony committed by the licensee

673 or any natural person named in s. 494.0031(2)(d) ~~(3)~~, not later
674 than 30 days after the date of conviction or the date the plea
675 of nolo contendere is entered.
676 (3) Each licensee under ss. 494.003-494.0043 shall report
677 any action in bankruptcy, voluntary or involuntary, to the
678 office not later than 7 business days after the action is
679 instituted.
680 (4) Each licensee under ss. 494.003-494.0043 shall report
681 on a form prescribed by rule of the commission any change to the
682 information contained in any initial application form or any
683 amendment to the application ~~any change in the form of business~~
684 ~~organization or any change of a person named, pursuant to s.~~
685 ~~494.0031(3), to the office in writing~~ not later than 30 days
686 after the change is effective.
687 (5) A license issued under ss. 494.003-494.0043 is not
688 transferable or assignable.
689 (6) Each licensee under ss. 494.003-494.0043 shall report
690 any change in the principal broker, partners, officers, members,
691 joint venturers, directors, control persons of any licensee, or
692 any individual who is the ultimate equitable owner of a 10-
693 percent or greater interest in the licensee, or any change in
694 the form of business organization, by written amendment in the
695 form and at the time the commission specifies by rule.
696 (a) In any case in which a person or a group of persons,
697 directly or indirectly or acting by or through one or more
698 persons, proposes to purchase or acquire a controlling interest
699 in a licensee, such person or group shall submit an initial
700 application for licensure as a mortgage brokerage business

701 before such purchase or acquisition and at the time and in the
702 form the commission prescribes by rule.
703 (b) As used in this subsection, the term "controlling
704 interest" means possession of the power to direct or cause the
705 direction of the management or policies of a company whether
706 through ownership of securities, by contract, or otherwise. Any
707 person who directly or indirectly has the right to vote 25
708 percent or more of the voting securities of a company or is
709 entitled to 25 percent or more of the company's profits is
710 presumed to possess a controlling interest.
711 (c) Any addition of a partner, officer, member, joint
712 venturer, director, control person, or ultimate equitable owner
713 of the applicant who does not have a controlling interest and
714 who has not previously complied with the provisions of s.
715 494.0031(2)(c) and (d) is subject to such provisions unless
716 required to file an initial application in accordance with
717 paragraph (a). If the office finds that the licensee does not
718 continue to meet licensure requirements, the office may bring an
719 administrative action in accordance with s. 494.0041 to enforce
720 the provisions of this chapter.
721 (d) The commission shall adopt rules pursuant to ss.
722 120.536(1) and 120.54 providing for the waiver of the
723 application required by this subsection if the person or group
724 of persons proposing to purchase or acquire a controlling
725 interest in a licensee has previously complied with the
726 provisions of s. 494.0031(2)(c) and (d) with respect to the same
727 legal entity or is currently licensed by the office under this
728 chapter.

729 (7) ~~(6)~~ On or before April 30, 2000, each mortgage
730 brokerage business shall file an initial report stating the
731 name, social security number, date of birth, mortgage broker
732 license number, date of hire and, if applicable, date of
733 termination for each person who was an associate of the mortgage
734 brokerage business during the immediate preceding quarter.
735 Thereafter, a mortgage brokerage business shall file a quarterly
736 report only if a person became an associate or ceased to be an
737 associate of the mortgage brokerage business during the
738 immediate preceding quarter. Such report shall be filed within
739 30 days after the last day of each calendar quarter and shall
740 contain the name, social security number, date of birth,
741 mortgage broker license number, date of hire and, if applicable,
742 the date of termination of each person who became or ceased to
743 be an associate of the mortgage brokerage business during the
744 immediate preceding quarter. The commission shall prescribe, by
745 rule, the procedures for filing reports required by this
746 subsection.
747 Section 13. Paragraphs (s), (t), and (u) are added to
748 subsection (2) of section 494.0041, Florida Statutes, and
749 subsection (3) of that section is amended, to read:
750 494.0041 Administrative penalties and fines; license
751 violations.--
752 (2) Each of the following acts constitutes a ground for
753 which the disciplinary actions specified in subsection (1) may
754 be taken:
755 (s) Payment to the office for a license or permit with a
756 check or electronic transmission of funds that is dishonored by

757 the applicant's or licensee's financial institution.
758 (t) Having a final judgment entered against the applicant
759 or licensee in a civil action upon grounds of fraud,
760 embezzlement, misrepresentation, or deceit.
761 (u)1. Having been the subject of any decision, finding,
762 injunction, suspension, prohibition, revocation, denial,
763 judgment, or administrative order by any court of competent
764 jurisdiction, administrative law judge, state or federal agency,
765 national securities exchange, national commodities exchange,
766 national option exchange, national securities association,
767 national commodities association, or national option association
768 involving a violation of any federal or state securities or
769 commodities law or rule or regulation adopted under such law or
770 involving a violation of any rule or regulation of any national
771 securities, commodities, or options exchange or association.
772 2. Having been the subject of any injunction or adverse
773 administrative order by a state or federal agency regulating
774 banking, insurance, finance or small loan companies, real
775 estate, mortgage brokers or lenders, money transmitters, or
776 other related or similar industries.
777 (3) A mortgage brokerage business is subject to the
778 disciplinary actions specified in subsection (1) for a violation
779 of subsection (2) by any officer, member, director, control
780 person, joint venturer, partner, ultimate equitable owner of a
781 10-percent or greater interest in the mortgage brokerage
782 business, or associate mortgage broker of the licensee.
783 Section 14. Paragraphs (a) and (c) of subsection (1) and
784 paragraph (a) of subsection (2) of section 494.006, Florida

785 Statutes, are amended to read:
786 494.006 Exemptions.--
787 (1) None of the following persons are subject to the
788 requirements of ss. 494.006-494.0077 in order to act as a
789 mortgage lender or correspondent mortgage lender:
790 (a) A state or federal chartered bank, ~~bank holding~~
791 ~~company,~~ trust company, savings and loan association, savings
792 bank or~~,~~ credit union, bank holding company regulated under the
793 laws of any state or the United States, or insurance company if
794 the insurance company is duly licensed in this state.
795 (c) A wholly owned bank holding company subsidiary or a
796 wholly owned savings and loan association holding company
797 subsidiary that is formed and regulated under the laws of any
798 state or the United States and that is approved or certified by
799 the Department of Housing and Urban Development, the Veterans
800 Administration, the Government National Mortgage Association,
801 the Federal National Mortgage Association, or the Federal Home
802 Loan Mortgage Corporation.
803 (2)(a) A natural person employed by a mortgage lender or
804 correspondent mortgage lender licensed under ss. 494.001-
805 494.0077 is exempt from the licensure requirements of ss.
806 494.001-494.0077 when acting within the scope of employment with
807 the licensee.
808 Section 15. Section 494.0061, Florida Statutes, is amended
809 to read:
810 494.0061 Mortgage lender's license requirements.--
811 (1) Each person who acts as a mortgage lender must be
812 licensed under this section unless otherwise exempt from

813 licensure.
814 (2) ~~(1)~~ Each initial application for a mortgage lender
815 license must be in the form prescribed by rule of the
816 commission. The commission or office may require each applicant
817 for a mortgage lender license to provide any information
818 reasonably necessary to make a determination of the applicant's
819 eligibility for licensure. The office shall issue an initial
820 mortgage lender license to any person that submits:
821 (a) A completed application form.~~;~~
822 (b) A nonrefundable application fee of $575. An
823 application is considered received for purposes of s. 120.60
824 upon receipt of a completed application form as prescribed by
825 commission rule, a nonrefundable application fee of $575, and
826 any other fee prescribed by law.~~;~~
827 (c) Audited financial statements, which documents disclose
828 that the applicant has a bona fide and verifiable net worth,
829 pursuant to United States generally accepted accounting
830 principles, of at least $250,000, which must be continuously
831 maintained as a condition of licensure.~~;~~
832 (d) A surety bond in the amount of $10,000, payable to the
833 state and conditioned upon compliance with ss. 494.001-494.0077,
834 which inures to the office and which must be continuously
835 maintained thereafter in full force.~~;~~
836 (e) Documentation that the applicant is duly incorporated,
837 registered, or otherwise formed as a general partnership,
838 limited partnership, limited liability company, or other lawful
839 entity under the laws of this state or another state of the
840 United States.~~; and~~

841 (f) ~~For applications submitted after October 1, 2001,~~
842 Proof that the applicant's principal representative has
843 completed 24 hours of classroom instruction in primary and
844 subordinate financing transactions and in the provisions of this
845 chapter and rules adopted under this chapter. This requirement
846 is satisfied if the principal representative has continuously
847 served in the capacity of a principal representative for a
848 licensed entity under this chapter for at least 1 year and has
849 not had a lapse in designation as a principal representative of
850 more than 2 years before the date of the submission of the
851 application or amendment in the case of a change in the
852 principal representative. This requirement is also satisfied if
853 the principal representative currently holds an active license
854 as a mortgage broker in this state.
855 (g) A complete set of fingerprints as the commission
856 requires by rule for the designated principal representative and
857 each officer, director, control person, member, partner, or
858 joint venturer of the applicant and ultimate equitable owner of
859 a 10-percent or greater interest in the applicant. A fingerprint
860 card submitted to the office must be taken by an authorized law
861 enforcement agency. The office shall submit the fingerprints to
862 the Department of Law Enforcement for state processing and the
863 Department of Law Enforcement shall forward the fingerprints to
864 the Federal Bureau of Investigation for federal processing. The
865 cost for the fingerprint processing may be borne by the office,
866 the employer, or the person subject to the background check. The
867 Department of Law Enforcement shall submit an invoice to the
868 office for the fingerprints received each month. The office

869 shall screen the background results to determine if the
870 applicant meets licensure requirements.
871 (h) Information the commission requires by rule concerning
872 any designated principal representative; any officer, director,
873 control person, member, partner, or joint venturer of the
874 applicant or any person having the same or substantially similar
875 status or performing substantially similar functions; or any
876 natural person who is the ultimate equitable owner of a 10-
877 percent or greater interest in the mortgage lender. The
878 commission may require information concerning any such applicant
879 or person, including, but not limited to, his or her full name
880 and any other names by which he or she may have been known,
881 social security number, age, qualifications and educational and
882 business history, and disciplinary and criminal history.
883 (3) ~~(2)~~ Notwithstanding ~~the provisions of~~ subsection (2)
884 ~~(1)~~, it is a ground for denial of licensure if the applicant;
885 designated principal representative; ~~,~~ any principal officer, ~~or~~
886 director, control person, member, partner, or joint venturer of
887 the applicant; ~~, or~~ any natural person owning a 10-percent or
888 greater interest in the applicant; ~~,~~ or any natural person who is
889 the ultimate equitable owner of a 10-percent or greater interest
890 in the applicant has committed any violation specified in s.
891 494.0072, or has pending against her or him any criminal
892 prosecution or administrative enforcement action, in any
893 jurisdiction, which involves fraud, dishonest dealing, or any
894 act of moral turpitude.
895 ~~(3) Each initial application for a mortgage lender's~~
896 ~~license must be in a form prescribed by the commission. The~~

897 ~~commission or office may require each applicant to provide any~~
898 ~~information reasonably necessary to make a determination of the~~
899 ~~applicant's eligibility for licensure. The commission or office~~
900 ~~may require that each officer, director, and ultimate equitable~~
901 ~~owner of a 10-percent or greater interest in the applicant~~
902 ~~submit a complete set of fingerprints taken by an authorized law~~
903 ~~enforcement officer.~~
904 (4) A person required to be licensed under ss. 494.006-
905 494.0077, or an agent or employee thereof, is deemed to have
906 consented to the venue of courts of competent jurisdiction in
907 this state regarding any matter within the authority of ss.
908 494.001-494.0077 regardless of where an act or violation was
909 committed.
910 (5) A license issued in accordance with ss. 494.006-
911 494.0077 is not transferable or assignable.
912 (6) A mortgage lender or branch office license may be
913 canceled if it was issued through mistake or inadvertence of the
914 office. A notice of cancellation must be issued by the office
915 within 90 days after the issuance of the license. A notice of
916 cancellation shall be effective upon receipt. The notice of
917 cancellation shall provide the applicant with notification of
918 the right to request a hearing within 21 days after the
919 applicant's receipt of the notice of cancellation. A license
920 shall be reinstated if the applicant can demonstrate that the
921 requirements for obtaining the license <u>under</u> ~~pursuant to~~ this
922 chapter have been satisfied.
923 ~~(7) If an initial mortgage lender or branch office license~~
924 ~~has been issued but the check upon which the license is based is~~

925 ~~returned due to insufficient funds, the license shall be deemed~~
926 ~~canceled. A license deemed canceled pursuant to this subsection~~
927 ~~shall be reinstated if the office receives a certified check for~~
928 ~~the appropriate amount within 30 days after the date the check~~
929 ~~was returned due to insufficient funds.~~
930 (7) ~~(8)~~ Each lender, regardless of the number of branches
931 it operates, shall designate a principal representative who
932 exercises control of the licensee's business and shall maintain
933 a form prescribed by the commission designating the principal
934 representative. If the form is not accurately maintained, the
935 business is considered to be operated by each officer, director,
936 or equitable owner of a 10-percent or greater interest in the
937 business.
938 (8) ~~(9)~~ ~~After October 1, 2001,~~ An applicant's principal
939 representative must pass a written test prescribed by the
940 commission and administered by the office, or must pass an
941 electronic test prescribed by the commission and administered by
942 the office or a third party approved by the office, which covers
943 primary and subordinate mortgage financing transactions and the
944 provisions of this chapter and rules adopted under this chapter.
945 The commission may set a fee by rule, which may not exceed $100,
946 for the electronic version of the mortgage broker test. The
947 commission may waive by rule the examination requirement for any
948 person who has passed a test approved by the Conference of State
949 Bank Supervisors, the American Association of Residential
950 Mortgage Regulators, or the United States Department of Housing
951 and Urban Development if the test covers primary and subordinate
952 mortgage financing transactions. This requirement is satisfied

953 if the principal representative has continuously served in the
954 capacity of a principal representative for a licensed entity
955 under this chapter for at least 1 year and has not had a lapse
956 in designation as a principal representative of more than 2
957 years before the date of the submission of the application or
958 amendment in the case of a change in the principal
959 representative. This requirement is also satisfied if the
960 principal representative holds an active license as a mortgage
961 broker in this state.
962 (9) ~~(10)~~ A lender shall notify the office of any change in
963 the designation of its principal representative within 30 days
964 after the change is effective. A new principal representative
965 shall satisfy ~~the name and address of any new principal~~
966 ~~representative and shall document that the person has completed~~
967 the educational and testing requirements of this section within
968 90 days after being designated as ~~upon~~ the ~~designation of a~~ new
969 principal representative. This requirement is satisfied if the
970 principal representative has continuously served in the capacity
971 of a principal representative for a licensed entity under this
972 chapter for at least 1 year and has not had a lapse in
973 designation as a principal representative of more than 2 years
974 before the date of the submission of the application or
975 amendment in the case of a change in the principal
976 representative. This requirement is also satisfied if the
977 principal representative holds an active license as a mortgage
978 broker in this state.
979 Section 16. Section 494.0062, Florida Statutes, is amended
980 to read:

981 494.0062 Correspondent mortgage lender's license
982 requirements.--
983 (1) Each person who acts as a correspondent mortgage
984 lender must be licensed under this section unless otherwise
985 exempt from licensure.
986 (2) ~~(1)~~ Each initial application for a correspondent
987 mortgage lender's license must be in the form prescribed by rule
988 of the commission. The office may require each applicant to
989 provide any information reasonably necessary to determine the
990 applicant's eligibility for licensure. The office shall issue an
991 initial correspondent mortgage lender license to any person who
992 submits:
993 (a) A completed application form.~~;~~
994 (b) A nonrefundable application fee of $500. An
995 application is considered received for purposes of s. 120.60
996 upon receipt of a completed application form as prescribed by
997 commission rule, a nonrefundable application fee of $500, and
998 any other fee prescribed by law.~~;~~
999 (c) Audited financial statements that~~, which~~ document that
1000 the applicant ~~application~~ has a bona fide and verifiable net
1001 worth pursuant to United States generally accepted accounting
1002 principles of $25,000 or more, which must be continuously
1003 maintained as a condition of licensure.~~;~~
1004 (d) A surety bond in the amount of $10,000, payable to the
1005 State of Florida and conditioned upon compliance with ss.
1006 494.001-494.0077, which inures to the office and which must be
1007 continuously maintained, thereafter, in full force.~~;~~
1008 (e) Documentation that the applicant is duly incorporated,

1009 registered, or otherwise formed as a general partnership,
1010 limited partnership, limited liability company, or other lawful
1011 entity under the laws of this state or another state of the
1012 United States.~~; and~~
1013 (f) ~~For applications filed after October 1, 2001,~~ Proof
1014 that the applicant's principal representative has completed 24
1015 hours of classroom instruction in primary and subordinate
1016 financing transactions and in the provisions of this chapter and
1017 rules enacted under this chapter. This requirement is satisfied
1018 if the principal representative has continuously served in the
1019 capacity of a principal representative for a licensed entity
1020 under this chapter for at least 1 year and has not had a lapse
1021 in designation as a principal representative of more than 2
1022 years before the date of the submission of the application or
1023 amendment in the case of a change in the principal
1024 representative. This requirement is also satisfied if the
1025 principal representative holds an active license as a mortgage
1026 broker in this state.
1027 (g) A complete set of fingerprints as the commission
1028 requires by rule for the designated principal representative and
1029 each officer, director, control person, member, partner, or
1030 joint venturer of the applicant and ultimate equitable owner of
1031 a 10-percent or greater interest in the applicant. A fingerprint
1032 card submitted to the office must be taken by an authorized law
1033 enforcement agency. The office shall submit the fingerprints to
1034 the Department of Law Enforcement for state processing and the
1035 Department of Law Enforcement shall forward the fingerprints to
1036 the Federal Bureau of Investigation for federal processing. The

1037 cost of the fingerprint processing may be borne by the office,
1038 the employer, or the person subject to the background check. The
1039 Department of Law Enforcement shall submit an invoice to the
1040 office for the fingerprints received each month. The office
1041 shall screen the background results to determine if the
1042 applicant meets licensure requirements.
1043 (h) Information the commission requires by rule concerning
1044 any designated principal representative; any officer, director,
1045 control person, member, partner, or joint venturer of the
1046 applicant or any person having the same or substantially similar
1047 status or performing substantially similar functions; or any
1048 natural person who is the ultimate equitable owner of a 10-
1049 percent or greater interest in the correspondent mortgage
1050 lender. The office may require information concerning any such
1051 applicant or person, including, but not limited to, his or her
1052 full name and any other names by which he or she may have been
1053 known, age, social security number, qualifications and
1054 educational and business history, and disciplinary and criminal
1055 history.
1056 (3) ~~(2)~~ Notwithstanding ~~the provisions of~~ subsection (2)
1057 ~~(1)~~, it is a ground for denial of licensure if the applicant;
1058 any designated principal representative; ~~,~~ any principal officer,
1059 ~~or~~ director, control person, member, partner, or joint venturer
1060 of the applicant; ~~,~~ or any natural person who is the ultimate
1061 equitable owner of a 10-percent or greater interest in the
1062 applicant has committed any violation specified in s. 494.0072,
1063 or has pending against her or him any criminal prosecution or
1064 administrative enforcement action, in any jurisdiction, which

1065 involves fraud, dishonest dealing, or any act of moral
1066 turpitude.
1067 ~~(3) Each initial application for a correspondent mortgage~~
1068 ~~lender's license must be in a form prescribed by the commission.~~
1069 ~~The commission or office may require each applicant to provide~~
1070 ~~any information reasonably necessary to make a determination of~~
1071 ~~the applicant's eligibility for licensure. The commission or~~
1072 ~~office may require that each officer, director, and ultimate~~
1073 ~~equitable owner of a 10-percent or greater interest submit a~~
1074 ~~complete set of fingerprints taken by an authorized law~~
1075 ~~enforcement officer.~~
1076 (4) Each license is valid for the remainder of the
1077 biennium in which the license is issued.
1078 (5) A person licensed as a correspondent mortgage lender
1079 may make mortgage loans, but may not service a mortgage loan for
1080 more than 4 months after the date the mortgage loan was made or
1081 acquired by the correspondent mortgage lender.
1082 (6) A licensee under ss. 494.006-494.0077, or an agent or
1083 employee thereof, is deemed to have consented to the venue of
1084 courts of competent jurisdiction in this state regarding any
1085 matter within the authority of ss. 494.001-494.0077 regardless
1086 of where an act or violation was committed.
1087 (7) A correspondent mortgage lender is subject to the same
1088 requirements and restrictions as a licensed mortgage lender
1089 unless otherwise provided in this section.
1090 (8) A license issued under this section is not
1091 transferable or assignable.
1092 (9) A correspondent mortgage lender or branch office

1093 license may be canceled if it was issued through mistake or
1094 inadvertence of the office. A notice of cancellation must be
1095 issued by the office within 90 days after the issuance of the
1096 license. A notice of cancellation shall be effective upon
1097 receipt. The notice of cancellation shall provide the applicant
1098 with notification of the right to request a hearing within 21
1099 days after the applicant's receipt of the notice of
1100 cancellation. A license shall be reinstated if the applicant can
1101 demonstrate that the requirements for obtaining the license
1102 pursuant to this chapter have been satisfied.
1103 ~~(10) If an initial correspondent mortgage lender or branch~~
1104 ~~office license has been issued but the check upon which the~~
1105 ~~license is based is returned due to insufficient funds, the~~
1106 ~~license shall be deemed canceled. A license deemed canceled~~
1107 ~~pursuant to this subsection shall be reinstated if the office~~
1108 ~~receives a certified check for the appropriate amount within 30~~
1109 ~~days after the date the check was returned due to insufficient~~
1110 ~~funds.~~
1111 (10) ~~(11)~~ Each correspondent lender shall designate a
1112 principal representative who exercises control over the business
1113 and shall maintain a form prescribed by the commission
1114 designating the principal representative. If the form is not
1115 accurately maintained, the business is considered to be operated
1116 by each officer, director, or equitable owner of a 10-percent or
1117 greater interest in the business.
1118 (11) ~~(12)~~ ~~After October 1, 2001,~~ An applicant's principal
1119 representative must pass a written test prescribed by the
1120 commission and administered by the office, or must pass an

1121 electronic test prescribed by the commission and administered by
1122 the office or a third party approved by the office, which covers
1123 primary and subordinate mortgage financing transactions and the
1124 provisions of this chapter and rules adopted under this chapter.
1125 The commission may waive by rule the examination requirement for
1126 any person who has passed a test approved by the Conference of
1127 State Bank Supervisors, the American Association of Residential
1128 Mortgage Regulators, or the United States Department of Housing
1129 and Urban Development if the test covers primary and subordinate
1130 mortgage financing transactions. The commission may set by rule
1131 a fee not to exceed $100 for taking the examination. This
1132 requirement is satisfied if the principal representative has
1133 continuously served in the capacity of a principal
1134 representative for a licensed entity under this chapter for at
1135 least 1 year and has not had a lapse in designation as a
1136 principal representative of more than 2 years before the date of
1137 the submission of the application or amendment in the case of a
1138 change in the principal representative. This requirement is also
1139 satisfied if the principal representative holds an active
1140 license as a mortgage broker in this state.
1141 (12) ~~(13)~~ A correspondent lender shall notify the office of
1142 any change in the designation of its principal representative
1143 within 30 days after the change is effective. A new principal
1144 representative shall satisfy ~~the name and address of any new~~
1145 ~~principal representative and shall document that such person has~~
1146 ~~completed~~ the educational and testing requirements of this
1147 section within 90 days after being designated as ~~upon~~ the
1148 ~~lender's designation of a~~ new principal representative. This

1149 requirement is satisfied if the principal representative has
1150 continuously served in the capacity of a principal
1151 representative for a licensed entity under this chapter for at
1152 least 1 year and has not had a lapse in designation as a
1153 principal representative of more than 2 years before the date of
1154 the submission of the application or amendment in the case of a
1155 change in the principal representative. This requirement is also
1156 satisfied if the principal representative holds an active
1157 license as a mortgage broker in this state.
1158 Section 17. Paragraph (b) of subsection (1) and subsection
1159 (2) of section 494.0064, Florida Statutes, are amended to read:
1160 494.0064 Renewal of mortgage lender's license; branch
1161 office license renewal.--
1162 (1)
1163 (b) A licensee shall also submit, as part of the renewal
1164 form, certification that during the preceding 2 years the
1165 licensee's principal representative and~~,~~ loan originators~~, and~~
1166 ~~associates~~ have completed the professional continuing education
1167 requirements of s. 494.00295.
1168 (2) The commission shall adopt rules establishing a
1169 procedure for the biennial renewal of mortgage lender's
1170 licenses, correspondent lender's licenses, and branch office
1171 licenses ~~permits~~. The commission may prescribe the form for
1172 renewal and may require an update of all information provided in
1173 the licensee's initial application.
1174 Section 18. Section 494.0065, Florida Statutes, is amended
1175 to read:
1176 494.0065 Saving clause.--

1177 (1)(a) Any person in good standing who holds an active
1178 registration pursuant to former s. 494.039 or license pursuant
1179 to former s. 521.205, or any person who acted solely as a
1180 mortgage servicer on September 30, 1991, is eligible to apply to
1181 the office for a mortgage lender's license and is eligible for
1182 licensure if the applicant:
1183 1. For at least 12 months during the period of October 1,
1184 1989, through September 30, 1991, has engaged in the business of
1185 either acting as a seller or assignor of mortgage loans or as a
1186 servicer of mortgage loans, or both;
1187 2. Has documented a minimum net worth of $25,000 in
1188 audited financial statements; and
1189 3. Has applied for licensure pursuant to this section by
1190 January 1, 1992, and paid an application fee of $100.
1191 (b) A licensee pursuant to paragraph (a) may operate a
1192 wholly owned subsidiary or affiliate for the purpose of
1193 servicing accounts if the subsidiary or affiliate is operational
1194 as of September 30, 1991. Such subsidiary or affiliate is not
1195 required to obtain a separate license, but is subject to all the
1196 requirements of a licensee under ss. 494.006-494.0077.
1197 (2) A licensee issued a license pursuant to subsection (1)
1198 may renew its mortgage lending license if it documents a minimum
1199 net worth of $25,000, according to United States generally
1200 accepted accounting principles, which must be continuously
1201 maintained as a condition to licensure. The office shall require
1202 an audited financial statement which documents such net worth.
1203 (3) The commission may prescribe by rule forms and
1204 procedures for application for licensure, and amendment and

1205 withdrawal of application for licensure, or transfer, including
1206 any existing branch offices, in accordance with subsections (4)
1207 and (5), and for renewal of licensure of licensees under this
1208 section. The office may require each applicant to provide any
1209 information reasonably necessary to determine the applicant's
1210 eligibility for licensure. An application is considered received
1211 for purposes of s. 120.60 upon receipt of a completed
1212 application form as prescribed by commission rule, a
1213 nonrefundable application fee of $500, and any other fee
1214 prescribed by law.
1215 (4)(a) Notwithstanding ss. 494.0061(5) and 494.0067(2) ~~(3)~~,
1216 the ultimate equitable owner, as of the effective date of this
1217 act, of a mortgage lender licensed under this section may
1218 transfer, one time, at least 50 percent of the ownership,
1219 control, or power to vote any class of equity securities of such
1220 mortgage lender, except as provided in paragraph (b). For
1221 purposes of this subsection, satisfaction of the amount of the
1222 ownership transferred may be met in multiple transactions or in
1223 a single transaction.
1224 (b) A person who is an ultimate equitable owner on the
1225 effective date of this act may transfer, at any time, at least
1226 50 percent of the ownership, control, or power to vote any class
1227 of equity securities of such person to the person's spouse or
1228 child, and any such transferee may transfer, at any time, such
1229 ownership, control, or power to vote to a spouse or child of
1230 such transferee, in perpetuity.
1231 (c) For any transfer application filed on or after October
1232 1, 2006:

1233 1. An applicant must provide proof that the applicant's
1234 principal representative has completed 24 hours of instruction
1235 in primary and subordinate financing transactions and in the
1236 provisions of this chapter and rules adopted under this chapter.
1237 This requirement is satisfied if the principal representative
1238 has continuously served in the capacity of a principal
1239 representative for a licensed entity under this chapter for at
1240 least 1 year and has not had a lapse in designation as a
1241 principal representative of more than 2 years before the date of
1242 the submission of the application or amendment in the case of a
1243 change in the principal representative. This requirement is also
1244 satisfied if the principal representative holds an active
1245 license as a mortgage broker in this state.
1246 2. An applicant's principal representative must pass a
1247 written test prescribed by the commission and administered by
1248 the office, or must pass an electronic test prescribed by the
1249 commission and administered by the office or a third party
1250 approved by the office, which covers primary and subordinate
1251 mortgage financing transactions and the provisions of this
1252 chapter and rules adopted under this chapter. The commission may
1253 set by rule a fee not to exceed $100 for the electronic version
1254 of the mortgage broker test. The commission may waive by rule
1255 the examination requirement for any person who has passed a test
1256 approved by the Conference of State Bank Supervisors, the
1257 American Association of Residential Mortgage Regulators, or the
1258 United States Department of Housing and Urban Development if the
1259 test covers primary and subordinate mortgage financing
1260 transactions. This requirement is satisfied if the principal

1261 representative has continuously served in the capacity of a
1262 principal representative for a licensed entity under this
1263 chapter for at least 1 year and has not had a lapse in
1264 designation as a principal representative of more than 2 years
1265 before the date of the submission of the application or
1266 amendment in the case of a change in the principal
1267 representative. This requirement is also satisfied if the
1268 principal representative holds an active license as a mortgage
1269 broker in this state.
1270 (5) Each initial application for a transfer must be in the
1271 form prescribed by rule of the commission. The commission or
1272 office may require each applicant for any transfer to provide
1273 any information reasonably necessary to make a determination of
1274 the applicant's eligibility for licensure. The office shall
1275 issue the transfer of licensure to any person who submits the
1276 following documentation at least 90 days prior to the
1277 anticipated transfer:
1278 (a) A completed application form.
1279 (b) A nonrefundable fee set by rule of the commission in
1280 the amount of $500. An application is considered received for
1281 purposes of s. 120.60 upon receipt of a completed application
1282 form as prescribed by commission rule, a nonrefundable
1283 application fee of $500, and any other fee prescribed by law.
1284 (c) Audited financial statements that substantiate that
1285 the applicant has a bona fide and verifiable net worth,
1286 according to United States generally accepted accounting
1287 principles, of at least $25,000, which must be continuously
1288 maintained as a condition of licensure.

1289 (d) Documentation that the applicant is incorporated,
1290 registered, or otherwise formed as a general partnership,
1291 limited partnership, limited liability company, or other lawful
1292 entity under the laws of this state or another state of the
1293 United States.
1294 (e) A complete set of fingerprints as the commission
1295 requires by rule for ~~or office may require that~~ each designated
1296 principal representative, officer, director, control person,
1297 member, partner, or joint venturer of the applicant and the
1298 ultimate equitable owner of a 10-percent or greater interest in
1299 the applicant. A fingerprint card submitted to the office must
1300 be ~~submit a complete set of fingerprints~~ taken by an authorized
1301 law enforcement agency ~~officer~~. The office shall submit the
1302 fingerprints to the Department of Law Enforcement for state
1303 processing and the Department of Law Enforcement shall forward
1304 the fingerprints to the Federal Bureau of Investigation for
1305 federal processing. The cost of the fingerprint processing may
1306 be borne by the office, the employer, or the person subject to
1307 the background check. The Department of Law Enforcement shall
1308 submit an invoice to the office for the fingerprints received
1309 each month. The office shall screen the background results to
1310 determine if the applicant meets licensure requirements.
1311 (f) Information that the commission requires by rule
1312 concerning any designated principal representative; any officer,
1313 director, control person, member, partner, or joint venturer of
1314 the applicant or any person having the same or substantially
1315 similar status or performing substantially similar functions; or
1316 any individual who is the ultimate equitable owner of a 10-

1317 percent or greater interest in the mortgage lender. The
1318 commission may require information concerning such applicant or
1319 person, including, but not limited to, his or her full name and
1320 any other names by which he or she may have been known, age,
1321 social security number, qualifications and educational and
1322 business history, and disciplinary and criminal history.
1323 (6) Notwithstanding subsection (5), a transfer under
1324 subsection (4) may be denied if the applicant; designated
1325 principal representative; ~~,~~ any principal officer, ~~or~~ director,
1326 control person, member, partner, or joint venturer of the
1327 applicant; ~~,~~ or any natural person owning a 10-percent or greater
1328 interest in the applicant has committed any violation specified
1329 in s. 494.0072, or has entered a plea of nolo contendere,
1330 regardless of adjudication, or has an action pending against the
1331 applicant in any criminal prosecution or administrative
1332 enforcement action, in any jurisdiction, which involves fraud,
1333 dishonest dealing, or any act of moral turpitude.
1334 (7) A license issued in accordance with this section is
1335 not transferable or assignable except as provided in subsection
1336 (4).
1337 (8) Each person applying for a transfer of any branch
1338 office pursuant to subsection (4) must comply with the
1339 requirements of s. 494.0066.
1340 (9) Each mortgage lender shall designate a principal
1341 representative who exercises control over the business and shall
1342 keep the designation current on a form prescribed by commission
1343 rule designating the principal representative. If the
1344 information on the form is not kept current, the business is

1345 considered to be operated by each officer, director, or
1346 equitable owner of a 10-percent or greater interest in the
1347 business.
1348 (10) A lender shall notify the office of any change in the
1349 designation of its principal representative within 30 days after
1350 the change is effective. A new principal representative must
1351 satisfy the educational and testing requirements of this section
1352 within 90 days after being designated as the new principal
1353 representative. This requirement is satisfied if the principal
1354 representative has continuously served in the capacity of a
1355 principal representative for a licensed entity under this
1356 chapter for at least 1 year and has not had a lapse in
1357 designation as a principal representative of more than 2 years
1358 before the date of the submission of the application or
1359 amendment in the case of a change in the principal
1360 representative. This requirement is also satisfied if the
1361 principal representative currently holds an active license as a
1362 mortgage broker in this state.
1363 Section 19. Subsection (2) of section 494.0066, Florida
1364 Statutes, is amended to read:
1365 494.0066 Branch offices.--
1366 (2) The office shall issue a branch office license to a
1367 licensee licensed under ss. 494.006-494.0077 after the office
1368 determines that the licensee has submitted ~~upon receipt of~~ a
1369 completed branch office application form as prescribed by rule
1370 by the commission and an initial nonrefundable branch office
1371 license fee of $325. The branch office application must include
1372 the name and license number of the licensee under ss. 494.006-

1373 494.0077, the name of the licensee's employee in charge of the
1374 branch office, and the address of the branch office. The branch
1375 office license shall be issued in the name of the licensee under
1376 ss. 494.006-494.0077 and must be renewed in conjunction with the
1377 license renewal.
1378 Section 20. Section 494.0067, Florida Statutes, is amended
1379 to read:
1380 494.0067 Requirements of licensees under ss. 494.006-
1381 494.0077.--
1382 ~~(1) Each license of a mortgage lender, correspondent~~
1383 ~~mortgage lender, or branch office shall be prominently displayed~~
1384 ~~in the office for which it is issued.~~
1385 (1) ~~(2)~~ Each licensee under ss. 494.006-494.0077 which
1386 makes mortgage loans on real estate in this state shall transact
1387 business from a principal place of business. Each principal
1388 place of business and each branch office shall be operated under
1389 the full charge, control, and supervision of the licensee under
1390 ss. 494.006-494.0077.
1391 (2) ~~(3)~~ A license issued under ss. 494.006-494.0077 is not
1392 transferable or assignable.
1393 (3) Each licensee under ss. 494.006-494.0077 shall report,
1394 on a form prescribed by rule of the commission, any change in
1395 the information contained in any initial application form, or
1396 any amendment thereto, not later than 30 days after the change
1397 is effective.
1398 (4) Each licensee under ss. 494.006-494.0077 shall report
1399 any changes in the partners, officers, members, joint venturers,
1400 directors, or control persons of any licensee or changes in the

1401 form of business organization by written amendment in such form
1402 and at such time that the commission specifies by rule.
1403 (a) In any case in which a person or a group of persons,
1404 directly or indirectly or acting by or through one or more
1405 persons, proposes to purchase or acquire a controlling interest
1406 in a licensee, such person or group must submit an initial
1407 application for licensure as a mortgage lender or correspondent
1408 mortgage lender before such purchase or acquisition and at the
1409 time and in the form prescribed by the commission by rule.
1410 (b) As used in this subsection, the term "controlling
1411 interest" means possession of the power to direct or cause the
1412 direction of the management or policies of a company whether
1413 through ownership of securities, by contract, or otherwise. Any
1414 person who directly or indirectly has the right to vote 25
1415 percent or more of the voting securities of a company or who is
1416 entitled to 25 percent or more of the company's profits is
1417 presumed to possess a controlling interest.
1418 (c) Any addition of a designated principal representative,
1419 partner, officer, member, joint venturer, director, or control
1420 person of the applicant who does not have a controlling interest
1421 and who has not previously complied with the provisions of s.
1422 494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.
1423 494.0065(5)(e) and (f) shall be subject to such provisions
1424 unless required to file an initial application in accordance
1425 with paragraph (a). If the office determines that the licensee
1426 does not continue to meet licensure requirements, the office may
1427 bring administrative action in accordance with s. 494.0072 to
1428 enforce the provisions of this section.

1429 (d) The commission shall adopt rules pursuant to ss.
1430 120.536(1) and 120.54 providing for the waiver of the
1431 application required by this subsection if the person or group
1432 of persons proposing to purchase or acquire a controlling
1433 interest in a licensee has previously complied with the
1434 provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and
1435 (h), or s. 494.0065(5)(e) and (f) with the same legal entity or
1436 is currently licensed with the office under this chapter.
1437 ~~(4) The commission or office may require each licensee~~
1438 ~~under ss. 494.006-494.0077 to report any change of address of~~
1439 ~~the principal place of business, change of address of any branch~~
1440 ~~office, or change of principal officer, director, or ultimate~~
1441 ~~equitable owner of 10 percent or more of the licensed~~
1442 ~~corporation to the office in a form prescribed by rule of the~~
1443 ~~commission not later than 30 business days after the change is~~
1444 ~~effective.~~
1445 (5) Each licensee under ss. 494.006-494.0077 shall report
1446 in a form prescribed by rule by the commission any indictment,
1447 information, charge, conviction, plea of nolo contendere, or
1448 plea of guilty to any crime or administrative violation that
1449 involves fraud, dishonest dealing, or any other act of moral
1450 turpitude, in any jurisdiction, by the licensee under ss.
1451 494.006-494.0077 or any principal officer, director, or ultimate
1452 equitable owner of 10 percent or more of the licensed
1453 corporation, not later than 30 business days after the
1454 indictment, information, charge, conviction, or final
1455 administrative action.
1456 (6) Each licensee under ss. 494.006-494.0077 shall report

1457 any action in bankruptcy, voluntary or involuntary, to the
1458 office, not later than 7 business days after the action is
1459 instituted.
1460 (7) Each licensee under ss. 494.006-494.0077 shall
1461 designate a registered agent in this state for service of
1462 process.
1463 (8) Each licensee under ss. 494.006-494.0077 shall provide
1464 an applicant for a mortgage loan a good faith estimate of the
1465 costs the applicant can reasonably expect to pay in obtaining a
1466 mortgage loan. The good faith estimate of costs shall be mailed
1467 or delivered to the applicant within a reasonable time after the
1468 licensee receives a written loan application from the applicant.
1469 The estimate of costs may be provided to the applicant by a
1470 person other than the licensee making the loan. The commission
1471 may adopt rules that set forth the disclosure requirements of
1472 this section.
1473 (9) On or before April 30, 2000, each mortgage lender or
1474 correspondent mortgage lender shall file an initial report
1475 stating the full legal name, residential address, social
1476 security number, date of birth, mortgage broker license number,
1477 date of hire, and, if applicable, date of termination for each
1478 person who acted as a loan originator or an associate of the
1479 mortgage lender or correspondent mortgage lender during the
1480 immediate preceding quarter. Thereafter, a mortgage lender or
1481 correspondent mortgage lender shall file a report only if a
1482 person became or ceased to be a loan originator or an associate
1483 of the mortgage lender or correspondent mortgage lender during
1484 the immediate preceding quarter. Such report shall be filed

1485 within 30 days after the last day of each calendar quarter and
1486 shall contain the full legal name, residential address, social
1487 security number, date of birth, date of hire and, if applicable,
1488 the mortgage broker license number and date of termination of
1489 each person who became or ceased to be a loan originator or an
1490 associate of the mortgage lender or correspondent mortgage
1491 lender during the immediate preceding quarter. The commission
1492 shall prescribe, by rule, the procedures for filing reports
1493 required by this subsection.
1494 (10)(a) Each licensee shall require the principal
1495 representative and all loan originators ~~or associates~~ who
1496 perform services for the licensee to complete 14 hours of
1497 professional continuing education during each biennial license
1498 period. The education shall cover primary and subordinate
1499 mortgage financing transactions and the provisions of this
1500 chapter and the rules adopted under this chapter.
1501 (b) The licensee shall maintain records of such training
1502 for a period of 4 years, including records of the content of and
1503 hours designated for each program and the date and location of
1504 the program.
1505 (c) Evidence of completion of such programs shall be
1506 included with the licensee's renewal application.
1507 Section 21. Paragraphs (s), (t), and (u) are added to
1508 subsection (2) of section 494.0072, Florida Statutes, and
1509 subsection (3) of that section is amended, to read:
1510 494.0072 Administrative penalties and fines; license
1511 violations.--
1512 (2) Each of the following acts constitutes a ground for

1513 which the disciplinary actions specified in subsection (1) may
1514 be taken:
1515 (s) Payment to the office for a license or permit with a
1516 check or electronic transmission of funds that is dishonored by
1517 the applicant's or licensee's financial institution.
1518 (t) Having a final judgment entered against the applicant
1519 or licensee in a civil action upon grounds of fraud,
1520 embezzlement, misrepresentation, or deceit.
1521 (u)1. Having been the subject of any decision, finding,
1522 injunction, suspension, prohibition, revocation, denial,
1523 judgment, or administrative order by any court of competent
1524 jurisdiction, administrative law judge, state or federal agency,
1525 national securities exchange, national commodities exchange,
1526 national option exchange, national securities association,
1527 national commodities association, or national option association
1528 involving a violation of any federal or state securities or
1529 commodities law, or any rule or regulation adopted under such
1530 law, or involving a violation of any rule or regulation of any
1531 national securities, commodities, or options exchange or
1532 association.
1533 2. Having been the subject of any injunction or adverse
1534 administrative order by a state or federal agency regulating
1535 banking, insurance, finance or small loan companies, real
1536 estate, mortgage brokers or lenders, money transmitters, or
1537 other related or similar industries.
1538 (3) A mortgage lender or correspondent mortgage lender is
1539 subject to the disciplinary actions specified in subsection (1)
1540 if any officer, member, director, control person, joint

1541 venturer, or ultimate equitable owner of a 10-percent or greater
1542 interest in the mortgage lender or correspondent mortgage
1543 lender, associate, or employee of the mortgage lender or
1544 correspondent mortgage lender violates any provision of
1545 subsection (2).
1546 Section 22. Subsection (2) of section 494.00721, Florida
1547 Statutes, is amended to read:
1548 494.00721 Net worth.--
1549 (2) If a mortgage lender or correspondent mortgage lender
1550 fails to satisfy the net worth requirements, the mortgage lender
1551 or correspondent mortgage lender shall immediately cease taking
1552 any new mortgage loan applications. Thereafter, the mortgage
1553 lender or correspondent mortgage lender shall have up to 60 days
1554 within which to satisfy the net worth requirements. If the
1555 licensee makes the office aware, prior to an examination, that
1556 the licensee no longer meets the net worth requirements, the
1557 mortgage lender or correspondent mortgage lender shall have 120
1558 days within which to satisfy the net worth requirements. A
1559 mortgage lender or correspondent mortgage lender shall not
1560 resume acting as a mortgage lender or correspondent mortgage
1561 lender without written authorization from the office, which
1562 authorization shall be granted if the mortgage lender or
1563 correspondent mortgage lender provides the office with
1564 documentation which satisfies the requirements of s.
1565 494.0061(2)~~(1)~~(c), s. 494.0062(2)~~(1)~~(c), or s. 494.0065(2),
1566 whichever is applicable.
1567 Section 23. Paragraph (c) of subsection (3) of section
1568 501.137, Florida Statutes, is amended to read:

1569 501.137 Mortgage lenders; tax and insurance payments from
1570 escrow accounts; duties.--
1571 (3)
1572 (c) If the lender violates paragraph (a) and the premium
1573 payment is more than 90 days overdue or if the insurer refuses
1574 to reinstate the insurance policy, the lender shall pay the
1575 difference between the cost of the previous insurance policy and
1576 a new, comparable insurance policy for a period of 2 years. If
1577 the lender refuses, the lender is liable for the reasonable
1578 attorney's fees and costs of the property owner for a violation
1579 of this section.
1580 Section 24. Subsection (8) is added to section 516.01,
1581 Florida Statutes, to read:
1582 516.01 Definitions.--As used in this chapter, the term:
1583 (8) "Control person" means an individual, partnership,
1584 corporation, trust, or other organization that possesses the
1585 power, directly or indirectly, to direct the management or
1586 policies of a company, whether through ownership of securities,
1587 by contract, or otherwise. A person is presumed to control a
1588 company if, with respect to a particular company, that person:
1589 (a) Is a director, general partner, or officer exercising
1590 executive responsibility or having similar status or functions;
1591 (b) Directly or indirectly may vote 10 percent or more of
1592 a class of a voting security or sell or direct the sale of 10
1593 percent or more of a class of voting securities; or
1594 (c) In the case of a partnership, may receive upon
1595 dissolution or has contributed 10 percent or more of the
1596 capital.

1597 Section 25. Section 516.03, Florida Statutes, is amended
1598 to read:
1599 516.03 Application for license; fees; etc.--
1600 (1) APPLICATION.--Application for a license to make loans
1601 under this chapter shall be in the form prescribed by rule of
1602 the commission. The commission may require each applicant to
1603 provide any information reasonably necessary to determine the
1604 applicant's eligibility for licensure. The applicant shall also
1605 provide information that the office requires concerning any
1606 officer, director, control person, member, partner, or joint
1607 venturer of the applicant or any person having the same or
1608 substantially similar status or performing substantially similar
1609 functions or concerning any individual who is the ultimate
1610 equitable owner of a 10-percent or greater interest in the
1611 applicant. The office may require information concerning any
1612 such applicant or person, including, but not limited to, his or
1613 her full name and any other names by which he or she may have
1614 been known, age, social security number, residential history,
1615 qualifications, educational and business history, and
1616 disciplinary and criminal history. The applicant must provide
1617 evidence of liquid assets of at least $25,000~~, and shall contain~~
1618 ~~the name, residence and business addresses of the applicant and,~~
1619 ~~if the applicant is a copartnership or association, of every~~
1620 ~~member thereof and, if a corporation, of each officer and~~
1621 ~~director thereof, also the county and municipality with the~~
1622 ~~street and number or approximate location where the business is~~
1623 ~~to be conducted, and such further relevant information as the~~
1624 ~~commission or office may require~~. At the time of making such

1625 application the applicant shall pay to the office a
1626 nonrefundable biennial license fee of $625. Applications, except
1627 for applications to renew or reactivate a license, must also be
1628 accompanied by a nonrefundable ~~an~~ investigation fee of $200. An
1629 application is considered received for purposes of s. 120.60
1630 upon receipt of a completed application form as prescribed by
1631 commission rule, a nonrefundable application fee of $625, and
1632 any other fee prescribed by law. The commission may adopt rules
1633 requiring ~~to allow~~ electronic submission of any form, document,
1634 or fee required by this act if such rules reasonably accommodate
1635 technological or financial hardship. The commission may
1636 prescribe by rule requirements and procedures for obtaining an
1637 exemption due to a technological or financial hardship.
1638 (2) FEES.--Fees ~~herein~~ provided for in this section shall
1639 be collected by the office and shall be turned into the State
1640 Treasury to the credit of the regulatory trust fund under the
1641 office. The office shall have full power to employ such
1642 examiners or clerks to assist the office as may from time to
1643 time be deemed necessary and fix their compensation. The
1644 commission may adopt rules requiring ~~to allow~~ electronic
1645 submission of any fee required by this section if such rules
1646 reasonably accommodate technological or financial hardship. The
1647 commission may prescribe by rule requirements and procedures for
1648 obtaining an exemption due to a technological or financial
1649 hardship.
1650 Section 26. Paragraph (a) of subsection (3) of section
1651 516.031, Florida Statutes, is amended to read:
1652 516.031 Finance charge; maximum rates.--

1653 (3) OTHER CHARGES.--
1654 (a) In addition to the interest, delinquency, and
1655 insurance charges herein provided for, no further or other
1656 charges or amount whatsoever for any examination, service,
1657 commission, or other thing or otherwise shall be directly or
1658 indirectly charged, contracted for, or received as a condition
1659 to the grant of a loan, except:
1660 1. An amount not to exceed $25 ~~$10~~ to reimburse a portion
1661 of the costs for investigating the character and credit of the
1662 person applying for the loan;
1663 2. An annual fee of $25 on the anniversary date of each
1664 line-of-credit account;
1665 3. Charges paid for brokerage fee on a loan or line of
1666 credit of more than $10,000, title insurance, and the appraisal
1667 of real property offered as security when paid to a third party
1668 and supported by an actual expenditure;
1669 4. Intangible personal property tax on the loan note or
1670 obligation when secured by a lien on real property;
1671 5. The documentary excise tax and lawful fees, if any,
1672 actually and necessarily paid out by the licensee to any public
1673 officer for filing, recording, or releasing in any public office
1674 any instrument securing the loan, which fees may be collected
1675 when the loan is made or at any time thereafter;
1676 6. The premium payable for any insurance in lieu of
1677 perfecting any security interest otherwise required by the
1678 licensee in connection with the loan, if the premium does not
1679 exceed the fees which would otherwise be payable, which premium
1680 may be collected when the loan is made or at any time

1681 thereafter;
1682 7. Actual and reasonable attorney's fees and court costs
1683 as determined by the court in which suit is filed;
1684 8. Actual and commercially reasonable expenses of
1685 repossession, storing, repairing and placing in condition for
1686 sale, and selling of any property pledged as security; or
1687 9. A delinquency charge not to exceed $10 for each payment
1688 in default for a period of not less than 10 days, if the charge
1689 is agreed upon, in writing, between the parties before imposing
1690 the charge.
1691
1692 Any charges, including interest, in excess of the combined total
1693 of all charges authorized and permitted by this chapter
1694 constitute a violation of chapter 687 governing interest and
1695 usury, and the penalties of that chapter apply. In the event of
1696 a bona fide error, the licensee shall refund or credit the
1697 borrower with the amount of the overcharge immediately but
1698 within 20 days from the discovery of such error.
1699 Section 27. Section 516.05, Florida Statutes, is amended
1700 to read:
1701 516.05 License.--
1702 (1) Upon the filing of an application for a license and
1703 payment of all applicable fees, the office shall, unless the
1704 application is to renew or reactivate an existing license, make
1705 an investigation of the facts concerning the applicant's
1706 background ~~proposed activities~~. If the office determines that a
1707 license should be granted, it shall issue the license for a
1708 period not to exceed 2 years. Biennial licensure periods and

1709 procedures for renewal of licenses shall be established by the
1710 rule of the commission. If the office determines that grounds
1711 exist under this chapter for denial of an application other than
1712 an application to renew a license, it shall deny such
1713 application~~, return to the applicant the sum paid as a license~~
1714 ~~fee, and retain the investigation fee~~.
1715 (2) A license that is not renewed at the end of the
1716 biennium established by the commission shall automatically
1717 revert to inactive status. An inactive license may be
1718 reactivated upon submission of a completed reactivation
1719 application, payment of the biennial license fee, and payment of
1720 a reactivation fee which shall equal the biennial license fee. A
1721 license expires on the date at which it has been inactive for 6
1722 months.
1723 (3) Only one place of business for the purpose of making
1724 loans under this chapter may be maintained under one license,
1725 but the office may issue additional licenses to a licensee upon
1726 compliance with all the provisions of this chapter governing
1727 issuance of a single license.
1728 (4) Each licensee shall report, on a form prescribed by
1729 rule of the commission, any change to the information contained
1730 in any initial application form or any amendment to such
1731 application not later than 30 days after the change is
1732 effective.
1733 (5) Each licensee shall report any changes in the
1734 partners, officers, members, joint venturers, directors, or
1735 control persons of any licensee, or changes in the form of
1736 business organization, by written amendment in such form and at

1737 such time as the commission specifies by rule.
1738 (a) In any case in which a person or a group of persons,
1739 directly or indirectly or acting by or through one or more
1740 persons, proposes to purchase or acquire a controlling interest
1741 in a licensee, such person or group must submit an initial
1742 application for licensure before such purchase or acquisition at
1743 such time and in such form as the commission prescribes by rule.
1744 (b) As used in this subsection, the term "controlling
1745 interest" means possession of the power to direct or cause the
1746 direction of the management or policies of a company whether
1747 through ownership of securities, by contract, or otherwise. Any
1748 person who directly or indirectly has the right to vote 25
1749 percent or more of the voting securities of a company or is
1750 entitled to 25 percent or more of the company's profits is
1751 presumed to possess a controlling interest.
1752 (c) Any addition of a partner, officer, member, joint
1753 venturer, director, or control person of the applicant who does
1754 not have a controlling interest and who has not previously
1755 complied with the provisions of s. 516.03(1) shall be subject to
1756 such provisions unless required to file an initial application
1757 in accordance with paragraph (a). If the office determines that
1758 the licensee does not continue to meet licensure requirements,
1759 the office may bring administrative action in accordance with s.
1760 516.07 to enforce the provisions of this chapter.
1761 (d) The commission shall adopt rules pursuant to ss.
1762 120.536(1) and 120.54 providing for the waiver of the
1763 application required by this subsection if the person or group
1764 of persons proposing to purchase or acquire a controlling

1765 interest in a licensee has previously complied with the
1766 provisions of s. 516.03(1) with the same legal entity or is
1767 currently licensed with the office under this chapter.
1768 ~~(4) Prior to relocating his or her place of business, a~~
1769 ~~licensee must file with the office, in the manner prescribed by~~
1770 ~~commission rule, notice of the relocation.~~
1771 (6) ~~(5)~~ A licensee may conduct the business of making loans
1772 under this chapter within a place of business in which other
1773 business is solicited or engaged in, unless the office shall
1774 find that the conduct of such other business by the licensee
1775 results in an evasion of this chapter. Upon such finding, the
1776 office shall order the licensee to desist from such evasion;
1777 provided, however, that no license shall be granted to or
1778 renewed for any person or organization engaged in the pawnbroker
1779 business.
1780 ~~(6) If any person purchases substantially all of the~~
1781 ~~assets of any existing licensed place of business, the purchaser~~
1782 ~~shall give immediate notice thereof to the office and shall be~~
1783 ~~granted a 90-day temporary license for the place of business~~
1784 ~~within 10 days after the office's receipt of an application for~~
1785 ~~a permanent license. Issuance of a temporary license for a place~~
1786 ~~of business nullifies the existing license for the place of~~
1787 ~~business, and the temporary licensee is subject to any~~
1788 ~~disciplinary action provided for by this chapter.~~
1789 (7) Licenses are not transferable or assignable. A
1790 licensee may invalidate any license by delivering it to the
1791 office with a written notice of the delivery, but such delivery
1792 does not affect any civil or criminal liability or the authority

1793 to enforce this chapter for acts committed in violation thereof.
1794 (8) The office may refuse to process an initial
1795 application for a license if the applicant or any person with
1796 power to direct the management or policies of the applicant's
1797 business is the subject of a pending criminal prosecution in any
1798 jurisdiction until conclusion of such criminal prosecution.
1799 (9) A licensee that is the subject of a voluntary or
1800 involuntary bankruptcy filing must report such filing to the
1801 office within 7 business days after the filing date.
1802 Section 28. Subsection (1) of section 516.07, Florida
1803 Statutes, is amended to read:
1804 516.07 Grounds for denial of license or for disciplinary
1805 action.--
1806 (1) The following acts are violations of this chapter and
1807 constitute grounds for denial of an application for a license to
1808 make consumer finance loans and grounds for any of the
1809 disciplinary actions specified in subsection (2):
1810 (a) A material misstatement of fact in an application for
1811 a license.~~;~~
1812 (b) Failure to maintain liquid assets of at least $25,000
1813 at all times for the operation of business at a licensed
1814 location or proposed location.~~;~~
1815 (c) Failure to demonstrate financial responsibility,
1816 experience, character, or general fitness, such as to command
1817 the confidence of the public and to warrant the belief that the
1818 business operated at the licensed or proposed location is
1819 lawful, honest, fair, efficient, and within the purposes of this
1820 chapter.~~;~~

1821 (d) The violation, either knowingly or without the
1822 exercise of due care, of any provision of this chapter, any rule
1823 or order adopted under this chapter, or any written agreement
1824 entered into with the office.~~;~~
1825 (e) Any act of fraud, misrepresentation, or deceit,
1826 regardless of reliance by or damage to a borrower, or any
1827 illegal activity, where such acts are in connection with a loan
1828 under this chapter. Such acts include, but are not limited to:
1829 1. Willful imposition of illegal or excessive charges; or
1830 2. Misrepresentation, circumvention, or concealment of any
1831 matter required to be stated or furnished to a borrower.~~;~~
1832 (f) The use of unreasonable collection practices or of
1833 false, deceptive, or misleading advertising, where such acts are
1834 in connection with the operation of a business to make consumer
1835 finance loans.~~;~~
1836 (g) Any violation of part III of chapter 817 or part II of
1837 chapter 559 or of any rule adopted under part II of chapter
1838 559.~~;~~
1839 (h) Failure to maintain, preserve, and keep available for
1840 examination, all books, accounts, or other documents required by
1841 this chapter, by any rule or order adopted under this chapter,
1842 or by any agreement entered into with the office.~~;~~
1843 (i) Refusal to permit inspection of books and records in
1844 an investigation or examination by the office or refusal to
1845 comply with a subpoena issued by the office.~~;~~
1846 (j) Pleading nolo contendere to, or having been convicted
1847 or found guilty of, a crime involving fraud, dishonest dealing,
1848 or any act of moral turpitude, regardless of whether

1849 adjudication is withheld.~~;~~
1850 (k) Paying money or anything else of value, directly or
1851 indirectly, to any person as compensation, inducement, or reward
1852 for referring loan applicants to a licensee.~~;~~
1853 (l) Allowing any person other than the licensee to use the
1854 licensee's business name, address, or telephone number in an
1855 advertisement.~~;~~
1856 (m) Accepting or advertising that the licensee accepts
1857 money on deposit or as consideration for the issuance or
1858 delivery of certificates of deposit, savings certificates, or
1859 similar instruments, except to the extent permitted under
1860 chapter 517.~~; or~~
1861 (n) Failure to pay any fee, charge, or fine imposed or
1862 assessed pursuant to this chapter or any rule adopted under this
1863 chapter.
1864 (o) Using the name or logo of a financial institution, as
1865 defined in s. 655.005(1), or its affiliates or subsidiaries when
1866 marketing or soliciting existing or prospective customers if
1867 such marketing materials are used without the written consent of
1868 the financial institution and in a manner that would lead a
1869 reasonable person to believe that the material or solicitation
1870 originated from, was endorsed by, or is related to or the
1871 responsibility of the financial institution or its affiliates or
1872 subsidiaries.
1873 (p) Payment to the office for a license or permit with a
1874 check or electronic transmission of funds that is dishonored by
1875 the applicant's or licensee's financial institution.
1876 Section 29. Section 516.08, Florida Statutes, is repealed.

1877 Section 30. Subsection (3) is added to section 516.12,
1878 Florida Statutes, to read:
1879 516.12 Records to be kept by licensee.--
1880 (3) The commission may prescribe by rule the minimum
1881 information to be shown in the books, accounts, records, and
1882 documents of licensees for purposes of enabling the office to
1883 determine the licensee's compliance with ss. 516.001-516.36. In
1884 addition, the commission may prescribe by rule the requirements
1885 for the destruction of books, accounts, records, and documents
1886 retained by the licensee after completion of the time period
1887 specified in subsection (1).
1888 Section 31. Section 516.19, Florida Statutes, is amended
1889 to read:
1890 516.19 Penalties.--Any person who violates any of the
1891 provisions of s. 516.02, s. 516.031, s. 516.05(3), ~~s. 516.05(4),~~
1892 s. 516.05(6) ~~(5)~~, or s. 516.07(1)(e) is guilty of a misdemeanor
1893 of the first degree, punishable as provided in s. 775.082 or s.
1894 775.083.
1895 Section 32. Subsection (4) of section 517.021, Florida
1896 Statutes, is amended to read:
1897 517.021 Definitions.--When used in this chapter, unless
1898 the context otherwise indicates, the following terms have the
1899 following respective meanings:
1900 (4) "Branch office" means any location in this state of a
1901 dealer or investment adviser at which one or more associated
1902 persons regularly conduct the business of rendering investment
1903 advice or effecting any transactions in, or inducing or
1904 attempting to induce the purchase or sale of, any security or

1905 any location that is held out as such. The commission may adopt
1906 by rule exceptions to this definition for dealers in order to
1907 maintain consistency with the definition of a branch office used
1908 by self-regulatory organizations authorized by the Securities
1909 and Exchange Commission, including, but not limited to, the
1910 National Association of Securities Dealers or the New York Stock
1911 Exchange. The commission may adopt by rule exceptions to this
1912 definition for investment advisers ~~office of a dealer or~~
1913 ~~investment adviser located in this state, other than the~~
1914 ~~principal office of the dealer or investment adviser, which~~
1915 ~~nonprincipal office is owned or controlled by the dealer or~~
1916 ~~investment adviser for the purpose of conducting a securities~~
1917 ~~business~~.
1918 Section 33. Subsection (9) of section 517.051, Florida
1919 Statutes, is amended to read:
1920 517.051 Exempt securities.--The exemptions provided herein
1921 from the registration requirements of s. 517.07 are self-
1922 executing and do not require any filing with the office prior to
1923 claiming such exemption. Any person who claims entitlement to
1924 any of these exemptions bears the burden of proving such
1925 entitlement in any proceeding brought under this chapter. The
1926 registration provisions of s. 517.07 do not apply to any of the
1927 following securities:
1928 (9) A security issued by a corporation organized and
1929 operated exclusively for religious, educational, benevolent,
1930 fraternal, charitable, or reformatory purposes and not for
1931 pecuniary profit, no part of the net earnings of which
1932 corporation inures to the benefit of any private stockholder or

1933 individual, or any security of a fund that is excluded from the
1934 definition of an investment company under s. 3(c)(10)(B) of the
1935 Investment Company Act of 1940; provided that no person shall
1936 directly or indirectly offer or sell securities under this
1937 subsection except by an offering circular containing full and
1938 fair disclosure, as prescribed by the rules of the commission,
1939 of all material information, including, but not limited to, a
1940 description of the securities offered and terms of the offering,
1941 a description of the nature of the issuer's business, a
1942 statement of the purpose of the offering and the intended
1943 application by the issuer of the proceeds thereof, and financial
1944 statements of the issuer prepared in conformance with United
1945 States generally accepted accounting principles. Section 6(c) of
1946 the Philanthropy Protection Act of 1995, Pub. L. No. 104-62,
1947 shall not preempt any provision of this chapter.
1948 Section 34. Subsection (18) of section 517.061, Florida
1949 Statutes, is amended to read:
1950 517.061 Exempt transactions.--The exemption for each
1951 transaction listed below is self-executing and does not require
1952 any filing with the office prior to claiming such exemption. Any
1953 person who claims entitlement to any of the exemptions bears the
1954 burden of proving such entitlement in any proceeding brought
1955 under this chapter. The registration provisions of s. 517.07 do
1956 not apply to any of the following transactions; however, such
1957 transactions are subject to the provisions of ss. 517.301,
1958 517.311, and 517.312:
1959 (18) The offer or sale of any security effected by or
1960 through a person in compliance with ~~registered pursuant to~~ s.

1961 517.12(17).
1962 Section 35. Paragraph (g) of subsection (3) of section
1963 517.081, Florida Statutes, is amended to read:
1964 517.081 Registration procedure.--
1965 (3) The office may require the applicant to submit to the
1966 office the following information concerning the issuer and such
1967 other relevant information as the office may in its judgment
1968 deem necessary to enable it to ascertain whether such securities
1969 shall be registered pursuant to the provisions of this section:
1970 (g)1. A specimen copy of the security and a copy of any
1971 circular, prospectus, advertisement, or other description of
1972 such securities.
1973 2. The commission shall adopt a form for a simplified
1974 offering circular to be used solely by corporations to register,
1975 under this section, securities of the corporation that are sold
1976 in offerings in which the aggregate offering price in any
1977 consecutive 12-month period does not exceed the amount provided
1978 in s. 3(b) of the Securities Act of 1933. The following issuers
1979 shall not be eligible to submit a simplified offering circular
1980 adopted pursuant to this subparagraph:
1981 a. An issuer seeking to register securities for resale by
1982 persons other than the issuer.
1983 b. An issuer who is subject to any of the
1984 disqualifications described in 17 C.F.R. s. 230.262, adopted
1985 pursuant to the Securities Act of 1933, or who has been or is
1986 engaged or is about to engage in an activity that would be
1987 grounds for denial, revocation, or suspension under s. 517.111.
1988 For purposes of this subparagraph, an issuer includes an

1989 issuer's director, officer, shareholder who owns at least 10
1990 percent of the shares of the issuer, promoter, or selling agent
1991 of the securities to be offered or any officer, director, or
1992 partner of such selling agent.
1993 c. An issuer who is a development-stage company that
1994 either has no specific business plan or purpose or has indicated
1995 that its business plan is to merge with an unidentified company
1996 or companies.
1997 d. An issuer of offerings in which the specific business
1998 or properties cannot be described.
1999 e. Any issuer the office determines is ineligible if the
2000 form would not provide full and fair disclosure of material
2001 information for the type of offering to be registered by the
2002 issuer.
2003 f. Any corporation which has failed to provide the office
2004 the reports required for a previous offering registered pursuant
2005 to this subparagraph.
2006
2007 As a condition precedent to qualifying for use of the simplified
2008 offering circular, a corporation shall agree to provide the
2009 office with an annual financial report containing a balance
2010 sheet as of the end of the issuer's fiscal year and a statement
2011 of income for such year, prepared in accordance with United
2012 States generally accepted accounting principles and accompanied
2013 by an independent accountant's report. If the issuer has more
2014 than 100 security holders at the end of a fiscal year, the
2015 financial statements must be audited. Annual financial reports
2016 must be filed with the office within 90 days after the close of

2017 the issuer's fiscal year for each of the first 5 years following
2018 the effective date of the registration.
2019 Section 36. Subsections (6), (7), (10), (11), (15), and
2020 (17) of section 517.12, Florida Statutes, are amended to read:
2021 517.12 Registration of dealers, associated persons,
2022 investment advisers, and branch offices.--
2023 (6) A dealer, associated person, investment adviser, or
2024 branch office, in order to obtain registration, must file with
2025 the office a written application, on a form which the commission
2026 may by rule prescribe~~, verified under oath~~. The commission may
2027 establish, by rule, procedures for depositing fees and filing
2028 documents by electronic means provided such procedures provide
2029 the office with the information and data required by this
2030 section. Each dealer or investment adviser must also file an
2031 irrevocable written consent to service of civil process similar
2032 to that provided for in s. 517.101. The application shall
2033 contain such information as the commission or office may require
2034 concerning such matters as:
2035 (a) The name of the applicant and the address of its
2036 principal office and each office in this state.
2037 (b) The applicant's form and place of organization; and,
2038 if the applicant is a corporation, a copy of its articles of
2039 incorporation and amendments to the articles of incorporation
2040 or, if a partnership, a copy of the partnership agreement.
2041 (c) The applicant's proposed method of doing business and
2042 financial condition and history, including a certified financial
2043 statement showing all assets and all liabilities, including
2044 contingent liabilities of the applicant as of a date not more

2045 than 90 days prior to the filing of the application.
2046 (d) The names and addresses of all associated persons of
2047 the applicant to be employed in this state and the offices to
2048 which they will be assigned.
2049 (7) The application shall also contain such information as
2050 the commission or office may require about the applicant; any
2051 partner, officer, or director of the applicant or any person
2052 having a similar status or performing similar functions; any
2053 person directly or indirectly controlling the applicant; or any
2054 employee of a dealer or of an investment adviser rendering
2055 investment advisory services. Each applicant shall file a
2056 complete set of fingerprints. A fingerprint card submitted to
2057 the office must be taken by an authorized law enforcement agency
2058 ~~officer~~. The office shall submit the ~~Such~~ fingerprints ~~shall be~~
2059 ~~submitted~~ to the Department of Law Enforcement for state
2060 processing and the Department of Law Enforcement shall forward
2061 the fingerprints to ~~or~~ the Federal Bureau of Investigation for
2062 ~~state and~~ federal processing. The cost of the fingerprint
2063 processing may be borne by the office, the employer, or the
2064 person subject to the background check. The Department of Law
2065 Enforcement shall submit an invoice to the office for the
2066 fingerprints received each month. The office shall screen the
2067 background results to determine if the applicant meets licensure
2068 requirements. The commission may waive, by rule, the requirement
2069 that applicants must file a set of fingerprints or the
2070 requirement that such fingerprints must be processed by the
2071 Department of Law Enforcement or the Federal Bureau of
2072 Investigation. The commission or office may require information

2073 about any such applicant or person concerning such matters as:
2074 (a) His or her full name, and any other names by which he
2075 or she may have been known, and his or her age, social security
2076 number, photograph, qualifications, and educational and business
2077 history.
2078 (b) Any injunction or administrative order by a state or
2079 federal agency, national securities exchange, or national
2080 securities association involving a security or any aspect of the
2081 securities business and any injunction or administrative order
2082 by a state or federal agency regulating banking, insurance,
2083 finance, or small loan companies, real estate, mortgage brokers,
2084 or other related or similar industries, which injunctions or
2085 administrative orders relate to such person.
2086 (c) His or her conviction of, or plea of nolo contendere
2087 to, a criminal offense or his or her commission of any acts
2088 which would be grounds for refusal of an application under s.
2089 517.161.
2090 (d) The names and addresses of other persons of whom the
2091 office may inquire as to his or her character, reputation, and
2092 financial responsibility.
2093 (10) An applicant for registration shall pay an assessment
2094 fee of $200, in the case of a dealer or investment adviser, or
2095 $40, in the case of an associated person. The assessment fee of
2096 an associated person shall be reduced to $30, but only after the
2097 office determines, by final order, that sufficient funds have
2098 been allocated to the Securities Guaranty Fund pursuant to s.
2099 517.1203 to satisfy all valid claims filed in accordance with s.
2100 517.1203(2) and after all amounts payable under any service

2101 contract entered into by the office pursuant to s. 517.1204, and
2102 all notes, bonds, certificates of indebtedness, other
2103 obligations, or evidences of indebtedness secured by such notes,
2104 bonds, certificates of indebtedness, or other obligations, have
2105 been paid or provision has been made for the payment of such
2106 amounts, notes, bonds, certificates of indebtedness, other
2107 obligations, or evidences of indebtedness. An associated person
2108 may ~~not having current fingerprint cards filed with the National~~
2109 ~~Association of Securities Dealers or a national securities~~
2110 ~~exchange registered with the Securities and Exchange Commission~~
2111 ~~shall~~ be assessed an additional fee to cover the cost for the
2112 ~~said~~ fingerprint cards to be processed by the office. Such fee
2113 shall be determined by rule of the commission. Each dealer and
2114 each investment adviser shall pay an assessment fee of $100 for
2115 each office in this state~~, except its designated principal~~
2116 ~~office~~. Such fees become the revenue of the state, except for
2117 those assessments provided for under s. 517.131(1) until such
2118 time as the Securities Guaranty Fund satisfies the statutory
2119 limits, and are not returnable in the event that registration is
2120 withdrawn or not granted.
2121 (11) If the office finds that the applicant is of good
2122 repute and character and has complied with the provisions of
2123 this chapter and the rules made pursuant hereto, it shall
2124 register the applicant. The registration of each dealer,
2125 investment adviser, branch office, and associated person expires
2126 ~~will expire~~ on December 31 of the year the registration became
2127 effective unless the registrant has renewed his or her
2128 registration on or before that date. The commission may

2129 establish by rule procedures for renewing the registration of a
2130 branch office through the Central Registration Depository~~, and~~
2131 ~~the registration of each branch office will expire on March 31,~~
2132 ~~of the year in which it became effective unless the registrant~~
2133 ~~has renewed its registration on or before that date~~.
2134 Registration may be renewed by furnishing such information as
2135 the commission may require, together with payment of the fee
2136 required in subsection (10) for dealers, investment advisers,
2137 associated persons, or branch offices and the payment of any
2138 amount lawfully due and owing to the office pursuant to any
2139 order of the office or pursuant to any agreement with the
2140 office. Any dealer, investment adviser, or associated person
2141 registrant who has not renewed a registration by the time the
2142 current registration expires may request reinstatement of such
2143 registration by filing with the office, on or before January 31
2144 of the year following the year of expiration, such information
2145 as may be required by the commission, together with payment of
2146 the fee required in subsection (10) for dealers, investment
2147 advisers, or associated persons and a late fee equal to the
2148 amount of such fee. Any reinstatement of registration granted by
2149 the office during the month of January shall be deemed effective
2150 retroactive to January 1 of that year.
2151 (15)(a) In order to facilitate uniformity and streamline
2152 procedures for persons who are subject to registration in
2153 multiple jurisdictions, the commission may adopt by rule uniform
2154 forms that have been approved by the Securities and Exchange
2155 Commission, and any subsequent amendments to such forms, if the
2156 forms are substantially consistent with the provisions of this

2157 chapter. Uniform forms that the commission may adopt to
2158 administer this section include, but are not limited to:
2159 1. Form BR, Uniform Branch Office Registration Form,
2160 adopted October 2005.
2161 2. Form U4, Uniform Application for Securities Industry
2162 Registration or Transfer, adopted October 2005.
2163 3. Form U5, Uniform Termination Notice for Securities
2164 Industry Registration, adopted October 2005.
2165 4. Form ADV, Uniform Application for Investment Adviser
2166 Registration, adopted October 2003.
2167 5. Form ADV-W, Notice of Withdrawal from Registration as
2168 an Investment Adviser, adopted October 2003.
2169 6. Form BD, Uniform Application for Broker-Dealer
2170 Registration, adopted July 1999.
2171 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
2172 adopted August 1999.
2173 (b) In lieu of filing with the office the applications
2174 specified in subsection (6), the fees required by subsection
2175 (10), the renewals required by subsection (11), and the
2176 termination notices required by subsection (12), the commission
2177 may by rule establish procedures for the deposit of such fees
2178 and documents with the Central Registration Depository or the
2179 Investment Adviser Registration Depository of the National
2180 Association of Securities Dealers, Inc., as developed under
2181 contract with the North American Securities Administrators
2182 Association, Inc.~~; provided, however, that such procedures shall~~
2183 ~~provide the office with the information and data as required by~~
2184 ~~this section.~~

2185 (17)(a) A dealer that is located in Canada, does not have
2186 an ~~and has no~~ office or other physical presence in this state,
2187 and has made a notice filing in accordance with this subsection
2188 is exempt from the registration requirements of this section and
2189 may~~, provided the dealer is registered in accordance with this~~
2190 ~~section,~~ effect transactions in securities with or for, or
2191 induce or attempt to induce the purchase or sale of any security
2192 by:
2193 1. A person from Canada who is present ~~temporarily resides~~
2194 in this state and with whom the Canadian dealer had a bona fide
2195 dealer-client relationship before the person entered the United
2196 States; or
2197 2. A person from Canada who is present in ~~a resident of~~
2198 this state~~,~~ and whose transactions are in a self-directed, tax-
2199 advantaged ~~tax advantage~~ retirement plan in Canada of which the
2200 person is the holder or contributor.
2201 (b) A notice filing under this subsection must consist of
2202 documents the commission by rule requires to be filed, together
2203 with a consent to service of process and a nonrefundable filing
2204 fee of $200. The commission may establish by rule procedures for
2205 the deposit of fees and the filing of documents to be made by
2206 electronic means, if such procedures provide the office with the
2207 information and data required by this section ~~An associated~~
2208 ~~person who represents a Canadian dealer registered under this~~
2209 ~~section may, provided the agent is registered in accordance with~~
2210 ~~this section, effect transactions in securities in this state as~~
2211 ~~permitted for a dealer, under subsection (a)~~.

2212 (c) A Canadian dealer may make a notice filing ~~register~~
2213 under this subsection if the ~~section provided that such~~ dealer
2214 provides to the office:
2215 1. A notice filing ~~Files an application~~ in the form the
2216 commission requires by rule ~~required by the jurisdiction in~~
2217 ~~which the dealer has a head office~~.
2218 2. ~~Files~~ A consent to service of process.
2219 3. Evidence that the Canadian dealer is registered as a
2220 dealer ~~in good standing~~ in the jurisdiction in which the
2221 dealer's main office is located ~~from which it is effecting~~
2222 ~~transactions into this state and files evidence of such~~
2223 ~~registration with the office~~.
2224 4. Evidence that the Canadian dealer is a member of a
2225 self-regulatory organization or stock exchange in Canada.
2226 (d) The office may issue a permit to evidence the
2227 effectiveness of a notice filing for a Canadian dealer.
2228 (e) A notice filing is effective upon receipt by the
2229 office. A notice filing expires on December 31 of the year in
2230 which the filing becomes effective unless the Canadian dealer
2231 has renewed the filing on or before that date. A Canadian dealer
2232 may annually renew a notice filing by furnishing to the office
2233 such information as the office requires together with a renewal
2234 fee of $200 and the payment of any amount due and owing the
2235 office pursuant to any agreement with the office. Any Canadian
2236 dealer who has not renewed a notice filing by the time a current
2237 notice filing expires may request reinstatement of such notice
2238 filing by filing with the office, on or before January 31 of the
2239 year following the year the notice filing expires, such

2240 information as the commission requires by rule, together with
2241 the payment of $200 and a late fee of $200. A reinstatement of a
2242 notice filing granted by the office during the month of January
2243 is effective retroactively to January 1 of that year.
2244 (f) ~~(d)~~ An associated person who represents a Canadian
2245 dealer who has made a notice filing ~~registered~~ under this
2246 subsection is exempt from the registration requirements of this
2247 section and may effect ~~section in effecting~~ transactions in
2248 securities in this state as permitted for a dealer under
2249 paragraph (a) if such person ~~may register under this section~~
2250 ~~provided that such person:~~
2251 ~~1. Files an application in the form required by the~~
2252 ~~jurisdiction in which the dealer has its head office.~~
2253 ~~2.~~ is registered ~~in good standing~~ in the jurisdiction from
2254 which he or she is effecting transactions into this state ~~and~~
2255 ~~files evidence of such registration with the office~~.
2256 ~~(e) If the office finds that the applicant is of good~~
2257 ~~repute and character and has complied with the provisions of~~
2258 ~~this chapter, the office shall register the applicant.~~
2259 (g) ~~(f)~~ A Canadian dealer who has made a notice filing
2260 ~~registered~~ under this subsection ~~section~~ shall:
2261 1. Maintain its provincial or territorial registration and
2262 its membership in a self-regulatory organization or stock
2263 exchange in good standing.
2264 2. Provide the office upon request with its books and
2265 records relating to its business in this state as a dealer.
2266 3. Provide the office upon request notice of each civil,
2267 criminal, or administrative action initiated against the dealer.

2268 4. Disclose to its clients in this state that the dealer
2269 and its associated persons ~~agents~~ are not subject to the full
2270 regulatory requirements under this chapter.
2271 5. Correct any inaccurate information within 30 days
2272 after~~, if~~ the information contained in the notice filing
2273 ~~application form~~ becomes inaccurate for any reason ~~before or~~
2274 ~~after the dealer becomes registered~~.
2275 (h) ~~(g)~~ An associated person representing ~~of~~ a Canadian
2276 dealer who has made a notice filing ~~registered~~ under this
2277 subsection ~~section~~ shall:
2278 1. Maintain provincial or territorial registration in good
2279 standing.
2280 2. Provide the office upon request with notice of each
2281 civil, criminal, or administrative action initiated against such
2282 person.
2283 ~~3. Through the dealer, correct any inaccurate information~~
2284 ~~within 30 days, if the information contained in the application~~
2285 ~~form becomes inaccurate for any reason before or after the~~
2286 ~~associated person becomes registered.~~
2287 (i) A notice filing may be terminated by filing notice of
2288 such termination with the office. Unless another date is
2289 specified by the Canadian dealer, such notice is effective upon
2290 receipt of the notice by the office.
2291 (j) All fees collected under this subsection become the
2292 revenue of the state, except those assessments provided for
2293 under s. 517.131(1), until the Securities Guaranty Fund has
2294 satisfied the statutory limits. Such fees are not returnable if
2295 a notice filing is withdrawn.

2296 ~~(h) Renewal applications for Canadian dealers and~~
2297 ~~associated persons under this section must be filed before~~
2298 ~~December 31 each year. Every applicant for registration or~~
2299 ~~renewal registration under this section shall pay the fee for~~
2300 ~~dealers and associated persons under this chapter.~~
2301 Section 37. Paragraphs (b) and (e) of subsection (3) of
2302 section 517.131, Florida Statutes, are amended, and subsection
2303 (5) is added to that section, to read:
2304 517.131 Securities Guaranty Fund.--
2305 (3) Any person is eligible to seek recovery from the
2306 Securities Guaranty Fund if:
2307 (b) Such person has made all reasonable searches and
2308 inquiries to ascertain whether the judgment debtor possesses
2309 real or personal property or other assets subject to being sold
2310 or applied in satisfaction of the judgment, and by her or his
2311 search the person has discovered no property or assets; or she
2312 or he has discovered property and assets and has taken all
2313 necessary action and proceedings for the application thereof to
2314 the judgment, but the amount thereby realized was insufficient
2315 to satisfy the judgment. To verify compliance with such
2316 condition, the office may require such person to have a writ of
2317 execution be issued upon such judgment, ~~and~~ may ~~further~~ require
2318 a showing that no personal or real property of the judgment
2319 debtor liable to be levied upon in complete satisfaction of the
2320 judgment can be found, or may require an affidavit from the
2321 claimant setting forth the reasonable searches and inquiries
2322 undertaken and the result of those searches and inquiries.
2323 (e) The office waives compliance with the requirements of

2324 paragraph (a) or paragraph (b). The office may waive such
2325 compliance if the dealer, investment adviser, or associated
2326 person which is the subject of the claim filed with the office
2327 is the subject of any proceeding in which a receiver has been
2328 appointed by a court of competent jurisdiction. If the office
2329 waives such compliance, the office may, upon petition by the
2330 debtor or the court-appointed trustee, examiner, or receiver,
2331 distribute funds from the Securities Guaranty Fund up to the
2332 amount allowed under s. 517.141. Any waiver granted pursuant to
2333 this section shall be considered a judgment for purposes of
2334 complying with the requirements of this section and of s.
2335 517.141.
2336 (5) The commission may adopt rules pursuant to ss.
2337 120.536(1) and 120.54 specifying the procedures for complying
2338 with subsections (2), (3), and (4), including rules for the form
2339 of submission and guidelines for the sufficiency and content of
2340 submissions of notices and claims.
2341 Section 38. Subsections (2) and (5) of section 517.141,
2342 Florida Statutes, are amended, and subsection (11) is added to
2343 that section, to read:
2344 517.141 Payment from the fund.--
2345 (2) Regardless of the number of claims or claimants
2346 involved, payments for claims shall be limited in the aggregate
2347 to $100,000 against any one dealer, investment adviser, or
2348 associated person. If the total claims exceed the aggregate
2349 limit of $100,000, the office shall prorate the payment based
2350 upon the ratio that the person's claim bears to the total claims
2351 filed.

2352 (5) If the final judgment that ~~which~~ gave rise to the
2353 claim is overturned in any appeal or in any collateral
2354 proceeding, the claimant shall reimburse the fund all amounts
2355 paid from the fund to the claimant on the claim. If the claimant
2356 satisfies the judgment specified in s. 517.131(3)(a), the
2357 claimant shall reimburse the fund all amounts paid from the fund
2358 to the claimant on the claim. Such reimbursement shall be paid
2359 to the office within 60 days after the final resolution of the
2360 appellate or collateral proceedings or the satisfaction of
2361 judgment, with the 60-day period commencing on the date the
2362 final order or decision is entered in such proceedings.
2363 (11) The commission may adopt rules pursuant to ss.
2364 120.536(1) and 120.54 specifying procedures for complying with
2365 this section, including rules for the form of submission and
2366 guidelines for the sufficiency and content of submissions of
2367 notices and claims.
2368 Section 39. Subsection (1) of section 517.161, Florida
2369 Statutes, is amended to read:
2370 517.161 Revocation, denial, or suspension of registration
2371 of dealer, investment adviser, associated person, or branch
2372 office.--
2373 (1) Registration under s. 517.12 may be denied or any
2374 registration granted may be revoked, restricted, or suspended by
2375 the office if the office determines that such applicant or
2376 registrant:
2377 (a) Has violated any provision of this chapter or any rule
2378 or order made under this chapter;
2379 (b) Has made a material false statement in the application

2380 for registration;
2381 (c) Has been guilty of a fraudulent act in connection with
2382 rendering investment advice or in connection with any sale of
2383 securities, has been or is engaged or is about to engage in
2384 making fictitious or pretended sales or purchases of any such
2385 securities or in any practice involving the rendering of
2386 investment advice or the sale of securities which is fraudulent
2387 or in violation of the law;
2388 (d) Has made a misrepresentation or false statement to, or
2389 concealed any essential or material fact from, any person in the
2390 rendering of investment advice or the sale of a security to such
2391 person;
2392 (e) Has failed to account to persons interested for all
2393 money and property received;
2394 (f) Has not delivered, after a reasonable time, to persons
2395 entitled thereto securities held or agreed to be delivered by
2396 the dealer, broker, or investment adviser, as and when paid for,
2397 and due to be delivered;
2398 (g) Is rendering investment advice or selling or offering
2399 for sale securities through any associated person not registered
2400 in compliance with the provisions of this chapter;
2401 (h) Has demonstrated unworthiness to transact the business
2402 of dealer, investment adviser, or associated person;
2403 (i) Has exercised management or policy control over or
2404 owned 10 percent or more of the securities of any dealer or
2405 investment adviser that has been declared bankrupt, or had a
2406 trustee appointed under the Securities Investor Protection Act;
2407 or is, in the case of a dealer or investment adviser, insolvent;

2408 (j) Has been convicted of, or has entered a plea of guilty
2409 or nolo contendere to, a crime against the laws of this state or
2410 any other state or of the United States or of any other country
2411 or government which relates to registration as a dealer,
2412 investment adviser, issuer of securities, associated person, or
2413 branch office; which relates to the application for such
2414 registration; or which involves moral turpitude or fraudulent or
2415 dishonest dealing;
2416 (k) Has had a final judgment entered against her or him in
2417 a civil action upon grounds of fraud, embezzlement,
2418 misrepresentation, or deceit;
2419 (l) Is of bad business repute; ~~or~~
2420 (m) Has been the subject of any decision, finding,
2421 injunction, suspension, prohibition, revocation, denial,
2422 judgment, or administrative order by any court of competent
2423 jurisdiction, administrative law judge, or by any state or
2424 federal agency, national securities, commodities, or option
2425 exchange, or national securities, commodities, or option
2426 association, involving a violation of any federal or state
2427 securities or commodities law or any rule or regulation
2428 promulgated thereunder, or any rule or regulation of any
2429 national securities, commodities, or options exchange or
2430 national securities, commodities, or options association, or has
2431 been the subject of any injunction or adverse administrative
2432 order by a state or federal agency regulating banking,
2433 insurance, finance or small loan companies, real estate,
2434 mortgage brokers <u>or lenders</u>, <u>money transmitters,</u> or other
2435 related or similar industries. For purposes of this subsection,

2436 the office may not deny registration to any applicant who has
2437 been continuously registered with the office for 5 years from
2438 the entry of such decision, finding, injunction, suspension,
2439 prohibition, revocation, denial, judgment, or administrative
2440 order provided such decision, finding, injunction, suspension,
2441 prohibition, revocation, denial, judgment, or administrative
2442 order has been timely reported to the office pursuant to the
2443 commission's rules; or~~.~~
2444 (n) Made payment to the office for a registration or
2445 notice filing with a check or electronic transmission of funds
2446 that is dishonored by the applicant's, registrant's, or notice
2447 filer's financial institution.
2448 Section 40. Section 520.02, Florida Statutes, is amended
2449 to read:
2450 520.02 Definitions.--In this act, unless the context or
2451 subject matter otherwise requires:
2452 (1) "Branch" means any location, other than a licensee's
2453 principal place of business, at which a licensee operates or
2454 conducts business under this act or which a licensee owns or
2455 controls for the purpose of conducting business under this act.
2456 (2) "Cash price" means the price at which a seller, in the
2457 ordinary course of business, offers to sell for cash the
2458 property or service that is the subject of the transaction. At
2459 the seller's option, the term "cash price" may include the price
2460 of accessories, services related to the sale, service contracts,
2461 and taxes and fees for license, title, and registration of the
2462 motor vehicle. The term "cash price" does not include any
2463 finance charge.

2464 (3) "Commission" means the Financial Services Commission.
2465 (4) "Control person" means an individual, partnership,
2466 corporation, trust, or other organization that possesses the
2467 power, directly or indirectly, to direct the management or
2468 policies of a company, whether through ownership of securities,
2469 by contract, or otherwise. A person is presumed to control a
2470 company if, with respect to a particular company, that person:
2471 (a) Is a director, general partner, or officer exercising
2472 executive responsibility or having similar status or functions;
2473 (b) Directly or indirectly may vote 10 percent or more of
2474 a class of a voting security or sell or direct the sale of 10
2475 percent or more of a class of voting securities; or
2476 (c) In the case of a partnership, may receive upon
2477 dissolution or has contributed 10 percent or more of the
2478 capital.
2479 (5) "Down payment" means the amount, including the value
2480 of any property used as a trade-in, paid to a seller to reduce
2481 the cash price of goods or services purchased in a credit sale
2482 transaction. A deferred portion of a down payment may be treated
2483 as part of the down payment if it is payable not later than the
2484 due date of the second otherwise regularly scheduled payment and
2485 is not subject to a finance charge.
2486 (6) "Finance charge" means the cost of consumer credit as
2487 a dollar amount. The term "finance charge" includes any charge
2488 payable directly or indirectly by the buyer and imposed directly
2489 or indirectly by the seller as an incident to or a condition of
2490 the extension of credit. The term "finance charge" does not

2491 include any charge of a type payable in a comparable cash
2492 transaction.
2493 (7) "Holder" of a retail installment contract means the
2494 retail seller of a motor vehicle retail installment contract or
2495 an assignee of such contract.
2496 (8) "Mobile home" means a structure, transportable in one
2497 or more sections, which is 8 body feet or more in width and is
2498 32 body feet or more in length, designed to be used as a
2499 dwelling with or without a permanent foundation when connected
2500 to the required utilities, and includes the plumbing, heating,
2501 air-conditioning, and electrical systems contained therein.
2502 (9) "Motor vehicle" means any device or vehicle, including
2503 automobiles, motorcycles, motor trucks, trailers, mobile homes,
2504 and all other vehicles operated over the public highways and
2505 streets of this state and propelled by power other than muscular
2506 power, but excluding traction engines, road rollers, implements
2507 of husbandry and other agricultural equipment, and vehicles
2508 which run only upon a track.
2509 (10) ~~(15)~~ "Motor vehicle retail installment seller" or
2510 "seller" means a person engaged in the business of selling motor
2511 vehicles to retail buyers in retail installment transactions.
2512 (11) ~~(4)~~ "Office" means the Office of Financial Regulation
2513 of the commission.
2514 (12) ~~(10)~~ "Official fees" means fees and charges prescribed
2515 by law which actually are or will be paid to public officials
2516 for determining the existence of, or for perfecting, releasing,
2517 or satisfying, any security related to the credit transaction,
2518 or the premium payable for any insurance in lieu of perfecting

2519 any security interest otherwise required by the creditor in
2520 connection with the transaction, if the premium does not exceed
2521 the fees and charges which would otherwise be payable to public
2522 officials.
2523 (13) ~~(11)~~ "Person" means an individual, partnership,
2524 corporation, association, and any other group however organized.
2525 (14) ~~(12)~~ "Principal place of business" means the physical
2526 location designated on the licensee's application for licensure,
2527 unless otherwise designated as required by this chapter.
2528 (15) ~~(13)~~ "Retail buyer" or "buyer" means a person who buys
2529 a motor vehicle from a seller not principally for the purpose of
2530 resale, and who executes a retail installment contract in
2531 connection therewith or a person who succeeds to the rights and
2532 obligations of such person.
2533 (16) ~~(14)~~ "Retail installment contract" or "contract" means
2534 an agreement, entered into in this state, pursuant to which the
2535 title to, or a lien upon the motor vehicle, which is the subject
2536 matter of a retail installment transaction, is retained or taken
2537 by a seller from a retail buyer as security, in whole or in
2538 part, for the buyer's obligation. The term includes a
2539 conditional sales contract and a contract for the bailment or
2540 leasing of a motor vehicle by which the bailee or lessee
2541 contracts to pay as compensation for its use a sum substantially
2542 equivalent to or in excess of its value and by which it is
2543 agreed that the bailee or lessee is bound to become, or for no
2544 further or a merely nominal consideration, has the option of
2545 becoming, the owner of the motor vehicle upon full compliance
2546 with the provisions of the contract.

2547 (17) ~~(16)~~ "Retail installment transaction" means any
2548 transaction evidenced by a retail installment contract entered
2549 into between a retail buyer and a seller wherein the retail
2550 buyer buys a motor vehicle from the seller at a deferred payment
2551 price payable in one or more deferred installments.
2552 (18) ~~(17)~~ "Sales finance company" means a person engaged in
2553 the business of purchasing retail installment contracts from one
2554 or more sellers. The term includes, but is not limited to, a
2555 bank or trust company, if so engaged. The term does not include
2556 the pledge of an aggregate number of such contracts to secure a
2557 bona fide loan thereon.
2558 (19) ~~(18)~~ Words in the singular include the plural and vice
2559 versa.
2560 Section 41. Subsections (2) through (5) of section 520.03,
2561 Florida Statutes, are amended to read:
2562 520.03 Licenses.--
2563 (2) An application for a license under this part must be
2564 submitted to the office in such form as the commission may
2565 prescribe by rule. The commission may require each applicant to
2566 provide any information reasonably necessary to determine the
2567 applicant's eligibility for licensure. The applicant shall also
2568 provide information that the office requires concerning any
2569 officer, director, control person, member, partner, or joint
2570 venturer of the applicant or any person having the same or
2571 substantially similar status or performing substantially similar
2572 functions or any individual who is the ultimate equitable owner
2573 of a 10-percent or greater interest in the applicant. The office
2574 may require information concerning any such applicant or person,

2575 including, but not limited to, his or her full name and any
2576 other names by which he or she may have been known, age, social
2577 security number, residential history, qualifications,
2578 educational and business history, and disciplinary and criminal
2579 history. If the office determines that an application should be
2580 granted, it shall issue the license for a period not to exceed 2
2581 years. A nonrefundable application fee of $175 shall accompany
2582 an initial application for the principal place of business and
2583 each application for a branch location of a retail installment
2584 seller who is required to be licensed under this chapter. An
2585 application is considered received for purposes of s. 120.60
2586 upon receipt of a completed application form as prescribed by
2587 commission rule, a nonrefundable application fee of $175, and
2588 any other fee prescribed by law.
2589 (3) The nonrefundable renewal fee for a motor vehicle
2590 retail installment seller license shall be $175. The commission
2591 shall establish by rule biennial licensure periods and
2592 procedures for renewal of licenses. A license that is not
2593 renewed by the end of the biennium established by the commission
2594 shall revert from active to inactive status. An inactive license
2595 may be reactivated within 6 months after becoming inactive upon
2596 filing a completed reactivation form, payment of the
2597 nonrefundable renewal fee, and payment of a reactivation fee
2598 equal to the nonrefundable renewal fee. A license that is not
2599 reactivated within 6 months after becoming inactive
2600 automatically expires.
2601 (4) ~~Each license shall specify the location for which it~~
2602 ~~is issued and must be conspicuously displayed at that location.~~

2603 ~~Prior to relocating a principal place of business or any branch~~
2604 ~~location, the licensee must provide to the office notice of the~~
2605 ~~relocation in a form prescribed by commission rule.~~ A licensee
2606 may not transact business as a motor vehicle retail installment
2607 seller except under the name by which it is licensed. Licenses
2608 issued under this part are not transferable or assignable.
2609 (5) The office may deny an initial application for a
2610 license under this part if the applicant or any officer,
2611 director, control person, member, partner, or joint venturer
2612 ~~person with power to direct the management or policies~~ of the
2613 applicant is the subject of a pending criminal prosecution or
2614 governmental enforcement action, in any jurisdiction, until
2615 conclusion of such criminal prosecution or enforcement action.
2616 Section 42. Subsections (10) through (18) of section
2617 520.31, Florida Statutes, are renumbered as subsections (11)
2618 through (19), respectively, subsection (4) of that section is
2619 renumbered as subsection (10), and a new subsection (4) is added
2620 to that section, to read:
2621 520.31 Definitions.--Unless otherwise clearly indicated by
2622 the context, the following words when used in this act, for the
2623 purposes of this act, shall have the meanings respectively
2624 ascribed to them in this section:
2625 (4) "Control person" means an individual, partnership,
2626 corporation, trust, or other organization that possesses the
2627 power, directly or indirectly, to direct the management or
2628 policies of a company, whether through ownership of securities,
2629 by contract, or otherwise. A person is presumed to control a
2630 company if, with respect to a particular company, that person:

2631 (a) Is a director, general partner, or officer exercising
2632 executive responsibility or having similar status or functions;
2633 (b) Directly or indirectly has the right to vote 10
2634 percent or more of a class of a voting security or has the power
2635 to sell or direct the sale of 10 percent or more of a class of
2636 voting securities; or
2637 (c) In the case of a partnership, has the right to receive
2638 upon dissolution or has contributed 10 percent or more of the
2639 capital.
2640 Section 43. Subsections (2) through (5) of section 520.32,
2641 Florida Statutes, are amended to read:
2642 520.32 Licenses.--
2643 (2) An application for a license under this part must be
2644 submitted to the office in such form as the commission may
2645 prescribe by rule. The commission may require each applicant to
2646 provide any information reasonably necessary to determine the
2647 applicant's eligibility for licensure. The applicant shall also
2648 provide information that the office requires concerning any
2649 officer, director, control person, member, partner, or joint
2650 venturer of the applicant or any person having the same or
2651 substantially similar status or performing substantially similar
2652 functions or any individual who is the ultimate equitable owner
2653 of a 10-percent or greater interest in the applicant. The office
2654 may require information concerning any such applicant or person,
2655 including his or her full name and any other names by which he
2656 or she may have been known, age, social security number,
2657 residential history, qualifications, educational and business
2658 history, and disciplinary and criminal history. If the office

2659 determines that an application should be granted, it shall issue
2660 the license for a period not to exceed 2 years. A nonrefundable
2661 application fee of $175 shall accompany an initial application
2662 for the principal place of business and each application for a
2663 branch location of a retail installment seller. An application
2664 is considered received for purposes of s. 120.60 upon receipt of
2665 a completed application form as prescribed by commission rule, a
2666 nonrefundable application fee of $175, and any other fee
2667 prescribed by law.
2668 (3) The nonrefundable renewal fee for a retail seller
2669 license shall be $175. Biennial licensure periods and procedures
2670 for renewal of licenses may also be established by the
2671 commission by rule. A license that is not renewed at the end of
2672 the biennium established by the commission shall revert from
2673 active to inactive status. An inactive license may be
2674 reactivated within 6 months after becoming inactive upon filing
2675 a completed reactivation form, payment of the nonrefundable
2676 renewal fee, and payment of a reactivation fee equal to the
2677 nonrefundable renewal fee. A license that is not reactivated
2678 within 6 months after becoming inactive automatically expires.
2679 (4) ~~Each license must specify the location for which it is~~
2680 ~~issued and must be conspicuously displayed at that location. If~~
2681 ~~a licensee's principal place of business or branch location~~
2682 ~~changes, the licensee shall notify the office and the office~~
2683 ~~shall endorse the change of location without charge.~~ A licensee
2684 may not transact business as a retail installment seller except
2685 under the name by which it is licensed. A license issued under
2686 this part is not transferable or assignable.

2687 (5) The office may deny an initial application for a
2688 license under this part if the applicant or any officer,
2689 director, control person, member, partner, or joint venturer
2690 ~~person with power to direct the management or policies~~ of the
2691 applicant is the subject of a pending criminal prosecution or
2692 governmental enforcement action, in any jurisdiction, until
2693 conclusion of such criminal prosecution or enforcement action.
2694 Section 44. Subsections (2) through (5) of section 520.52,
2695 Florida Statutes, are amended to read:
2696 520.52 Licensees.--
2697 (2) An application for a license under this part must be
2698 submitted to the office in such form as the commission may
2699 prescribe by rule. The commission may require each applicant to
2700 provide any information reasonably necessary to determine the
2701 applicant's eligibility for licensure. The applicant shall also
2702 provide information that the office requires concerning any
2703 officer, director, control person, member, partner, or joint
2704 venturer of the applicant or any person having the same or
2705 substantially similar status or performing substantially similar
2706 functions or any individual who is the ultimate equitable owner
2707 of a 10-percent or greater interest in the applicant. The office
2708 may require information concerning any such applicant or person,
2709 including his or her full name and any other names by which he
2710 or she may have been known, age, social security number,
2711 residential history, qualifications, educational and business
2712 history, and disciplinary and criminal history. If the office
2713 determines that an application should be granted, it shall issue
2714 the license for a period not to exceed 2 years. A nonrefundable

2715 application fee of $175 shall accompany an initial application
2716 for the principal place of business and each branch location of
2717 a sales finance company. An application is considered received
2718 for purposes of s. 120.60 upon receipt of a completed
2719 application form as prescribed by commission rule, a
2720 nonrefundable application fee of $175, and any other fee
2721 prescribed by law.
2722 (3) The nonrefundable renewal fee for a sales finance
2723 company license shall be $175. Biennial licensure periods and
2724 procedures for renewal of licenses may also be established by
2725 the commission by rule. A license that is not renewed at the end
2726 of the biennium established by the commission shall revert from
2727 active to inactive status. An inactive license may be
2728 reactivated within 6 months after becoming inactive upon filing
2729 a completed reactivation form, payment of the nonrefundable
2730 renewal fee, and payment of a reactivation fee equal to the
2731 nonrefundable renewal fee. A license that is not reactivated
2732 within 6 months after becoming inactive automatically expires.
2733 (4) ~~Each license must specify the location for which it is~~
2734 ~~issued and must be conspicuously displayed at that location. If~~
2735 ~~a licensee's principal place of business or branch location~~
2736 ~~changes, the licensee shall notify the office and the office~~
2737 ~~shall endorse the change of location without charge.~~ A licensee
2738 may not transact business as a sales finance company except
2739 under the name by which it is licensed. A license issued under
2740 this part is not transferable or assignable.
2741 (5) The office may deny an initial application for a
2742 license under this part if the applicant or any officer,

2743 director, control person, member, partner, or joint venturer
2744 ~~person with power to direct the management or policies~~ of the
2745 applicant is the subject of a pending criminal prosecution or
2746 governmental enforcement action, in any jurisdiction, until
2747 conclusion of such criminal prosecution or enforcement action.
2748 Section 45. Subsections (5), (6), (7), (15), (16), and
2749 (22) of section 520.61, Florida Statutes, are renumbered as
2750 subsections (7), (5), (16), (22), (15), and (23), respectively,
2751 and a new subsection (6) is added to that section to read:
2752 520.61 Definitions.--As used in this act:
2753 (6) "Control person" means an individual, partnership,
2754 corporation, trust, or other organization that possesses the
2755 power, directly or indirectly, to direct the management or
2756 policies of a company, whether through ownership of securities,
2757 by contract, or otherwise. A person is presumed to control a
2758 company if, with respect to a particular company, that person:
2759 (a) Is a director, general partner, or officer exercising
2760 executive responsibility or having similar status or functions;
2761 (b) Directly or indirectly may vote 10 percent or more of
2762 a class of a voting security or sell or direct the sale of 10
2763 percent or more of a class of voting securities; or
2764 (c) In the case of a partnership, may receive upon
2765 dissolution or has contributed 10 percent or more of the
2766 capital.
2767 Section 46. Subsections (2) through (5) of section 520.63,
2768 Florida Statutes, are amended to read:
2769 520.63 Licensees.--
2770 (2) An application for a license under this part must be

2771 submitted to the office in such form as the commission may
2772 prescribe by rule. The commission may require each applicant to
2773 provide any information reasonably necessary to determine the
2774 applicant's eligibility for licensure. The applicant shall also
2775 provide information that the office requires concerning any
2776 officer, director, control person, member, partner, or joint
2777 venturer of the applicant or any person having the same or
2778 substantially similar status or performing substantially similar
2779 functions or any individual who is the ultimate equitable owner
2780 of a 10-percent or greater interest in the applicant. The office
2781 may require information concerning any such applicant or person,
2782 including, but not limited to, his or her full name and any
2783 other names by which he or she may have been known, age, social
2784 security number, residential history, qualifications,
2785 educational and business history, and disciplinary and criminal
2786 history. If the office determines that an application should be
2787 granted, it shall issue the license for a period not to exceed 2
2788 years. A nonrefundable application fee of $175 shall accompany
2789 an initial application for the principal place of business and
2790 each application for a branch location of a home improvement
2791 finance seller. An application is considered received for
2792 purposes of s. 120.60 upon receipt of a completed application
2793 form as prescribed by commission rule, a nonrefundable
2794 application fee of $175, and any other fee prescribed by law.
2795 (3) The nonrefundable renewal fee for a home improvement
2796 finance license shall be $175. Biennial licensure periods and
2797 procedures for renewal of licenses may also be established by
2798 the commission by rule. A license that is not renewed at the end

2799 of the biennium established by the commission shall
2800 automatically revert from active to inactive status. An inactive
2801 license may be reactivated within 6 months after becoming
2802 inactive upon filing a completed reactivation form, payment of
2803 the nonrefundable renewal fee, and payment of a reactivation fee
2804 equal to the nonrefundable renewal fee. A license that is not
2805 reactivated within 6 months after becoming inactive
2806 automatically expires.
2807 (4) ~~Each license must specify the location for which it is~~
2808 ~~issued and must be conspicuously displayed at that location. If~~
2809 ~~a home improvement finance seller's principal place of business~~
2810 ~~or any branch location changes, the licensee shall notify the~~
2811 ~~office and the office shall endorse the change of location~~
2812 ~~without charge.~~ A licensee may not transact business as a home
2813 improvement finance seller except under the name by which it is
2814 licensed. A license issued under this part is not transferable
2815 or assignable.
2816 (5) The office may deny an initial application for a
2817 license under this part if the applicant or any officer,
2818 director, control person, member, partner, or joint venturer
2819 ~~person with power to direct the management or policies~~ of the
2820 applicant is the subject of a pending criminal prosecution or
2821 governmental enforcement action, in any jurisdiction, until
2822 conclusion of such criminal prosecution or enforcement action.
2823 Section 47. Subsection (5) of section 520.994, Florida
2824 Statutes, is amended to read:
2825 520.994 Powers of office.--
2826 (5) The office shall administer and enforce this chapter.

2827 The commission has authority to adopt rules pursuant to ss.
2828 120.536(1) and 120.54 to implement the provisions of this
2829 chapter. The commission may adopt rules requiring ~~to allow~~
2830 electronic submission of any form, document, or fee required by
2831 this chapter if such rules reasonably accommodate technological
2832 or financial hardship. The commission may prescribe by rule
2833 requirements and procedures for obtaining an exemption due to a
2834 technological or financial hardship.
2835 Section 48. Subsections (1) and (4) of section 520.995,
2836 Florida Statutes, are amended to read:
2837 520.995 Grounds for disciplinary action.--
2838 (1) The following acts are violations of this chapter and
2839 constitute grounds for the disciplinary actions specified in
2840 subsection (2):
2841 (a) Failure to comply with any provision of this chapter,
2842 any rule or order adopted pursuant to this chapter, or any
2843 written agreement entered into with the office.~~;~~
2844 (b) Fraud, misrepresentation, deceit, or gross negligence
2845 in any home improvement finance transaction or retail
2846 installment transaction, regardless of reliance by or damage to
2847 the buyer or owner.~~;~~
2848 (c) Fraudulent misrepresentation, circumvention, or
2849 concealment of any matter required to be stated or furnished to
2850 a retail buyer or owner pursuant to this chapter, regardless of
2851 reliance by or damage to the buyer or owner.~~;~~
2852 (d) Willful imposition of illegal or excessive charges in
2853 any retail installment transaction or home improvement finance
2854 transaction.~~;~~

2855 (e) False, deceptive, or misleading advertising by a
2856 seller or home improvement finance seller.~~;~~
2857 (f) Failure to maintain, preserve, and keep available for
2858 examination, all books, accounts, or other documents required by
2859 this chapter, by any rule or order adopted pursuant to this
2860 chapter, or by any agreement entered into with the office.~~;~~
2861 (g) Refusal to permit inspection of books and records in
2862 an investigation or examination by the office or refusal to
2863 comply with a subpoena issued by the office.~~;~~
2864 (h) Criminal conduct in the course of a person's business
2865 as a seller, as a home improvement finance seller, or as a sales
2866 finance company.~~; or~~
2867 (i) Failure to timely pay any fee, charge, or fine imposed
2868 or assessed pursuant to this chapter or any rule adopted under
2869 this chapter.
2870 (j) Using the name or logo of a financial institution, as
2871 defined in s. 655.005(1), or its affiliates or subsidiaries when
2872 marketing or soliciting existing or prospective customers if
2873 such marketing materials are used without the written consent of
2874 the financial institution and in a manner that would lead a
2875 reasonable person to believe that the material or solicitation
2876 originated from, was endorsed by, or is related to or the
2877 responsibility of the financial institution or its affiliates or
2878 subsidiaries.
2879 (k) Payment to the office for a license or permit with a
2880 check or electronic transmission of funds that is dishonored by
2881 the applicant's or licensee's financial institution.
2882 (4) It is sufficient cause for the office to take any of

2883 the actions specified in subsection (2) as to any partnership,
2884 corporation, or association, if the office finds grounds for
2885 such action as to any member of the partnership, as to any
2886 officer or director of the corporation or association, or as to
2887 any control person, partner, or joint venturer ~~person with power~~
2888 ~~to direct the management or policies~~ of the partnership,
2889 corporation, or association.
2890 Section 49. Subsection (4) of section 520.997, Florida
2891 Statutes, is amended to read:
2892 520.997 Books, accounts, and records.--
2893 (4) The commission may prescribe by rule the minimum
2894 information to be shown in the books, accounts, documents, and
2895 records of licensees so that such records will enable the office
2896 to determine compliance with ~~the provisions of~~ this chapter. In
2897 addition, the commission may prescribe by rule requirements for
2898 the destruction of books, accounts, records, and documents
2899 retained by the licensee after completion of the time period
2900 specified in subsection (3).
2901 Section 50. Section 520.999, Florida Statutes, is created
2902 to read:
2903 520.999 Requirements of licensees.--
2904 (1) Each licensee under this chapter shall report, on a
2905 form prescribed by rule of the commission, any change in the
2906 information contained in any initial application form or any
2907 amendment to such application not later than 30 days after the
2908 change is effective.
2909 (2) Each licensee under this chapter shall report any
2910 changes in the partners, officers, members, joint venturers,

2911 directors, or control persons of any licensee or changes in the
2912 form of business organization by written amendment in such form
2913 and at such time as the commission specifies by rule.
2914 (a) In any case in which a person or a group of persons,
2915 directly or indirectly or acting by or through one or more
2916 persons, proposes to purchase or acquire a controlling interest
2917 in a licensee, such person or group must submit an initial
2918 application for licensure before such purchase or acquisition at
2919 such time and in such form as the commission prescribes by rule.
2920 (b) As used in subsection, the term "controlling interest"
2921 means possession of the power to direct or cause the direction
2922 of the management or policies of a company whether through
2923 ownership of securities, by contract, or otherwise. Any person
2924 who directly or indirectly has the right to vote 25 percent or
2925 more of the voting securities of a company or is entitled to 25
2926 percent or more of its profits is presumed to possess a
2927 controlling interest.
2928 (c) Any addition of a partner, officer, member, joint
2929 venturer, director, or control person of the applicant who does
2930 not have a controlling interest and who has not previously
2931 complied with the provisions of ss. 520.03(2), 520.32(2),
2932 520.52(2), and 520.63(2) shall be subject to such provisions
2933 unless required to file an initial application in accordance
2934 with paragraph (a). If the office determines that the licensee
2935 does not continue to meet licensure requirements, the office may
2936 bring administrative action in accordance with s. 520.995 to
2937 enforce the provisions of this chapter.
2938 (d) The commission shall adopt rules pursuant to ss.

2939 120.536(1) and 120.54 providing for the waiver of the
2940 application required by this subsection if the person or group
2941 of persons proposing to purchase or acquire a controlling
2942 interest in a licensee has previously complied with the
2943 provisions of ss. 520.03(2), 520.32(2), 520.52(2), and 520.63(2)
2944 with the same legal entity or is currently licensed with the
2945 office under this chapter.
2946 Section 51. Subsection (5) of section 537.009, Florida
2947 Statutes, is amended to read:
2948 537.009 Recordkeeping; reporting; safekeeping of
2949 property.--
2950 (5) The commission may prescribe by rule the books,
2951 accounts, documents, and records, and the minimum information to
2952 be shown in the books, accounts, documents, and records, of
2953 licensees so that such records will enable the office to
2954 determine compliance with the provisions of this act. In
2955 addition, the commission may prescribe by rule requirements for
2956 the destruction of books, accounts, records, and documents
2957 retained by the licensee after completion of the time period
2958 specified in subsection (3).
2959 Section 52. Paragraph (e) of subsection (2) of section
2960 559.9232, Florida Statutes, is amended to read:
2961 559.9232 Definitions; exclusion of rental-purchase
2962 agreements from certain regulations.--
2963 (2) A rental-purchase agreement that complies with this
2964 act shall not be construed to be, nor be governed by, any of the
2965 following:
2966 (e) A lease or agreement which constitutes a "retail

2967 installment contract" or "retail installment transaction" as
2968 those terms are defined in s. 520.31~~(13) and (14)~~; or
2969 Section 53. Subsection (3) is added to section 560.105,
2970 Florida Statutes, to read:
2971 560.105 Supervisory powers; rulemaking.--
2972 (3) The commission may adopt rules pursuant to ss.
2973 120.536(1) and 120.54 requiring electronic submission of any
2974 forms, documents, or fees required by this code if such rules
2975 reasonably accommodate technological or financial hardship. The
2976 commission may prescribe by rule requirements and procedures for
2977 obtaining an exemption due to a technological or financial
2978 hardship.
2979 Section 54. Paragraph (y) is added to subsection (1) of
2980 section 560.114, Florida Statutes, to read:
2981 560.114 Disciplinary actions.--
2982 (1) The following actions by a money transmitter or money
2983 transmitter-affiliated party are violations of the code and
2984 constitute grounds for the issuance of a cease and desist order,
2985 the issuance of a removal order, the denial of a registration
2986 application or the suspension or revocation of any registration
2987 previously issued pursuant to the code, or the taking of any
2988 other action within the authority of the office pursuant to the
2989 code:
2990 (y) Payment to the office for a license or permit with a
2991 check or electronic transmission of funds that is dishonored by
2992 the applicant's or licensee's financial institution.
2993 Section 55. Subsection (2) of section 560.121, Florida
2994 Statutes, is amended to read:

2995 560.121 Records; limited restrictions upon public
2996 access.--.
2997 (2) The commission may prescribe by rule the minimum
2998 information that must be shown in the books, accounts, records,
2999 and documents of licensees for purposes of enabling the office
3000 to determine the licensee's compliance with this chapter. In
3001 addition, the commission may prescribe by rule requirements for
3002 the destruction of books, accounts, records, and documents
3003 retained by the licensee after completion of the time period
3004 specified in this subsection. Examination reports, investigatory
3005 records, applications, and related information compiled by the
3006 office, or photographic copies thereof, shall be retained by the
3007 office for a period of at least 3 years following the date that
3008 the examination or investigation ceases to be active.
3009 Application records, and related information compiled by the
3010 office, or photographic copies thereof, shall be retained by the
3011 office for a period of at least 2 years following the date that
3012 the registration ceases to be active.
3013 Section 56. Section 560.126, Florida Statutes, is amended
3014 to read:
3015 560.126 Significant events; notice required.--
3016 (1) Unless exempted by the office, every money transmitter
3017 must provide the office with a written notice within 30 ~~15~~ days
3018 after the occurrence or knowledge of, whichever period of time
3019 is greater, any of the following events:
3020 (a) ~~(1)~~ The filing of a petition under the United States
3021 Bankruptcy Code for bankruptcy or reorganization by the money
3022 transmitter.

3023 (b) ~~(2)~~ The commencement of any registration suspension or
3024 revocation proceeding, either administrative or judicial, or the
3025 denial of any original registration request or a registration
3026 renewal, by any state, the District of Columbia, any United
3027 States territory, or any foreign country, in which the money
3028 transmitter operates or plans to operate or has registered to
3029 operate.
3030 (c) ~~(3)~~ A felony indictment relating to the money
3031 transmission business involving the money transmitter or a money
3032 transmitter-affiliated party of the money transmitter.
3033 (d) ~~(4)~~ The felony conviction, guilty plea, or plea of nolo
3034 contendere, if the court adjudicates the nolo contendere pleader
3035 guilty, or the adjudication of guilt of a money transmitter or
3036 money transmitter-affiliated party.
3037 (e) ~~(5)~~ The interruption of any corporate surety bond
3038 required by the code.
3039 (f) ~~(6)~~ Any suspected criminal act, as defined by the
3040 commission by rule, perpetrated in this state against a money
3041 transmitter or authorized vendor.
3042
3043 However, a person does not incur liability ~~no liability shall be~~
3044 ~~incurred by any person~~ as a result of making a good-faith ~~good~~
3045 ~~faith~~ effort to fulfill this disclosure requirement.
3046 (2)(a) Each registrant under this code shall report, on a
3047 form prescribed by rule of the commission, any change in the
3048 information contained in any initial application form or any
3049 amendment thereto not later than 30 days after the change is
3050 effective.

3051 (b) Each registrant under the code shall report any
3052 changes in the partners, officers, members, joint venturers,
3053 directors, controlling shareholders, or responsible persons of
3054 any registrant or changes in the form of business organization
3055 by written amendment in such form and at such time as the
3056 commission specifies by rule.
3057 1. In any case in which a person or a group of persons,
3058 directly or indirectly or acting by or through one or more
3059 persons, proposes to purchase or acquire a controlling interest
3060 in a licensee, such person or group must submit an initial
3061 application for registration as a money transmitter before such
3062 purchase or acquisition at such time and in such form as the
3063 commission prescribes by rule.
3064 2. As used in this subsection, the term "controlling
3065 interest" means possession of the power to direct or cause the
3066 direction of the management or policies of a company whether
3067 through ownership of securities, by contract, or otherwise. Any
3068 person who directly or indirectly has the right to vote 25
3069 percent or more of the voting securities of a company or is
3070 entitled to 25 percent or more of its profits is presumed to
3071 possess a controlling interest.
3072 3. Any addition of a partner, officer, member, joint
3073 venturer, director, controlling shareholder, or responsible
3074 person of the applicant who does not have a controlling interest
3075 and who has not previously complied with ss. 560.205 and 560.306
3076 shall be subject to such provisions unless required to file an
3077 initial application in accordance with subparagraph 1. If the
3078 office determines that the registrant does not continue to meet

3079 registration requirements, the office may bring administrative
3080 action in accordance with s. 560.114 to enforce the provisions
3081 of this code.
3082 4. The commission shall adopt rules pursuant to ss.
3083 120.536(1) and 120.54 providing for the waiver of the
3084 application required by this subsection if the person or group
3085 of persons proposing to purchase or acquire a controlling
3086 interest in a registrant has previously complied with the
3087 provisions of ss. 560.205 and 560.306 with the same legal entity
3088 or is currently registered with the office under this code.
3089 Section 57. Section 560.127, Florida Statutes, is amended
3090 to read:
3091 560.127 Control of a money transmitter.--
3092 ~~(1)~~ A person has control over a money transmitter if:
3093 (1)~~(a)~~ The individual, partnership, corporation, trust, or
3094 other organization possesses the power, directly or indirectly,
3095 to direct the management or policies of a company, whether
3096 through ownership of securities, by contract, or otherwise. A
3097 person is presumed to control a company if, with respect to a
3098 particular company, that person:
3099 (a) Is a director, general partner, or officer exercising
3100 executive responsibility or having similar status or functions;
3101 (b) Directly or indirectly may vote 25 percent or more of
3102 a class of a voting security or sell or direct the sale of 25
3103 percent or more of a class of voting securities; or
3104 (c) In the case of a partnership, may receive upon
3105 dissolution or has contributed 25 percent or more of the
3106 capital. ~~The person directly or indirectly or acting through one~~

3107 ~~or more other persons owns, controls, or has power to vote 25~~
3108 ~~percent or more of any class of voting securities of the money~~
3109 ~~transmitter; or~~
3110 (2) ~~(b)~~ The office determines, after notice and opportunity
3111 for hearing, that the person directly or indirectly exercises a
3112 controlling influence over the activities of the money
3113 transmitter.
3114 ~~(2) In any case in which a person or a group of persons,~~
3115 ~~directly or indirectly or acting by or through one or more~~
3116 ~~persons, proposes to purchase or acquire a controlling interest~~
3117 ~~in a money transmitter, and thereby to change the control of~~
3118 ~~that money transmitter, each person or group of persons shall~~
3119 ~~provide written notice to the office.~~
3120 ~~(a) A money transmitter whose stock is traded on an~~
3121 ~~organized stock exchange shall provide the office with written~~
3122 ~~notice within 15 days after knowledge of such change in control.~~
3123 ~~(b) A money transmitter whose stock is not publicly traded~~
3124 ~~shall provide the office with not less than 30 days' prior~~
3125 ~~written notice of such proposed change in control.~~
3126 ~~(3) After a review of the written notification, the office~~
3127 ~~may require the money transmitter to provide additional~~
3128 ~~information relating to other and former addresses, and the~~
3129 ~~reputation, character, responsibility, and business~~
3130 ~~affiliations, of the proposed new owner or each of the proposed~~
3131 ~~new owners of the money transmitter.~~
3132 ~~(a) The office may deny the person or group of persons~~
3133 ~~proposing to purchase, or who have acquired control of, a money~~
3134 ~~transmitter if, after investigation, the office determines that~~

3135 ~~the person or persons are not qualified by reputation,~~
3136 ~~character, experience, or financial responsibility to control or~~
3137 ~~operate the money transmitter in a legal and proper manner and~~
3138 ~~that the interests of the other stockholders, if any, or the~~
3139 ~~interests of the public generally may be jeopardized by the~~
3140 ~~proposed change in ownership, controlling interest, or~~
3141 ~~management.~~
3142 ~~(b) The office may disapprove any person who has been~~
3143 ~~convicted of, or pled guilty or nolo contendere to, a violation~~
3144 ~~of s. 560.123, s. 655.50, chapter 896, or any similar state,~~
3145 ~~federal, or foreign law.~~
3146 Section 58. Section 560.205, Florida Statutes, is amended
3147 to read:
3148 560.205 Qualifications of applicant for registration;
3149 contents.--
3150 (1) To qualify for registration under this part, an
3151 applicant must demonstrate to the office such character and
3152 general fitness as to command the confidence of the public and
3153 warrant the belief that the registered business will be operated
3154 lawfully and fairly. The office may investigate each applicant
3155 to ascertain whether the qualifications and requirements
3156 prescribed by this part have been met. The office's
3157 investigation may include a criminal background investigation of
3158 all controlling shareholders, principals, officers, directors,
3159 members, and responsible persons of a funds transmitter and a
3160 payment instrument seller and all persons designated by a funds
3161 transmitter or payment instrument seller as an authorized
3162 vendor. Each controlling shareholder, principal, officer,

3163 director, member, and responsible person of a funds transmitter
3164 or payment instrument seller, unless the applicant is a publicly
3165 traded corporation as defined by the commission by rule, a
3166 subsidiary thereof, or a subsidiary of a bank or bank holding
3167 company organized and regulated under the laws of any state or
3168 the United States, shall file a complete set of fingerprints. A
3169 fingerprint card submitted to the office must be taken by an
3170 authorized law enforcement agency ~~officer~~. The office shall
3171 submit the ~~Such~~ fingerprints ~~must be submitted~~ to the Department
3172 of Law Enforcement for state processing and the Department of
3173 Law Enforcement shall forward the fingerprints to ~~or~~ the Federal
3174 Bureau of Investigation for state and federal processing. The
3175 cost of the fingerprint processing may be borne by the office,
3176 the employer, or the person subject to the background check. The
3177 Department of Law Enforcement shall submit an invoice to the
3178 office for the fingerprints received each month. The office
3179 shall screen the background results to determine if the
3180 applicant meets licensure requirements. The commission may waive
3181 by rule the requirement that applicants file a set of
3182 fingerprints or the requirement that such fingerprints be
3183 processed by the Department of Law Enforcement or the Federal
3184 Bureau of Investigation.
3185 (2) Each application for registration must be submitted
3186 under oath to the office on such forms as the commission
3187 prescribes by rule and must be accompanied by a nonrefundable
3188 application fee. Such fee may not exceed $500 for each payment
3189 instrument seller or funds transmitter and $50 for each
3190 authorized vendor or location operating within this state. The

3191 application must contain ~~forms shall set forth~~ such information
3192 as the commission ~~reasonably~~ requires by rule, including, but
3193 not limited to:
3194 (a) The name and address of the applicant, including any
3195 fictitious or trade names used by the applicant in the conduct
3196 of its business.
3197 (b) The history of the applicant's material litigation,
3198 criminal convictions, pleas of nolo contendere, and cases of
3199 adjudication withheld.
3200 (c) A description of the activities conducted by the
3201 applicant, the applicant's history of operations, and the
3202 business activities in which the applicant seeks to engage in
3203 this state.
3204 ~~(d) A list identifying the applicant's proposed authorized~~
3205 ~~vendors in this state, including the location or locations in~~
3206 ~~this state at which the applicant and its authorized vendors~~
3207 ~~propose to conduct registered activities.~~
3208 (d) ~~(e)~~ A sample authorized vendor contract, if applicable.
3209 (e) ~~(f)~~ A sample form of payment instrument, if applicable.
3210 (f) ~~(g)~~ The name and address of the clearing financial
3211 institution or financial institutions through which the
3212 applicant's payment instruments will be drawn or through which
3213 such payment instruments will be payable.
3214 (g) ~~(h)~~ Documents revealing that the net worth and bonding
3215 requirements specified in s. 560.209 have been or will be
3216 fulfilled.
3217 (3) Each application for registration by an applicant that
3218 is a corporation shall contain ~~also set forth~~ such information

3219 as the commission ~~reasonably~~ requires by rule, including, but
3220 not limited to:
3221 (a) The date of the applicant's incorporation and state of
3222 incorporation.
3223 (b) A certificate of good standing from the state or
3224 country in which the applicant was incorporated.
3225 (c) A description of the corporate structure of the
3226 applicant, including the identity of any parent or subsidiary of
3227 the applicant, and the disclosure of whether any parent or
3228 subsidiary is publicly traded on any stock exchange.
3229 (d) The name, social security number, business and
3230 residence addresses, and employment history for the past 5 years
3231 for each executive officer, each director, each controlling
3232 shareholder, and the responsible person who will be in charge of
3233 all the applicant's business activities in this state.
3234 (e) The history of material litigation and criminal
3235 convictions, pleas of nolo contendere, and cases of adjudication
3236 withheld for each ~~executive~~ officer, each director, each
3237 controlling shareholder, and the responsible person who will be
3238 in charge of the applicant's registered activities.
3239 (f) Copies of the applicant's audited financial statements
3240 for the current year and, if available, for the immediately
3241 preceding 2-year period. In cases where the applicant is a
3242 wholly owned subsidiary of another corporation, the parent's
3243 consolidated audited financial statements may be submitted to
3244 satisfy this requirement. An applicant who is not required to
3245 file audited financial statements may satisfy this requirement
3246 by filing unaudited financial statements verified under penalty

3247 of perjury, as provided by the commission by rule.
3248 (g) An applicant who is not required to file audited
3249 financial statements may file copies of the applicant's
3250 unconsolidated, unaudited financial statements for the current
3251 year and, if available, for the immediately preceding 2-year
3252 period.
3253 (h) If the applicant is a publicly traded company, copies
3254 of all filings made by the applicant with the United States
3255 Securities and Exchange Commission, or with a similar regulator
3256 in a country other than the United States, within the year
3257 preceding the date of filing of the application.
3258 (4) Each application for registration submitted to the
3259 office by an applicant that is not a corporation shall contain
3260 ~~also set forth~~ such information as the commission ~~reasonably~~
3261 requires by rule, including, but not limited to:
3262 (a) Evidence that the applicant is registered to do
3263 business in this state.
3264 (b) The name, business and residence addresses, personal
3265 financial statement and employment history for the past 5 years
3266 for each individual having a controlling ownership interest in
3267 the applicant, and each responsible person who will be in charge
3268 of the applicant's registered activities.
3269 (c) The history of material litigation and criminal
3270 convictions, pleas of nolo contendere, and cases of adjudication
3271 withheld for each individual having a controlling ownership
3272 interest in the applicant and each responsible person who will
3273 be in charge of the applicant's registered activities.
3274 (d) Copies of the applicant's audited financial statements

3275 for the current year, and, if available, for the preceding 2
3276 years. An applicant who is not required to file audited
3277 financial statements may satisfy this requirement by filing
3278 unaudited financial statements verified under penalty of
3279 perjury, as provided by the commission by rule.
3280 (5) Each applicant shall designate and maintain an agent
3281 in this state for service of process.
3282 Section 59. Section 560.207, Florida Statutes, is amended
3283 to read:
3284 560.207 Renewal of registration; registration fee.--
3285 (1) Registration may be renewed for a 24-month period or
3286 the remainder of any such period without proration following the
3287 date of its expiration by furnishing such information as the
3288 commission requires by rule, together with the payment of the
3289 fees required under subsections (2), (3), and (4)~~, upon the~~
3290 ~~filing with the office of an application and other statements~~
3291 ~~and documents as may reasonably be required of registrants by~~
3292 ~~the commission~~. ~~However, the registrant must remain qualified~~
3293 ~~for such registration under the provisions of this part.~~
3294 (2) Each renewal of ~~All~~ registration must ~~renewal~~
3295 ~~applications shall~~ be accompanied by a nonrefundable renewal fee
3296 not to exceed $1,000. A registration expires on April 30 of the
3297 year in which the existing registration expires, unless the
3298 registrant has renewed his or her registration on or before that
3299 date. In no event shall a registration be issued for a period in
3300 excess of 24 months. The commission may adopt rules pursuant to
3301 ss. 120.536(1) and 120.54 to implement this section ~~All renewal~~
3302 ~~applications must be filed on or after January 1 of the year in~~

3303 ~~which the existing registration expires, but before the~~
3304 ~~expiration date of April 30. If the renewal application is filed~~
3305 ~~prior to the expiration date of an existing registration, no~~
3306 ~~late fee shall be paid in connection with such renewal~~
3307 ~~application. If the renewal application is filed within 60~~
3308 ~~calendar days after the expiration date of an existing~~
3309 ~~registration, then, in addition to the $1,000 renewal fee, the~~
3310 ~~renewal application shall be accompanied by a nonrefundable late~~
3311 ~~fee of $500. If the registrant has not filed a renewal~~
3312 ~~application within 60 calendar days after the expiration date of~~
3313 ~~an existing registration, a new application shall be filed with~~
3314 ~~the office pursuant to s. 560.205~~.
3315 (3) In addition to the renewal fee required under
3316 subsection (2), each registrant must pay ~~Every registration~~
3317 ~~renewal application shall also include~~ a 2-year nonrefundable
3318 registration renewal fee of $50 for each authorized vendor or
3319 location operating within this state or, at the option of the
3320 registrant, a total 2-year nonrefundable renewal fee of $20,000
3321 may be paid to renew the registration of all such locations
3322 currently registered at the time of renewal.
3323 (4) A registration may be reinstated only if the renewal
3324 fee and a nonrefundable late fee of $500 are filed within 60
3325 calendar days after the expiration of the existing registration.
3326 The office shall grant a reinstatement of registration if an
3327 application is filed during the 60-day period, and the
3328 reinstatement is effective upon receipt of the required fees and
3329 any information that the commission requires by rule. If a
3330 registrant does not file an application for reinstatement of the

3331 registration within the 60 calendar days after expiration of an
3332 existing registration, the registration expires and a new
3333 application must be filed with the office pursuant to s.
3334 560.205.
3335 Section 60. Subsection (1) of section 560.210, Florida
3336 Statutes, is amended to read:
3337 560.210 Permissible investments.--
3338 (1) A registrant shall at all times possess permissible
3339 investments with an aggregate market value calculated in
3340 accordance with United States generally accepted accounting
3341 principles of not less than the aggregate face amount of all
3342 outstanding funds transmissions ~~transmitted~~ and ~~outstanding~~
3343 payment instruments issued or sold by the registrant or an
3344 authorized vendor in the United States.
3345 Section 61. Subsection (2) of section 560.211, Florida
3346 Statutes, is amended to read:
3347 560.211 Records.--
3348 (2) The records required to be maintained by the code may
3349 be maintained by the registrant at any location if~~, provided~~
3350 ~~that~~ the registrant notifies the office in writing of the
3351 location of the records in its application or otherwise by
3352 amendment as prescribed by commission rule. The registrant shall
3353 make such records available to the office for examination and
3354 investigation in this state, as permitted by the code, within 7
3355 days after receipt of a written request.
3356 Section 62. Section 560.305, Florida Statutes, is amended
3357 to read:
3358 560.305 Application.--Each application for registration

3359 must ~~shall~~ be in writing and under oath to the office, in such
3360 form as the commission prescribes. The application must contain
3361 such information as the commission requires by rule, including,
3362 but not limited to ~~shall include the following~~:
3363 (1) The legal name, social security number, and residence
3364 and business addresses of the applicant if the applicant is a
3365 natural person, or, if the applicant is a partnership,
3366 association, or corporation, the name of every partner, officer,
3367 ~~or~~ director, member, controlling shareholder, or responsible
3368 person thereof.
3369 (2) The location of the principal office of the applicant.
3370 (3) The complete address of any other locations at which
3371 the applicant proposes to engage in such activities since the
3372 provisions of registration apply to each and every operating
3373 location of a registrant.
3374 (4) Such other information as the commission or office
3375 reasonably requires with respect to the applicant or any money
3376 transmitter-affiliated party of the applicant; however, the
3377 commission or office may not require more information than is
3378 specified in part II.
3379 Section 63. Subsections (1) and (4) of section 560.306,
3380 Florida Statutes, are amended to read:
3381 560.306 Standards.--
3382 (1) In order to qualify for registration under this part,
3383 an applicant must demonstrate to the office that he or she has
3384 such character and general fitness as will command the
3385 confidence of the public and warrant the belief that the
3386 registered business will be operated lawfully and fairly. The

3387 office may investigate each applicant to ascertain whether the
3388 qualifications and requirements prescribed by this part have
3389 been met. The office's investigation may include a criminal
3390 background investigation of all controlling shareholders,
3391 principals, officers, directors, members, and responsible
3392 persons of a check casher and a foreign currency exchanger and
3393 all persons designated by a foreign currency exchanger or check
3394 casher as an authorized vendor. Each controlling shareholder,
3395 principal, officer, director, member, and responsible person of
3396 a check casher or foreign currency exchanger, unless the
3397 applicant is a publicly traded corporation as defined by the
3398 commission by rule, a subsidiary thereof, or a subsidiary of a
3399 bank or bank holding company organized and regulated under the
3400 laws of any state or the United States, shall file a complete
3401 set of fingerprints. A fingerprint card submitted to the office
3402 must be taken by an authorized law enforcement agency ~~officer~~.
3403 The office shall submit the ~~Such~~ fingerprints ~~must be submitted~~
3404 to the Department of Law Enforcement for state processing and
3405 the Department of Law Enforcement shall forward the fingerprints
3406 to ~~or~~ the Federal Bureau of Investigation for ~~state and~~ federal
3407 processing. The cost for the fingerprint processing may be borne
3408 by the office, the employer, or the person subject to the
3409 background check. The Department of Law Enforcement shall submit
3410 an invoice to the office for the fingerprints received each
3411 month. The office shall screen the background results to
3412 determine if the applicant meets licensure requirements. The
3413 commission may waive by rule the requirement that applicants
3414 file a set of fingerprints or the requirement that such

3415 fingerprints be processed by the Department of Law Enforcement
3416 or the Federal Bureau of Investigation.
3417 (4) Each registration application and renewal application
3418 must specify the location at which the applicant proposes to
3419 establish its principal place of business and any other
3420 location, including authorized vendors operating in this state.
3421 The registrant shall notify the office of any changes to any
3422 such locations. ~~Any registrant may satisfy this requirement by~~
3423 ~~providing the office with a list of such locations, including~~
3424 ~~all authorized vendors operating in this state, not less than~~
3425 ~~annually.~~ A registrant may not transact business as a check
3426 casher or a foreign currency exchanger except pursuant to the
3427 name under which it is registered.
3428 Section 64. Section 560.308, Florida Statutes, is amended
3429 to read:
3430 560.308 Registration terms; renewal; renewal fees.--
3431 (1) Registration may be renewed for a 24-month period, or
3432 the remainder of any such period without proration, following
3433 the date of its expiration by furnishing such information as the
3434 commission requires by rule, together with the payment of the
3435 fees required under subsections (2), (3), and (4). Registration
3436 pursuant to this part shall remain effective through the
3437 remainder of the second calendar year following its date of
3438 issuance unless during such calendar year the registration is
3439 surrendered, suspended, or revoked.
3440 (2) Each application for renewal of registration must be
3441 accompanied by ~~The office shall renew registration upon receipt~~
3442 ~~of a completed renewal form and payment of~~ a nonrefundable

3443 renewal fee not to exceed $500. A registration expires on
3444 December 31 of the year in which the existing registration
3445 expires, unless the registrant has renewed his or her
3446 registration on or before that date ~~The completed renewal form~~
3447 ~~and payment of the renewal fee shall occur on or after June 1 of~~
3448 ~~the year in which the existing registration expires~~.
3449 (3) In addition to the renewal fee required by subsection
3450 (2), each registrant must pay a 2-year nonrefundable
3451 registration renewal fee of $50 for each authorized vendor or
3452 location operating within this state or, at the option of the
3453 registrant, a total 2-year nonrefundable renewal fee of $20,000
3454 may be paid to renew the registration of all such locations
3455 currently registered at the time of renewal.
3456 (4) ~~Registration that is not renewed on or before the~~
3457 ~~expiration date of the registration period automatically~~
3458 ~~expires.~~ A renewal ~~application and~~ fee~~,~~ and a nonrefundable late
3459 fee of $250~~,~~ must be filed within 60 calendar days after the
3460 expiration of an existing registration in order for the
3461 registration to be reinstated. The office shall grant a
3462 reinstatement of registration if application is filed during the
3463 60-day period, and the reinstatement is effective upon receipt
3464 of the required fees and any information that the commission
3465 requires by rule. If the registrant has not filed an ~~a renewal~~
3466 application within 60 calendar days after the expiration date of
3467 an existing registration, the registration expires and a new
3468 application must be filed with the office pursuant to s.
3469 560.307.
3470 Section 65. Subsection (2) of section 560.310, Florida

3471 Statutes, is amended to read:
3472 560.310 Records of check cashers and foreign currency
3473 exchangers.--
3474 (2) The records required to be maintained by the code may
3475 be maintained by the registrant at any location if~~, provided~~
3476 ~~that~~ the registrant notifies the office, in writing, of the
3477 location of the records in its application or otherwise by
3478 amendment as prescribed by commission rule. The registrant shall
3479 make such records available to the office for examination and
3480 investigation in this state, as permitted by the code, within 7
3481 days after receipt of a written request.
3482 Section 66. Subsections (2) and (4) of section 560.403,
3483 Florida Statutes, are amended to read:
3484 560.403 Requirements of registration; declaration of
3485 intent.--
3486 (2) A registrant under this part shall renew his or her
3487 intent to engage in the business of deferred presentment
3488 transactions or to act as a deferred presentment provider upon
3489 renewing his or her registration under part II or part III and
3490 shall do so by indicating his or her intent ~~on the renewal form~~
3491 ~~and~~ by submitting a nonrefundable deferred presentment provider
3492 renewal fee of $1,000, in addition to any fees required for
3493 renewal of registration under part II or part III.
3494 (4) The notice of intent of a registrant under this part
3495 who fails to timely renew his or her intent to engage in the
3496 business of deferred presentment transactions or to act as a
3497 deferred presentment provider on or before the expiration date
3498 of the registration period automatically expires. A renewal

3499 ~~declaration of intent and~~ fee~~,~~ and a nonrefundable late fee of
3500 $500~~,~~ must be filed within 60 calendar days after the expiration
3501 of an existing registration in order for the declaration of
3502 intent to be reinstated. The office shall grant a reinstatement
3503 of registration if application is filed during the 60-day
3504 period, and the reinstatement is effective upon receipt of the
3505 required fees and any information that the commission requires
3506 by rule. If the registrant has not filed a reinstatement of a
3507 renewal declaration of intent within 60 calendar days after the
3508 expiration date of an existing registration, the notice of
3509 intent expires and a new declaration of intent must be filed
3510 with the office.
3511 Section 67. Section 655.935, Florida Statutes, is amended
3512 to read:
3513 655.935 Search procedure on death of lessee.--If
3514 satisfactory proof of the death of the lessee is presented, a
3515 lessor shall permit the person named in a court order for the
3516 purpose, or if no order has been served upon the lessor, the
3517 spouse, a parent, an adult descendant, or a person named as a
3518 personal representative in a copy of a purported will produced
3519 by such person, to open and examine the contents of a safe-
3520 deposit box leased or co-leased by a decedent, or any documents
3521 delivered by a decedent for safekeeping, in the presence of an
3522 officer of the lessor; and the lessor, if so requested by such
3523 person, shall deliver:
3524 (1) Any writing purporting to be a will of the decedent,
3525 to the court having probate jurisdiction in the county in which
3526 the financial institution is located;

3527 (2) Any writing purporting to be a deed to a burial plot
3528 or to give burial instructions, to the person making the request
3529 for a search; and
3530 (3) Any document purporting to be an insurance policy on
3531 the life of the decedent, to the beneficiary named therein.
3532
3533 No other contents may be removed pursuant to this section and
3534 access granted pursuant to this section shall not be considered
3535 the initial opening of the safe-deposit box pursuant to s.
3536 733.6065 by a personal representative appointed by a court in
3537 this state.
3538 Section 68. Subsections (1) and (2) of section 655.936,
3539 Florida Statutes, are amended to read:
3540 655.936 Delivery of safe-deposit box contents or property
3541 held in safekeeping to personal representative.--
3542 (1) Subject to the provisions of subsection (3), the
3543 lessor shall immediately deliver to a ~~resident~~ personal
3544 representative appointed by a court in this state, upon
3545 presentation of a certified copy of his or her letters of
3546 authority, all property deposited with it by the decedent for
3547 safekeeping, and shall grant the ~~resident~~ personal
3548 representative access to any safe-deposit box in the decedent's
3549 name and permit him or her to remove from such box any part or
3550 all of the contents thereof.
3551 (2) If a ~~foreign~~ personal representative of a deceased
3552 lessee has been appointed by a court of any other state, a
3553 lessor may, at its discretion, after 3 months from the issuance
3554 to such ~~foreign~~ personal representative of his or her letters of

3555 authority, deliver to such ~~foreign~~ personal representative all
3556 properties deposited with it for safekeeping and the contents of
3557 any safe-deposit box in the name of the decedent if at such time
3558 the lessor has not received written notice of the appointment of
3559 a personal representative in this state, and such delivery is a
3560 valid discharge of the lessor for all property or contents so
3561 delivered. A ~~Such foreign~~ personal representative appointed by a
3562 court of any other state shall furnish the lessor with an
3563 affidavit setting forth facts showing the domicile of the
3564 deceased lessee to be other than this state and stating that
3565 there are no unpaid creditors of the deceased lessee in this
3566 state, together with a certified copy of his or her letters of
3567 authority. A lessor making delivery pursuant to this subsection
3568 shall maintain in its files a receipt executed by such ~~foreign~~
3569 personal representative which itemizes in detail all property so
3570 delivered.
3571 Section 69. Section 655.937, Florida Statutes, is amended
3572 to read:
3573 655.937 Access to safe-deposit boxes leased in two or more
3574 names.--
3575 (1) Unless ~~When~~ specifically provided in the lease or
3576 rental agreement to the contrary, if ~~covering~~ a safe-deposit box
3577 is ~~heretofore or hereafter~~ rented or leased in the names of two
3578 or more lessees, ~~that~~ access to the safe-deposit box will be
3579 granted to either lessee~~,~~ or to ~~either or the survivor, access~~
3580 ~~to the safe-deposit box shall be granted to~~:
3581 (a) Either or any of such lessees, regardless of whether
3582 or not the other lessee or lessees or any of them are living or

3583 competent.~~; or~~
3584 (b) Subject to s. 655.933, those persons named in s.
3585 655.933.
3586 (c) Subject to s. 655.935, those persons named in s.
3587 655.935.
3588 (d)~~(b)~~ Subject to s. 773.6065, the personal representative
3589 of the estate of either or any of such lessees who is deceased,
3590 or the guardian of the property of either or any of such lessees
3591 who is incapacitated.
3592 (2) In all cases described in subsection (1),~~; and, in~~
3593 ~~either such case, the provisions of s. 655.933 apply, and~~ the
3594 signature on the safe-deposit entry or access record,~~(~~or the
3595 receipt or acquittance, in the case of property or documents
3596 otherwise held for safekeeping,~~)~~ is a valid and sufficient
3597 release and discharge to the lessor for granting access to such
3598 safe-deposit box or for the delivery of such property or
3599 documents otherwise held for safekeeping.
3600 (3)~~(2)~~ A lessor may not be held liable for damages or
3601 penalty by reason of any access granted or delivery made
3602 pursuant to this section.
3603 (4) The right of access by a co-lessee is separate from
3604 the rights and responsibilities of other persons who may be
3605 granted access to a safe-deposit box after the death or
3606 incapacity of another co-lessee and such right of access is not
3607 subject to the provisions of s. 655.935 or s. 733.6065 or other
3608 requirements imposed upon personal representatives, guardians,
3609 or other fiduciaries.
3610 (5) After the death of a co-lessee, the surviving co-

3611 lessee or any other person who is granted access to the safe-
3612 deposit box pursuant to this section may make a written
3613 inventory of the box, which must be conducted by the person
3614 making the request in the presence of one other person as
3615 specified in this section. Each person present shall verify the
3616 contents of the box by signing a copy of the inventory under
3617 penalty of perjury.
3618 (a) If the person making the written inventory is the
3619 surviving co-lessee, the other person may be any other person
3620 granted access pursuant to this section, an employee of the
3621 institution where the box is located, or an attorney licensed in
3622 this state.
3623 (b) If the person making the written inventory is not a
3624 surviving co-lessee, the other person may be a surviving co-
3625 lessee, an employee of the institution where the box is located,
3626 or an attorney licensed in this state.
3627 Section 70. Section 733.6065, Florida Statutes, is amended
3628 to read:
3629 733.6065 Opening safe-deposit box.--
3630 (1) Subject to the provisions of s. 655.936(2), the
3631 initial opening of a ~~the decedent's~~ safe-deposit box that is
3632 leased or co-leased by the decedent shall be conducted in the
3633 presence of any two of the following persons: an employee of the
3634 institution where the box is located, the personal
3635 representative, or the personal representative's attorney of
3636 record. Each person who is present must verify the contents of
3637 the box by signing a copy of the inventory under penalties of
3638 perjury. The personal representative shall file the safe-deposit

3639 box inventory, together with a copy of the box entry record from
3640 a date which is 6 months prior to the date of death to the date
3641 of inventory, with the court within 10 days after the box is
3642 opened. Unless otherwise ordered by the court, this inventory
3643 and the attached box entry record is subject to inspection only
3644 by persons entitled to inspect an inventory under s. 733.604(1).
3645 The personal representative may remove the contents of the box.
3646 (2) The right to open and examine the contents of a safe-
3647 deposit box leased by a decedent, or any documents delivered by
3648 a decedent for safekeeping, and to receive items as provided for
3649 in s. 655.935 are separate from ~~in addition to~~ the rights
3650 provided for in subsection (1).
3651 Section 71. For the 2006-2007 fiscal year, the recurring
3652 sum of $700,515 is appropriated from the Regulatory Trust Fund
3653 to the Office of Financial Regulation for the purpose of
3654 implementing the provisions of s. 494.0033(2)(b), Florida
3655 Statutes, for third-party administration of the mortgage broker
3656 test.
3657 Section 72. This act shall take effect October 1, 2006.

1

Amendment No. (1)

Bill No. **HB 7153**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Detert offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 3626-3627 insert:
6 Section 70. Effective upon becoming law, subsection (3) of
7 section 679.705, Florida Statutes, is amended to read:
8 679.705 Effectiveness of action taken before effective
9 date.--
10 (3) This act does not render ineffective an effective
11 financing statement that, before this act takes effect, is filed
12 and satisfies the applicable requirements for perfection under
13 the law of the jurisdiction governing perfection as provided in
14 s. 679.103, Florida Statutes 2000. However, except as otherwise
15 provided in subsections (4) and (5) and s. 679.706, the
16 financing statement ceases to be effective at the earlier of:
17 (a) The time the financing statement would have ceased to
18 be effective under the law of the jurisdiction in which it is
19 filed; or
20 (b) December 31 ~~June 30~~, 2006.
21

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

23 Remove line(s) 235 and insert:

24 providing a penalty; amending s. 679.705, F.S.; extending the

25 time that a financing statement is effective under certain

26 circumstances; amending 733.6065, F.S.; revising

2

Amendment No. (2)

Bill No. **HB 7153**

COUNCIL/COMMITTEE ACTION

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

OK 4/19/06

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1 Council/Committee hearing bill: Commerce Council
2 Representative(s) Detert offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 3657 and insert:
6 Section 72. Except as otherwise provided herein, this act
7 shall take effect October 1, 2006.
8
9 ========== T I T L E A M E N D M E N T ==========
10 Remove line(s) 238 and insert:
11 effective dates.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7237 PCB UT 06-01 Public Service Commission
SPONSOR(S): Utilities & Telecommunications Committee and Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Utilities & Telecommunications Committee	12 Y, 0 N	Cater	Holt
1) Finance & Tax Committee	6 Y, 0 N	Noriega	Diez-Arguelles
2) Commerce Council		Cater	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

In a recent operational audit of the Florida Public Service Commission (PSC or Commission), the Auditor General reported that there were several obsolete provisions in Chapter 350, F.S., which governs the PSC. The Auditor General also reported that the regulatory assessment fee rates in s. 350.113(3), F.S., are inconsistent with the rates used in industry-specific statutes.

The bill deletes obsolete language contained in Chapter 350, F.S., relating to: 1) the regulation of railroads, 2) the position of Chief Auditor, 3) maximum regulatory assessment fees, 4) other obsolete administrative language, and 5) coal slurry pipelines.

The bill clarifies the beginning and ending dates of the term for newly appointed Commissioners.

The bill does not appear to have a fiscal impact and has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill removes obsolete statutory language relating to the PSC, and repeals its authority over coal slurry pipelines. The bill also deletes regulatory assessment fee rates in Chapter 350, F.S., which are inconsistent with industry-specific statutes.

B. EFFECT OF PROPOSED CHANGES:

Background

In September 2005, the Auditor General issued an operational audit report on the PSC, report Number 2006-021, entitled *Public Service Commission Regulatory Audits and Personnel Administration.* One of the findings in this report was that some of the sections of Chapter 350, F.S., relating to the railroad industry, the position of Chief Internal Auditor, and maximum regulatory assessment fee rates, were no longer reflective of current Commission practices. Despite the fact that the Commission's jurisdiction over the railroad industry ended with the industry's deregulation in 1985, ss. 350.011, 350.113(3)(a), and 350.117(2), F.S., continue to include references or requirements applicable to the railroad industry. Additionally, s. 350.051, F.S., specifies the qualifications of the Chief Auditor and designates that the Chief Auditor is the director of the Commission's accounting department. However, the PSC's current organizational structure does not include an accounting department. The functions formerly performed by the Director of the Accounting Department are now performed by the Chief of the Bureau of Auditing and do not need statutory reference.

Finally, s. 350.113(3), F.S., sets out regulatory assessment fee maximums for the telecommunications, gas, and water and wastewater industries that are inconsistent with the assessment fee maximums specified in the industry-specific statutes (ss. 364.336, 366.14(2) and (3), and 367.145(1), F.S., respectively). The Auditor General's report recommended that these statutes be amended to eliminate outdated or inappropriate requirements and eliminate regulatory assessment fee maximums that are inconsistent with the more recent industry-specific statutes.

Proposed Changes

The bill makes the statutory changes recommended in the Auditor General's report, and corrects cross-references related to the appointment of Commissioners in s. 350.031, F.S.

Section 1
The bill amends provisions in s. 350.01, F.S., relating to appointment of Commissioners and hearing examiners. The bill clarifies that the term for a Public Service Commissioner begins on January 2nd of the year the term commences and ends on January 1st four years later. The bill deletes a reference to "the commission's office of hearing examiners" as the PSC no longer has such an office, but instead has staff attorneys who serve as hearing examiners.

Section 2
The bill amends s. 350.011, F.S., deleting references to the transition from the "Florida Railroad and Public Utilities Commission" to the "Florida Public Service Commission." The original title dates to the creation of the Chapter in 1897.

Section 3

The bill repeals s. 350.051, F.S., which designates the Commission's Chief Auditor as the director of the accounting department. The PSC no longer has this department.

Section 4
The bill amends s. 350.06, F.S., deleting obsolete provisions relating to the Commission's official reporters. These provisions contain an obsolete salary cap, conflicting provisions on fees for copies of transcripts, and requires a report that is not needed for internal fiscal controls. The bill also changes the Commission's fees for copying, certifying, or providing orders, transcripts and similar documents to the same fees that are allowed to be charged by the clerks of the circuit courts. These fees are to be no more than those of the court clerks.

Section 5
The bill amends s. 350.113(3), F.S., to delete provisions for maximum regulatory assessment fees that conflict with the maximum set forth in the industry-specific statutes, and to delete a reference to railroads. These changes were recommended as part of the Auditor General's report.

Section 6
The bill amends s. 350.117(2), F.S., to delete a reference to the regulation of railroads.

Section 7
The bill repeals s. 350.80, F.S., which provides for the Commission's regulation of coal slurry pipelines. No coal slurry pipeline has ever been proposed in Florida. According to PSC staff, instead of using such pipelines to bring coal into Florida from coal-producing states to generate electricity, two 500 kilovolt (kV) electric transmission lines were constructed to bring in coal-based electricity from the state of Georgia under long-term contracts. Additionally, a footnote to this statute states that "Section 5, ch. 79-236, provides that '[t]his act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline.'" Georgia has never granted eminent domain authority, so this section never became effective.

Section 8
The bill amends s. 361.08(2), F.S., to delete subsection (d) on condemnation proceedings on coal slurry pipelines as contemplated in s. 350.80, F.S., which is to be repealed in Section 7 of the bill.

Section 9
This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 350.01, F.S., relating to the term of Florida Public Service Commissioners, and Commission proceedings.

Section 2. Amends s. 350.011, F.S., relating to the jurisdiction, powers and duties of the Florida Public Service Commission.

Section 3. Repeals s. 350.051, F.S., relating to the Commission's Chief Auditor.

Section 4. Amends s. 350.06, F.S., relating to the Commission's place of meeting, expenditures, employment of personnel, records availability and fees.

Section 5. Amends s. 350.113(3), F.S., relating to the Florida Public Service Commission Regulatory Trust Fund.

Section 6. Amends s. 350.117(2), F.S., relating to reports and audits.

Section 7. Repeals s. 350.80, F.S., relating to the regulation of coal slurry pipelines.

Section 8. Amends s. 361.08(2), F.S., relating to the right of eminent domain to coal pipeline companies.

Section 9. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the Public Service Commission; amending
3 s. 350.01, F.S.; correcting cross-references; revising
4 provisions for terms of commissioners on the Public
5 Service Commission; revising a reference to the office of
6 hearing examiners; amending s. 350.011, F.S.; deleting
7 obsolete provisions relating to a transfer of certain
8 functions and duties to the Public Service Commission;
9 repealing s. 350.051, F.S., relating to qualifications of
10 the Chief Auditor of the commission; amending s. 350.06,
11 F.S.; deleting certain provisions relating to the
12 employment of reporters and furnishing of transcripts by
13 the commission; revising provisions for the collection and
14 accounting of fees for furnishing transcripts and other
15 documents or instruments; amending s. 350.113, F.S.;
16 removing limits on the amount of certain regulatory fees;
17 amending s. 350.117, F.S.; removing an exception for
18 railroads from certain audits by the commission; repealing
19 s. 350.80, F.S., relating to regulation of certain coal
20 slurry pipeline companies; amending s. 361.08, F.S.;
21 removing a provision for consideration by the court of
22 certain findings by the commission relating to coal slurry
23 pipeline companies, to conform to changes made by the act;
24 providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraphs (a) and (b) of subsection (2) and
29 subsection (5) of section 350.01, Florida Statutes, are amended
30 to read:
31 350.01 Florida Public Service Commission; terms of
32 commissioners; vacancies; election and duties of chair; quorum;
33 proceedings.--
34 (2)(a) Each commissioner serving on July 1, 1978, shall be
35 permitted to remain in office until the completion of his or her
36 current term. Upon the expiration of the term, a successor shall
37 be appointed in the manner prescribed by s. 350.031(5), (6), ~~(3)~~
38 and (7) ~~(4)~~ for a 4-year term, except that the terms of the
39 initial members appointed under this act shall be as follows:
40 1. The vacancy created by the present term ending in
41 January, 1981, shall be filled by appointment for a 4-year term
42 and for 4-year terms thereafter; and
43 2. The vacancies created by the two present terms ending
44 in January, 1979, shall be filled by appointment for a 3-year
45 term and for 4-year terms thereafter.
46 (b) Two additional commissioners shall be appointed in the
47 manner prescribed by s. 350.031(5), (6), ~~(3)~~ and (7) ~~(4)~~ for 4-
48 year terms beginning the first Tuesday after the first Monday in
49 January, 1979, and successors shall be appointed for 4-year
50 terms thereafter with each term beginning on January 2 of the
51 year the term commences and ending 4 years later on January 1.
52 (5) The primary duty of the chair is to serve as chief
53 administrative officer of the commission; however, the chair may
54 participate in any proceedings pending before the commission
55 when administrative duties and time permit. In order to

56 distribute the workload and expedite the commission's calendar,
57 the chair, in addition to other administrative duties, has
58 authority to assign the various proceedings pending before the
59 commission requiring hearings to two or more commissioners or to
60 the commission's staff ~~office~~ of hearing examiners under the
61 supervision of the office of general counsel. Only those
62 commissioners assigned to a proceeding requiring hearings are
63 entitled to participate in the final decision of the commission
64 as to that proceeding; provided, if only two commissioners are
65 assigned to a proceeding requiring hearings and cannot agree on
66 a final decision, the chair shall cast the deciding vote for
67 final disposition of the proceeding. If more than two
68 commissioners are assigned to any proceeding, a majority of the
69 members assigned shall constitute a quorum and a majority vote
70 of the members assigned shall be essential to final commission
71 disposition of those proceedings requiring actual participation
72 by the commissioners. If a commissioner becomes unavailable
73 after assignment to a particular proceeding, the chair shall
74 assign a substitute commissioner. In those proceedings assigned
75 to a hearing examiner, following the conclusion of the hearings,
76 the designated hearing examiner is responsible for preparing
77 recommendations for final disposition by a majority vote of the
78 commission. A petition for reconsideration shall be voted upon
79 by those commissioners participating in the final disposition of
80 the proceeding.
81 Section 2. Section 350.011, Florida Statutes, is amended
82 to read:

83 350.011 Florida Public Service Commission; jurisdiction;
84 powers and duties.--The state regulatory agency heretofore known
85 as the Florida Railroad and Public Utilities Commission or
86 Florida Public Utilities Commission shall be known and hereafter
87 called Florida Public Service Commission, and all rights,
88 powers, duties, responsibilities, jurisdiction, and judicial
89 powers now vested in said Railroad and Public Utilities
90 Commission or said Florida Public Utilities Commission and the
91 commissioners thereof are vested in the Florida Public Service
92 Commission and the commissioners thereof. ~~Whenever reference is~~
93 ~~made to the Florida Railroad and Public Utilities Commission or~~
94 ~~Florida Public Utilities Commission and the commissioners~~
95 ~~thereof in the laws of the state previously enacted or enacted~~
96 ~~at this session of the Legislature, such reference shall be~~
97 ~~construed to mean the Florida Public Service Commission and the~~
98 ~~commissioners thereof and all appropriations for the use of said~~
99 ~~Railroad and Public Utilities Commission or Florida Public~~
100 ~~Utilities Commission and the members thereof for the biennium or~~
101 ~~continuing in nature previously made or made at this session of~~
102 ~~the Legislature, shall be construed to be for the use of said~~
103 ~~Florida Public Service Commission and the commissioners thereof,~~
104 ~~to be used for the purposes set out in the laws making said~~
105 ~~appropriations; provided, however, the change in name of said~~
106 ~~regulatory agency shall in nowise affect any pending causes and~~
107 ~~proceedings, existing notices, orders, certificates, permits,~~
108 ~~licenses, or authorities previously granted or any action~~
109 ~~previously taken by the Florida Railroad and Public Utilities~~
110 ~~Commission or Florida Public Utilities Commission.~~

111 Section 3. Section 350.051, Florida Statutes, is repealed.
112 Section 4. Subsections (3) through (9) of section 350.06,
113 Florida Statutes, are amended to read:
114 350.06 Place of meeting; expenditures; employment of
115 personnel; records availability and fees.--
116 (3) The commissioners may employ clerical, technical, and
117 professional personnel reasonably necessary for the performance
118 of their duties and~~. The commissioners~~ may also employ one or
119 more persons capable of stenographic court reporting, to be
120 known as the official reporters of the commission~~, and fix the~~
121 ~~compensation of each not to exceed $28,000 annually. The~~
122 ~~official reporters shall furnish only to the commission~~
123 ~~transcripts of all testimony taken by them, and the commission~~
124 ~~may make and sell certified copies of such testimony and charge~~
125 ~~therefor the same fees as are allowed clerks of the circuit~~
126 ~~courts of the state, subject to such rules and regulations as~~
127 ~~may be prescribed by the commission~~.
128 (4) When needed, the commission may engage supplementary
129 qualified reporters at their usual rate of compensation;
130 however, the supplementary reporters shall furnish the
131 commission the original certified transcripts of testimony taken
132 by them~~, but such reporters shall have the right to sell copies~~
133 ~~of such transcripts subject to rules and regulations of the~~
134 ~~commission. The commission may make copies of the transcripts~~
135 ~~for internal use without further compensation. When~~
136 ~~supplementary reporters are unable to provide copies within a~~
137 ~~reasonable time, the commission may, upon request, sell copies~~

138 ~~at its usual rate and shall deposit the proceeds in the Public~~
139 ~~Service Regulatory Trust Fund~~.
140 ~~(5) Upon request by the governing body of a municipal or~~
141 ~~county government within 7 days after completion of the~~
142 ~~transcript and its delivery to the commission, the commission~~
143 ~~shall provide copies of the transcripts of testimony at the cost~~
144 ~~of reproduction and mailing, but such copies need not be~~
145 ~~certified unless specifically requested.~~
146 (5) ~~(6)~~ The commission shall make available to the public
147 counsel the original copy of all transcripts for use and study
148 in the commission offices. If the commission makes any copies of
149 transcripts for internal use and if the public counsel has so
150 requested in writing to the clerk of the commission ~~at the time~~
151 ~~of his or her intervention~~, the commission shall supply the
152 public counsel with a copy of the transcript at no charge. ~~In~~
153 ~~all other cases, the public counsel may obtain a copy of the~~
154 ~~transcript from the commission for the cost of reproduction.~~
155 (6) ~~(7)~~ The commission shall collect for copying,
156 examining, comparing, correcting, verifying, certifying, or
157 furnishing orders, records, transcripts of testimony, papers, or
158 other instruments no more than the same fees that are allowed
159 clerks of the circuit courts of this state ~~Florida~~. In cases
160 where the fee would amount to less than $1, no fee shall be
161 charged.
162 (7) ~~(8)~~ Copies of commission orders furnished to public
163 officials, newspapers, periodical publications, federal
164 agencies, state officials of other states, and parties to the
165 proceeding in which the order was entered and their attorneys

166 shall be without charge. However, the commission may in its
167 discretion charge fees for the furnishing of more than one copy
168 of any order to any of the foregoing.
169 (8) ~~(9)~~ The commission shall keep accounting records ~~a book~~
170 in which all fees collected by it as provided for herein shall
171 be recorded, together with the amount and purpose for which
172 collected. The accounting records ~~This book~~ shall be ~~a~~ public
173 records ~~record~~. ~~The commission shall prepare a statement of~~
174 ~~these fees in duplicate each month and remit one copy of the~~
175 ~~statement, together with all fees collected by it, to the Chief~~
176 ~~Financial Officer.~~ All moneys collected pursuant to this section
177 by the commission shall be deposited in the State Treasury to
178 the credit of the Florida Public Service Regulatory Trust Fund.
179 Section 5. Subsection (3) of section 350.113, Florida
180 Statutes, is amended to read:
181 350.113 Florida Public Service Regulatory Trust Fund;
182 moneys to be deposited therein.--
183 (3) Each regulated company under the jurisdiction of the
184 commission, which company was in operation for the preceding 6-
185 month period, shall pay to the commission within 30 days
186 following the end of each 6-month period, commencing June 30,
187 1977, a fee based upon the gross operating revenues for such
188 period ~~subject to the limitations of this subsection~~. The fee
189 ~~fees~~ shall, to the extent practicable, be related to the cost of
190 regulating such type of regulated company. ~~and shall in no event~~
191 ~~be greater than:~~

192 ~~(a) For each railroad operating under chapter 351, one-~~
193 ~~eighth of 1 percent of its gross operating revenues derived from~~
194 ~~intrastate business.~~
195 ~~(b) For each telephone company licensed or operating under~~
196 ~~chapter 364, one-eighth of 1 percent of its gross operating~~
197 ~~revenues derived from intrastate business.~~
198 ~~(c) For each "public utility" as defined in s. 366.02,~~
199 ~~one-eighth of 1 percent of its gross operating revenues derived~~
200 ~~from intrastate business, excluding sales for resale between~~
201 ~~public utilities, municipal electric utilities, and rural~~
202 ~~electric cooperatives, or any combination thereof.~~
203 ~~(d) For each municipal electric utility and rural electric~~
204 ~~cooperative, one sixty-fourth of 1 percent of its gross~~
205 ~~operating revenues derived from intrastate business, excluding~~
206 ~~sales for resale between public utilities, municipal electric~~
207 ~~utilities, and rural electric cooperatives, or any combination~~
208 ~~thereof.~~
209 ~~(e) For each regulated company licensed under chapter 367,~~
210 ~~2.5 percent of its gross revenues derived from intrastate~~
211 ~~business.~~
212
213 Differences, if any, between the amount paid in any 6-month
214 period and the amount actually determined by the commission to
215 be due shall, upon notification by the commission, be
216 immediately paid or refunded. Each regulated company which is
217 subject to the jurisdiction of the commission, but which did not
218 operate under the commission's jurisdiction during the entire
219 preceding 6-month period, shall, within 30 days after the close

220 of the first 6-month period during which it commenced operations
221 under, or became subject to, the jurisdiction of the commission,
222 pay to the commission the prescribed fee based upon its gross
223 operating revenues derived from intrastate business during those
224 months or parts of months in which the regulated company did
225 operate during such 6-month period. In no event shall payments
226 under this section be less than $25 annually.
227 Section 6. Subsection (2) of section 350.117, Florida
228 Statutes, is amended to read:
229 350.117 Reports; audits.--
230 (2) The commission may perform management and operation
231 audits of any regulated company ~~except railroads~~. The commission
232 may consider the results of such audits in establishing rates;
233 however, the company shall not be denied due process as a result
234 of the use of any such management or operation audit.
235 Section 7. Section 350.80, Florida Statutes, is repealed.
236 Section 8. Paragraph (d) of subsection (2) of section
237 361.08, Florida Statutes, is amended to read:
238 361.08 Right of eminent domain to coal pipeline
239 companies.--
240 (2) Any corporation, partnership, joint venture,
241 association, or other legal entity organized under the laws of
242 this state, or under the laws of any other state and qualified
243 to do business in this state, for the purpose of supplying any
244 electric utility or utilities; any city, town, or village or the
245 inhabitants thereof; or any community with coal or its
246 derivatives and any mixture and combination thereof by pipeline,
247 and for the purpose of serving as a common carrier operating or

248 proposing to operate a pipeline or pipelines for transporting or
249 delivering coal or its derivatives or any mixture or combination
250 thereof, shall have the right of eminent domain, for the purpose
251 of acquiring title, easements, rights-of-way, or other rights or
252 interests in property, necessary to acquire and take private
253 property which is or may be needed for the construction,
254 operation, maintenance, repair, or replacement of coal slurry
255 and derivative plants, pipelines, pumping stations, and any
256 other installations and works incident thereto. The procedure to
257 condemn property or interest therein shall be exercised in the
258 manner set forth in chapters 73 and 74. In any condemnation
259 proceeding under this act, the circuit court shall restrict the
260 exercise of the right of eminent domain in the following
261 particulars:
262 ~~(d) The court, in any condemnation proceeding brought~~
263 ~~pursuant to this section, shall be bound by the findings of the~~
264 ~~Florida Public Service Commission on the general issues of~~
265 ~~economic and environmental feasibility as determined pursuant to~~
266 ~~s. 350.80.~~
267 Section 9. This act shall take effect July 1, 2006.

Bill No. **7237**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Commerce Council
2 Representative(s) Littlefield offered the following:
3
4 **Amendment (with title amendment)**
5 Between line(s) 110 and 111, insert:
6 Section 3. Section 350.012, Florida Statutes, is amended
7 to read:
8 350.012 Committee on Public Service Commission Oversight;
9 creation; membership; powers and duties.--
10 (1) There is created a standing joint committee of the
11 Legislature, designated the Committee on Public Service
12 Commission Oversight, and composed of 12 members appointed as
13 follows: six members of the Senate appointed by the President of
14 the Senate, two of whom must be members of the minority party;
15 and six members of the House of Representatives appointed by the
16 Speaker of the House of Representatives, two of whom must be
17 members of the minority party. The terms of members shall be for
18 2 years and shall run from the organization of one Legislature
19 to the organization of the next Legislature. The President shall
20 appoint the chair of the committee in even-numbered years and
21 the vice chair in odd-numbered years, and the Speaker of the

22 House of Representatives shall appoint the chair of the
23 committee in odd-numbered years and the vice chair in even-
24 numbered years, from among the committee membership. Vacancies
25 shall be filled in the same manner as the original appointment.
26 Members shall serve without additional compensation, but shall
27 be reimbursed for expenses.
28 ~~(2) The committee shall be governed by joint rules of the~~
29 ~~Senate and the House of Representatives which shall remain in~~
30 ~~effect until repealed or amended by concurrent resolution.~~
31 (2)~~(3)~~ The committee shall:
32 (a) Recommend to the Governor nominees to fill a vacancy
33 on the Public Service Commission, as provided by general law;
34 and
35 (b) Appoint a Public Counsel as provided by general law.
36 (3)~~(4)~~ The committee is authorized to file a complaint
37 with the Commission on Ethics alleging a violation of this
38 chapter by a commissioner, former commissioner, former
39 commission employee, or member of the Public Service Commission
40 Nominating Council.
41 (4)~~(5)~~ The committee will not have a permanent staff, but
42 the President of the Senate and the Speaker of the House of
43 Representatives shall select staff members from among existing
44 legislative staff, when and as needed.
45
46
47 ========== T I T L E A M E N D M E N T ==========
48 Between line(s) 8 and 9, insert:
49 amending s. 350.012, F.S.; removing a provision for governance
50 of the Committee on Public Service Commission Oversight;

HB 1143 / McInvale

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143 CS Economic Development Incentives
SPONSOR(S): McInvale
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	15 Y, 0 N, w/CS	Olmedillo	Carlson
2) Finance & Tax Committee	7 Y, 1 N, w/CS	Rice	Diez-Arguelles
3) Commerce Council		Olmedillo	Randle
4)			
5)			

SUMMARY ANALYSIS

The bill requires the Department of Revenue to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. The eligible convention centers must be certified pursuant to new s. 288.1171, F.S. Program distributions cannot exceed $5 million per state fiscal year and no local government may receive more than $1 million per state fiscal year.

Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows.

The bill creates s. 288.1171, F.S., which sets the criteria for eligible convention centers, which include that they:

- Be owned by a unit of local government,
- Contain more than 30,000 square feet of exhibit space,
- Be certified by resolution as serving a public purpose, and
- Be located in a county levying a local option tourist development tax under s. 125.0104, F.S.

The bill is estimated to result in a ($5.4) million reduction in state revenues and a $5.4 million increase in local revenues for FY2006-2007. It will also cause a ($6.5) million reduction in state revenues and a $6.5 million increase to local revenues in FY 2007-2008.

The provisions of this bill will be repealed on June 30, 2009.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-- The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Economic Incentives in Florida

The Florida Legislature encourages economic development through the enactment of several programs and tax incentives enumerated in the Florida Statutes.

The majority of the programs and incentives are coordinated and administered by the Office of Tourism, Trade, and Economic Development (OTTED) in conjunction with several public-private organizations such as Enterprise Florida, Inc. and The Sports Foundation. OTTED and associated groups are charged with the attraction, recruitment, and retention of high-technology, research and development, entertainment, and tourism industries.

The following are some of the types of programs currently available in the state.

The Qualified Targeted Industry Tax Refund Program

The Qualified Targeted Industry Tax Refund (QTI) Program (s.288.106, F.S.) encourages quality job growth in targeted high-wage, value-added businesses. Approved businesses receive refunds on taxes paid (corporate income, sales, and certain other taxes) for creating new jobs in specified industry categories. This program defines a "target industry business" as a corporate headquarters business or any business that is engaged in a stable industry with high job growth, output, and wages, with strong economic benefits.

The High-Impact Business Performance Incentive Grant

The High-Impact Business Performance Incentive (HIPI) Grant (s. 288.108, F.S.) is an incentive used to attract and grow high-impact facilities. These incentive programs apply to high technology and manufacturing businesses operating in one of the following sectors: biomedical technology, financial services, silicon technology, or transportation equipment. The business must also create at least 100 new full time equivalent jobs (75 for a research and development facility) in Florida for a three year period and invest $100 million cumulatively in the state.

Florida Small Business Technology Growth Program

Florida Small Business Technology Growth Program (s. 288.95155, F.S.) is designated to provide financial assistance to businesses in this state having high job growth and emerging technology potential and fewer than 100 employees. Successful applicants receive funding in the form of loans and grants from state appropriations and Enterprise Florida. Funding priority is given to moderate and high risk ventures that offer the greatest opportunity for compelling economic development impact.

Convention Centers in Florida

Section 212.0305, F.S., is the "Convention Development Tax Act" and s. 125.0104, F.S., is the "Local Option Tourist Development Act". As listed under s. 212.0305(2), "[o]ne of the principal purposes of the convention development tax is to promote tourism and the use of hotel facilities by facilitating the improvement and construction of convention centers". Both ss. 212.0305, and 125.0104 F.S., authorize counties to impose a tax on transient rentals through ordinance. The proceeds of these taxes are to be used to build, acquire, remodel, maintain, expand, improve, and enlarge publicly owned convention centers in the county or to pay debts created for those purposes.[1]

There are at least seventeen[2] publicly owned convention centers that currently contain at least 30,000 square feet of exhibit space[3]:

- Orange County Convention Center (2,100,000 sq. ft.)*
- Miami Beach Convention Center (502,848 sq. ft.)
- Palm Beach County Convention Center (100,000 sq. ft.)
- Broward County Convention Center (199,526 sq. ft.)
- Tampa Convention Center (200,000 sq. ft.)
- Coconut Grove Convention Center in Miami(150,000 sq. ft.)
- Lakeland Center (100,000 sq. ft.)
- Prime F. Osborn III Convention Center in Jacksonville (100,000 sq. ft.)*
- Expo Centre in Orlando (65,200)
- Ocean Center in Volusia (60,000)
- Tallahassee Leon County Civic Center (58,000)*
- Osceola Heritage Park Exhibition Building (49,000)
- St. John's County Convention Center (36,150)
- Emerald Coast Conference Center (35,000)
- Manatee Convention Center (32,400)
- Clearwater Harbor View Center (30,000)
- Harborside Event Center in Fort Myers (30,000)

*There are conflicting reports regarding the size of the Tallahassee, Jacksonville and Orange County Centers from Kristopher Shoemaker, Assistant Business Manager for the Orange County Convention Center. Specifically, Mr. Shoemaker reports that Tallahassee Leon County Civic Center is 60,947 sq. ft. Prime F. Osborn III Convention Center in Jacksonville is 78,500 sq. ft., and Orange County Convention Center is 2,053,820 sq. ft.

Effect of Proposed Changes:

The bill amends s. 212.20(6)(d)7., F.S., to require the Department of Revenue (DOR) to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. Proceeds eligible for partial reimbursement include standard services provided by convention center staff to users of the center. Some examples include parking, admission, ticket sales, and food and utility services. The eligible convention centers must be certified pursuant to s. 288.1171, F.S. Distributions cannot exceed $5 million per fiscal year and no local government may receive more than $1 million per state fiscal year. Such distributions are required to begin 60 days following notification of certification. The bill provides for the apportionment of sales tax proceeds in the case where the fiscal year cap of $5 million is exceeded.

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[1] The funds received under s. 212.0305, F.S., may also be used for the improvement of stadiums, auditoriums, coliseums and exhibition centers in the county. The funds under that section may also be used for advertising if the municipality has a population of at least 10,000. Funds under s. 125.0104, F.S., may also be used for a professional sport franchise facility or a spring training facility.
[2] The James L. Knight Convention Center in Miami had 28,000 square feet.
[3] Source: 2006 REC Impact Conference.

Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows. The bill provides for the repeal of the incentive on June 30, 2009.

The bill creates s. 288.1171, F.S., which requires the Office of Tourism, Trade, and Economic Development (OTTED) to adopt rules to screen applicants and certify those meeting the criteria as an "eligible convention center." As provided in the bill, a center must do the following in order to be eligible:

- must be owned by a unit of local government,
- must contain more than 30,000 square feet of exhibit space,
- must be certified by resolution as serving a public purpose, and
- must be located in a county levying a local option tourist development tax under s. 125.0104, F.S.[4]

Previously certified applicants are ineligible for additional certifications.

Funds distributed to a local government are required to be used for the economic development purposes set forth above as designated in a resolution adopted by the governing board of the local government. The bill provides that failure to use the funds pursuant to the bill is grounds for revoking certification. The bill provides for the repeal of s. 288.1171, F.S., on June 30, 2009.

C. SECTION DIRECTORY:

Section 1: Creates s. 212.20(6)(d)7.e., F.S., relating to the distribution of proceeds from tax on sales, use, and other transactions; requiring monthly distributions to eligible units of local government; providing definitions; providing limits and methods for distributions; establishing provisions for use of funding; providing a repeal date of June 30, 2009.

Section 2: Creates s. 288.1171, F.S., providing a certification process for a local government applicant owning a convention center; providing the Office of Tourism, Trade, and Economic Development rule making authority for the receipt and processing of applications for funding; providing definitions; establishing conditions; establishing provisions for use of funding; providing a repeal date of June 30, 2009.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007	FY 2007-2008
General Revenue	($4.3)m	($5.0)m
State Trust	(Insignificant)	(Insignificant)
Total	($4.3)m	($5.0)m

2. Expenditures:

None

[4] Currently, 58 counties charge a local tourist development tax.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-2007	FY 2007-2008
Sales and Use Tax Refund	$4.3m	$5.0m
Total	$4.3m	$5.0m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted one amendment to the bill on March 16, 2005. The amendment removed language permitting the Auditor General to conduct an audit of a convention center receiving a distribution authorized by the bill.

On April 11, 2006, the Finance and Tax Committee adopted an amendment to the bill. The amendment reduced the minimum square footage of exhibition space requirement from 60,000 to 30,000.

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to economic development incentives;
7 amending s. 212.20, F.S.; providing for distribution of a
8 portion of revenues from the tax on sales, use, and other
9 transactions to specified units of local government owning
10 eligible convention centers; providing limitations;
11 requiring the Department of Revenue to prescribe certain
12 forms; providing for future repeal; creating s. 288.1171,
13 F.S.; providing for certification by the Office of
14 Tourism, Trade, and Economic Development of units of local
15 government owning eligible convention centers; requiring
16 the office to adopt specified rules; providing a
17 definition; providing requirements for certification;
18 providing for use of proceeds distributed to units of
19 local government under the act; providing for revocation
20 of certification; providing for future repeal; providing
21 an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (d) of subsection (6) of section
26 212.20, Florida Statutes, is amended to read:
27 212.20 Funds collected, disposition; additional powers of
28 department; operational expense; refund of taxes adjudicated
29 unconstitutionally collected.--
30 (6) Distribution of all proceeds under this chapter and s.
31 202.18(1)(b) and (2)(b) shall be as follows:
32 (d) The proceeds of all other taxes and fees imposed
33 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
34 and (2)(b) shall be distributed as follows:
35 1. In any fiscal year, the greater of $500 million, minus
36 an amount equal to 4.6 percent of the proceeds of the taxes
37 collected pursuant to chapter 201, or 5 percent of all other
38 taxes and fees imposed pursuant to this chapter or remitted
39 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
40 monthly installments into the General Revenue Fund.
41 2. Two-tenths of one percent shall be transferred to the
42 Ecosystem Management and Restoration Trust Fund to be used for
43 water quality improvement and water restoration projects.
44 3. After the distribution under subparagraphs 1. and 2.,
45 8.814 percent of the amount remitted by a sales tax dealer
46 located within a participating county pursuant to s. 218.61
47 shall be transferred into the Local Government Half-cent Sales
48 Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to
49 be transferred pursuant to this subparagraph to the Local
50 Government Half-cent Sales Tax Clearing Trust Fund shall be
51 reduced by 0.1 percent, and the department shall distribute this

52 amount to the Public Employees Relations Commission Trust Fund
53 less $5,000 each month, which shall be added to the amount
54 calculated in subparagraph 4. and distributed accordingly.
55 4. After the distribution under subparagraphs 1., 2., and
56 3., 0.095 percent shall be transferred to the Local Government
57 Half-cent Sales Tax Clearing Trust Fund and distributed pursuant
58 to s. 218.65.
59 5. After the distributions under subparagraphs 1., 2., 3.,
60 and 4., 2.0440 percent of the available proceeds pursuant to
61 this paragraph shall be transferred monthly to the Revenue
62 Sharing Trust Fund for Counties pursuant to s. 218.215.
63 6. After the distributions under subparagraphs 1., 2., 3.,
64 and 4., 1.3409 percent of the available proceeds pursuant to
65 this paragraph shall be transferred monthly to the Revenue
66 Sharing Trust Fund for Municipalities pursuant to s. 218.215. If
67 the total revenue to be distributed pursuant to this
68 subparagraph is at least as great as the amount due from the
69 Revenue Sharing Trust Fund for Municipalities and the former
70 Municipal Financial Assistance Trust Fund in state fiscal year
71 1999-2000, no municipality shall receive less than the amount
72 due from the Revenue Sharing Trust Fund for Municipalities and
73 the former Municipal Financial Assistance Trust Fund in state
74 fiscal year 1999-2000. If the total proceeds to be distributed
75 are less than the amount received in combination from the
76 Revenue Sharing Trust Fund for Municipalities and the former
77 Municipal Financial Assistance Trust Fund in state fiscal year
78 1999-2000, each municipality shall receive an amount

79 proportionate to the amount it was due in state fiscal year
80 1999-2000.
81 7. Of the remaining proceeds:
82 a. In each fiscal year, the sum of $29,915,500 shall be
83 divided into as many equal parts as there are counties in the
84 state, and one part shall be distributed to each county. The
85 distribution among the several counties shall begin each fiscal
86 year on or before January 5th and shall continue monthly for a
87 total of 4 months. If a local or special law required that any
88 moneys accruing to a county in fiscal year 1999-2000 under the
89 then-existing provisions of s. 550.135 be paid directly to the
90 district school board, special district, or a municipal
91 government, such payment shall continue until such time that the
92 local or special law is amended or repealed. The state covenants
93 with holders of bonds or other instruments of indebtedness
94 issued by local governments, special districts, or district
95 school boards prior to July 1, 2000, that it is not the intent
96 of this subparagraph to adversely affect the rights of those
97 holders or relieve local governments, special districts, or
98 district school boards of the duty to meet their obligations as
99 a result of previous pledges or assignments or trusts entered
100 into which obligated funds received from the distribution to
101 county governments under then-existing s. 550.135. This
102 distribution specifically is in lieu of funds distributed under
103 s. 550.135 prior to July 1, 2000.
104 b. The department shall distribute $166,667 monthly
105 pursuant to s. 288.1162 to each applicant that has been
106 certified as a "facility for a new professional sports

107 franchise" or a "facility for a retained professional sports
108 franchise" pursuant to s. 288.1162. Up to $41,667 shall be
109 distributed monthly by the department to each applicant that has
110 been certified as a "facility for a retained spring training
111 franchise" pursuant to s. 288.1162; however, not more than
112 $208,335 may be distributed monthly in the aggregate to all
113 certified facilities for a retained spring training franchise.
114 Distributions shall begin 60 days following such certification
115 and shall continue for not more than 30 years. Nothing contained
116 in this paragraph shall be construed to allow an applicant
117 certified pursuant to s. 288.1162 to receive more in
118 distributions than actually expended by the applicant for the
119 public purposes provided for in s. 288.1162(6). However, a
120 certified applicant is entitled to receive distributions up to
121 the maximum amount allowable and undistributed under this
122 section for additional renovations and improvements to the
123 facility for the franchise without additional certification.
124 c. Beginning 30 days after notice by the Office of
125 Tourism, Trade, and Economic Development to the Department of
126 Revenue that an applicant has been certified as the professional
127 golf hall of fame pursuant to s. 288.1168 and is open to the
128 public, $166,667 shall be distributed monthly, for up to 300
129 months, to the applicant.
130 d. Beginning 30 days after notice by the Office of
131 Tourism, Trade, and Economic Development to the Department of
132 Revenue that the applicant has been certified as the
133 International Game Fish Association World Center facility
134 pursuant to s. 288.1169, and the facility is open to the public,

135 $83,333 shall be distributed monthly, for up to 168 months, to
136 the applicant. This distribution is subject to reduction
137 pursuant to s. 288.1169. A lump sum payment of $999,996 shall be
138 made, after certification and before July 1, 2000.
139 e. The department shall distribute monthly to units of
140 local government that have been certified as owning eligible
141 convention centers pursuant to s. 288.1171 an amount equal to 50
142 percent of the proceeds, as defined in this sub-subparagraph,
143 received and collected in the previous month by the department
144 under the provisions of this chapter which are generated by such
145 eligible convention centers and remitted on the sales and use
146 tax returns of eligible convention centers. Proceeds, for the
147 purposes of this sub-subparagraph, are limited to all applicable
148 sales taxes collected by an eligible convention center for
149 standard services provided by center staff to users of the
150 center, which include the following: parking, admission and
151 ticket sales, food services, utilities services, space rentals,
152 equipment rentals, security services, decorating services,
153 business services, advertising services, communications
154 services, exhibit supply sales and rentals, locksmith services,
155 and sales of gifts and sundries. The total distribution to each
156 unit of local government shall not exceed $1 million per state
157 fiscal year. However, total distributions to all units of local
158 government shall not exceed $5 million per state fiscal year,
159 and such distribution shall be limited exclusively to the taxes
160 collected and remitted under the provisions of this chapter. If
161 collections and remittances of eligible convention centers
162 exceed the $5-million maximum amount authorized for

163 distribution, the department shall distribute proceeds to each
164 eligible unit of local government using an apportionment factor,
165 the numerator of which is the amount remitted by an eligible
166 convention center and the denominator of which is the total
167 amount remitted by all eligible convention centers. The
168 apportionment factor for each eligible convention center shall
169 be applied to the $5-million maximum amount authorized for
170 distribution to determine the amount that shall be distributed
171 to each local government unit. The department shall prescribe
172 forms required to be filed with the department by eligible
173 convention centers. Distributions shall begin 60 days following
174 notification of certification by the Office of Tourism, Trade,
175 and Economic Development pursuant to s. 288.1171. Distributions
176 shall be used solely to encourage and provide economic
177 development for the attraction, recruitment, and retention of
178 corporate headquarters and of high-technology, manufacturing,
179 research-and-development, entertainment, and tourism industries
180 as designated by the unit of local government by resolution of
181 its governing body, and to assist the eligible convention
182 centers to attract more business and expand their offerings,
183 including developing their own events and shows. This sub-
184 subparagraph is repealed June 30, 2009.
185 8. All other proceeds shall remain with the General
186 Revenue Fund.
187 Section 2. Section 288.1171, Florida Statutes, is created
188 to read:

189 288.1171 Convention centers owned by units of local
190 government; certification as owning eligible convention centers;
191 duties.--
192 (1) The Office of Tourism, Trade, and Economic Development
193 shall serve as the state agency for screening applicants for
194 state funding pursuant to s. 212.20(6)(d)7.e. and for certifying
195 an applicant as owning an eligible convention center.
196 (2) The Office of Tourism, Trade, and Economic Development
197 shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the
198 receipt and processing of applications for funding pursuant to
199 s. 212.20(6)(d)7.e.
200 (3) As used in this section, the term "eligible convention
201 center" means a publicly owned facility having exhibition space
202 in excess of 30,000 square feet, the primary function of which
203 is to host meetings, conventions, or trade shows.
204 (4) Prior to certifying an applicant as owning an eligible
205 convention center, the Office of Tourism, Trade, and Economic
206 Development must determine that:
207 (a) The unit of local government, as defined in s.
208 218.369, owns an eligible convention center.
209 (b) The convention center contains more than 30,000 square
210 feet of exhibition space.
211 (c) The unit of local government in which the convention
212 center is located has certified by resolution after a public
213 hearing that the application serves a public purpose pursuant to
214 subsection (7).
215 (d) The convention center is located in a county that is
216 levying a tourist development tax pursuant to s. 125.0104.

217 (5) Upon certification of an applicant, the Office of
218 Tourism, Trade, and Economic Development shall notify the
219 executive director of the Department of Revenue of such
220 certification by means of an official letter granting
221 certification. The Department of Revenue shall not begin
222 distributing proceeds until 60 days following notice by the
223 Office of Tourism, Trade, and Economic Development that a unit
224 of local government has been certified as owning an eligible
225 convention center.
226 (6) An applicant previously certified under any provision
227 of this section who has received proceeds under such
228 certification is not eligible for an additional certification.
229 (7) A unit of local government certified as owning an
230 eligible convention center may use proceeds provided pursuant to
231 s. 212.20(6)(d)7.e. solely to encourage and provide economic
232 development for the attraction, recruitment, and retention of
233 corporate headquarters and of high-technology, manufacturing,
234 research-and-development, entertainment, and tourism industries
235 as designated by the unit of local government by resolution of
236 its governing body, and to assist the eligible convention
237 centers to attract more business and expand their offerings,
238 including developing their own events and shows.
239 (8) Failure to use the proceeds as provided in this
240 section shall be grounds for revoking certification.
241 (9) This section is repealed June 30, 2009.
242 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7157 PCB EDTB 06-03 Internet Phishing
SPONSOR(S): Economic Development, Trade & Banking Committee; Bilivakis
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
2) Criminal Justice Appropriations Committee	5 Y, 0 N	Sneed	DeBeaugrine
3) Commerce Council		Olmedillo	Randle
4)			
5)			

SUMMARY ANALYSIS

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently.

This bill creates the "Anti-Phishing Act" and will prohibit the acquisition of personal identifying information from a Florida resident through the use of a website or e-mail with the intent to possess or use such information fraudulently. To accomplish this goal the Anti-Phishing Act provides the following:

- Creates a civil cause of action for Internet access providers, financial institutions, web page or trademark owners harmed by a violation, and the Attorney General.
- Provides the plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.
- Provides for an award of attorney's fees and costs to a prevailing plaintiff.
- Establishes personal jurisdiction for a violator, sets venue in any county where the plaintiff resides or where any part of the action occurred, and creates a three year statute of limitations.
- Provides that certain moneys received by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund.
- Grants the Department of Legal Affairs (Department) rulemaking authority to implement the provisions of this act.

According to the Department of Legal Affairs, this bill will have an indeterminate fiscal impact on the Department's revenues and expenditures. This bill does not appear to have a fiscal impact on local government. See fiscal comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill increases personal accountability for unlawful actions and injurious behavior.

Provide limited government -- This bill creates a new civil cause of action designed to deter and punish identity theft.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Identity theft is a substantial problem in the United States and "phishing" represents the cutting edge of this widely recognized as practice.

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. A person may also use a phony web site to trick citizens into revealing sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.[1] According to the FTC, last year's identity theft losses to businesses and financial institutions totaled nearly $48 billion and consumer victims reported $5 billion in out-of-pocket expenses.[2]

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.[3]

Anti-Phishing Bills in Congress

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".[4]

H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

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[1] See article issued by Federal Trade Commission, dated September 3, 2003 "FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers". See also http://www.ftc.gov/opa/2003/idtheft.htm.

[2] Id.

[3] The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

[4] The Senate companion, S.472 is before the Judiciary Committee.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

Effect of bill

Name

This bill creates the "Anti-Phishing Act".

Prohibited Acts

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. This bill prohibits:

- representing oneself, either directly or by implication to be another person, without the authority or approval of such other person, through the use of a web page or Internet domain name; and
- using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information.

This bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- is falsely represented as being sent by another person, without the authority or approval of such other person;
- refers or links the recipient to a falsely represented web site; and
- directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

This bill defines or incorporates by reference definitions of terms as follows:

- "Department" means the Department of Legal Affairs.
- "Electronic mail message" means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.[5]
- "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.[6]
- "Identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
    - name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit

[5] s. 668.602(7), F.S.
[6] s. 668.602(6), F.S.

card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
    - unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
    - unique electronic identification number, address, or routing code;
    - medical records;
    - telecommunication identifying information or access device; or
    - other number or information that can be used to access a person's financial resources.[7]
- "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.[8]
- "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Remedies

This bill gives standing to bring a civil action under this part to:

- a person engaged in the business of providing Internet access to the public who was adversely affected by the violation;
- a financial institution as defined by s. 655.005(1)(h), F.S., adversely affected by the violation.
- an owner of a web page or trademark who was harmed by a violation under this bill; and
- the Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature, or seek both injunctive relief and damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

This bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

This bill provides that the violator submits personally to the jurisdiction of the courts of the State of Florida by committing a violation of this Act. In addition, the bill establishes a 3 year statute of limitations to bring a suit under the Act.

This bill also provides that venue lies in any county in which the plaintiff resides or in which any part of the violation occurred.

This bill requires that any moneys received by the Attorney General for attorney's fees and costs, or not utilized to reimburse persons harmed under this act, shall be deposited in the Legal Affairs Revolving Trust Fund.

This bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law.

This bill grants the Department rulemaking authority to implement the provisions of this act.

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[7] s. 817.568(1)(f), F.S.
[8] s. 668.602(10), F.S.

Exemption

This bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information. The bill also exempts providers of an interactive computer service when removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of the provisions of this bill.

C. SECTION DIRECTORY:

Section 1 creates s. 668.701, F.S., to provide a title; s. 668.702, F.S., to provide definitions; s. 668.703, F.S., to provide prohibited acts; s. 668.704, F.S., to provide remedies and standing; and s. 668.705, F.S., to provide exemptions.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that the Attorney General may bring a civil action against a person that violates the Act, and would be able to collect the greater of the actual damages or $5,000, which is to be deposited into the Legal Affairs Revolving Trust Fund.

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

According to the Department of Legal Affairs, it prosecuted only two cases under the 2004 Electronic Mail Communications Act, which creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages to an electronic mail address that is held by a resident of Florida. A number of persons filed additional complaints; however the

Department of Legal Affairs has not been able to determine who sent the messages, preventing further action under the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This Act creates sections 668.701 – 668.705, F.S., to provide civil penalties for the acquisition of personal identifying information from a resident of this State with the intent to possess or use such information fraudulently. Under certain circumstances, it is possible that this bill could assert Florida's police power over non-residents of Florida, and therefore this bill could possibly violate the Commerce Clause of the U.S. Constitution.

The Commerce Clause empowers Congress to regulate commerce among the several states.[9] "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce."[10] The aspect of the Commerce Clause, which operates as an implied limitation upon state and local government authority is often referred to as the dormant Commerce Clause.[11]

In Pike v. Bruce Church Inc.,[12] the court devised a two prong test to determine if a state statute violates the dormant Commerce Clause:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court explained that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.[13] The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

For instance, in Healy, the court held:

> [T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:
>
> First, the "commerce clause . . . preludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has

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[9] *See* U.S. Const., art. I, § 8, cl. 3.
[10] Healy v. The Beer Insitiute, 491 U.S. 324 (1989).
[11] MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).
[12] 397 U.S. 137 (1970).
[13] *See* Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

> effects within the State" . . . . Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other Sates and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.[14]

In American Libraries Ass'n v. Pataki[15], the first case to apply the dormant Commerce Clause to a state law on Internet use[16], a federal trial court granted an injunction preventing the State of New York from enforcing a statute that criminalized intentional communications via the internet for the purpose of engaging in harmful sexual conduct with a minor. The court held that the New York Act is concerned with interstate commerce and contravenes the Commerce Clause for three reasons:

> First, the Act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.[17]

"Many courts have followed the logic of American Libraries Ass'n."[18]

Moreover, courts have examined "spam" statutes, which prohibit unsolicited false or misleading commercial electronic mail under the dormant Commerce Clause and found those statutes to be constitutional.[19]

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.[20] The Act specifically prohibited e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington.[21] The court distinguished the case from American Libraries Ass'n stating that the Washington Act did not impose liability for messages that are merely routed through Washington or that are read by a Washington resident who was not the actual addressee.[22]

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[14] Healy at 336-37; *see also* MaryCle, at 15.
[15] Am. Libraries Ass'n, 969 F. Supp. 160 (S.D.N.Y. 1997).
[16] *See* State v. Heckel, 24 P.3d 404 (Wash 2001).
[17] Am. Libraries Ass'n, 969 F. Supp. at 169 (S.D.N.Y. 1997)
[18] *See* The Internet and the Dormant Commerce Clause, 110 The Yale Law Journal 787 (2001).
[19] *See* State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).
[20] Heckel ,at 412-13.
[21] Id at 413.
[22] Id.

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.[23]

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.[24]

Similarly, in Cashatt, a Florida court, using the Pike test, upheld a statute that criminalized the use of a computer on-line service or Internet service to seduce, lure or entice, a child to commit any illegal act.[25]

The Anti-Phishing Act, appears to apply evenhandedly to in-state and out-of-state transmitters. The local benefit of this Act is to protect the public and businesses from misleading and deceptive practices involving fraudulent use of personal information, a legitimate local public interest, and the only burden imposed is not using the Internet for the purpose of obtaining another's personal information for a fraudulent purpose.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Legal Affairs rulemaking authority to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment adds an exemption for providers of interactive computer services who remove or disable access to content due to a good faith belief that the content is being used to violate provisions of this bill. The bill was then reported favorably with a committee substitute.

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[23] MaryCle, at 19.
[24] Feruson, at 1265.
[25] *See* Cashatt v. State, 873 So.2d 430 (1st DCA 2004).

1 A bill to be entitled
2 An act relating to fraudulent use or possession of
3 identifying information; creating part IV of ch. 668,
4 F.S.; providing a short title; providing definitions;
5 prohibiting certain acts relating to fraudulent use or
6 possession of identifying information; authorizing civil
7 actions for violations; providing for injunctive relief
8 and damages; authorizing courts to increase awards of
9 actual damages under certain circumstances; providing for
10 recovery of attorney's fees and court costs; providing for
11 jurisdiction and venue; providing for deposit of certain
12 moneys received by the Attorney General into the Legal
13 Affairs Revolving Trust Fund; authorizing the Department
14 of Legal Affairs to adopt rules; providing for
15 nonapplication to certain entities' good faith handling of
16 identifying information; specifying the absence of
17 liability for certain actions taken to prevent certain
18 violations; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Part IV of chapter 668, Florida Statutes,
23 consisting of sections 668.701, 668.702, 668.703, 668.704, and
24 668.705, Florida Statutes, is created to read:
25 PART IV
26 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION
27 668.701 Short title.--This part may be cited as the "Anti-
28 Phishing Act."

29 668.702 Definitions.--As used in this part, the term:
30 (1) "Department" means the Department of Legal Affairs.
31 (2) "Electronic mail address" has the same meaning as
32 provided in s. 668.602.
33 (3) "Electronic mail message" has the same meaning as
34 provided in s. 668.602.
35 (4) "Identifying information" has the same meaning as the
36 term "personal identification information" as defined in s.
37 817.568(1).
38 (5) "Internet domain name" has the same meaning as
39 provided in s. 668.602.
40 (6) "Web page" means a location that has a single uniform
41 resource locator (URL) with respect to the World Wide Web or
42 another location that can be accessed on the Internet.
43 668.703 Prohibited acts.--
44 (1) A person with an intent to engage in conduct involving
45 the fraudulent use or possession of another person's identifying
46 information may not represent oneself, directly or by
47 implication, to be another person without the authority or
48 approval of such other person through the use of a web page or
49 Internet domain name and use that web page, Internet domain
50 name, or a link to that web page or domain name or another site
51 on the Internet to induce, request, or solicit a resident of
52 this state to provide identifying information.
53 (2) A person with an intent to engage in conduct involving
54 the fraudulent use or possession of identifying information may
55 not send or cause to be sent to an electronic mail address held
56 by a resident of this state an electronic mail message that is

57 falsely represented as being sent by another person without the
58 authority or approval of such other person, refers or links the
59 recipient of the message to a web page, and directly or
60 indirectly induces, requests, or solicits the recipient of the
61 electronic mail message to provide identifying information.
62 668.704 Remedies.--
63 (1) The following persons may bring a civil action against
64 a person who violates this part:
65 (a) A person engaged in the business of providing Internet
66 access service to the public who is adversely affected by the
67 violation.
68 (b) A financial institution as defined in s. 655.005(1)
69 that is adversely affected by the violation.
70 (c) An owner of a web page, trademark, or service mark who
71 is adversely affected by the violation.
72 (d) The Attorney General.
73 (2) A person bringing an action under this section may:
74 (a) Seek injunctive relief to restrain the violator from
75 continuing the violation.
76 (b) Recover damages in an amount equal to the greater of:
77 1. Actual damages arising from the violation; or
78 2. The sum of $5,000 for each violation of the same
79 nature.
80 (3) The court may increase an award of actual damages in
81 an action brought under this section to an amount not to exceed
82 three times the actual damages sustained if the court finds that
83 the violations have occurred with a frequency as to constitute a
84 pattern or practice.

85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct
88 or action occurred.
89 (5) A plaintiff who prevails in an action filed under this
90 section is entitled to recover reasonable attorney's fees and
91 court costs.
92 (6) By committing a violation under this part, the
93 violator submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a person who commits a violation
96 under this part.
97 (7) An action under this part may be brought in any court
98 of competent jurisdiction to enforce such rights and to recover
99 damages as stated in this part.
100 (8) The venue for a civil action brought under this
101 section shall be the county in which the plaintiff resides or in
102 any county in which any part of the alleged violation under this
103 part took place, regardless of whether the defendant was ever
104 actually present in that county. A civil action filed under this
105 section must be brought within 3 years after the violation
106 occurred.
107 (9) The remedies available under this section are in
108 addition to remedies otherwise available for the same conduct
109 under federal or state law.
110 (10) Any moneys received by the Attorney General for
111 attorney's fees and costs of investigation or litigation in
112 proceedings brought under this section shall be deposited as

113 received into the Legal Affairs Revolving Trust Fund.
114 (11) Any moneys received by the Attorney General which are
115 not for attorney's fees and costs of investigation or litigation
116 or used for reimbursing persons found under this part to be
117 damaged shall accrue to the state and be deposited as received
118 into the Legal Affairs Revolving Trust Fund.
119 (12) The Department of Legal Affairs may adopt rules
120 pursuant to ss. 120.536(1) and 120.54 to implement the
121 provisions of this part.
122 668.705 Exemptions.--
123 (1) This part does not apply to a telecommunications
124 provider's or Internet service provider's good faith
125 transmission or routing of, or intermediate temporary storing or
126 caching of, identifying information.
127 (2) A provider of an interactive computer service is not
128 liable under the laws of this state for removing or disabling
129 access to content that resides on an Internet website or other
130 online location controlled or operated by such provider if such
131 provider believes in good faith that the content is used to
132 engage in a violation of this part.
133 Section 2. This act shall take effect July 1, 2006.

HB 1467 CS / Grant

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1469 CS Public Records
SPONSOR(S): Grant
TIED BILLS: HB 1467 **IDEN./SIM. BILLS:** SB 2656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Carlson	Carlson
2) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Williamson
3) Commerce Council		Carlson MVC	Randle
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for certain information relating to venture capital investment in Florida businesses under the Florida Capital Formation Act created by HB 1467. Specifically, the bill makes confidential and exempt for 10 years proprietary confidential business information held by the Florida Opportunity Fund regarding alternative investments. It defines proprietary confidential business information and specifically excludes certain information from this definition.

The bill authorizes access to inspect or copy a particular public record if requested and if a proprietor fails to verify certain required information through a written declaration. In addition, any person may petition the appropriate court in Orange County, Florida, for the public release of any record made confidential and exempt by the bill.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Florida Capital Formation Act

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a "fund of funds" basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses;
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold $75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;
- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida.

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may

be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

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

Public Records Exemption for Alternative Investments: Definitions

The bill provides definitions for a new public records exemption for the Florida Opportunity Fund.

The bill defines an alternative investment as "an investment...in a private equity fund, venture fund, or angel fund or a direct investment in a portfolio company through a distribution of securities to its partners or shareholders by an alternative investment vehicle."

The bill also defines "proprietary confidential business information" as information which has been designated by a proprietor as meeting all three of the following criteria:

Proprietary Confidential Business Information Criteria	Elements of the Criteria
1. *Owned or controlled* by a proprietor.	A proprietor is defined as "an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the Florida Opportunity Fund."
2. Intended to be and is treated by the proprietor as *private*.	The disclosure of this information must harm the business operations of the proprietor. The information must not have been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process or pursuant to law or an order of a court or administrative body;
3. Relates to any of the designated areas.	These designated areas include: - Trade secrets as defined in the Uniform Trade Secrets Act. - Information provided to the Florida Opportunity Fund regarding a prospective investment in a private equity fund, venture fund, angel fund, or portfolio company which is proprietary to the provider of the information. - Financial statements and auditor reports of an alternative investment vehicle. - Meeting materials of an alternative investment vehicle

Proprietary Confidential Business Information Criteria	Elements of the Criteria
	relating to financial, operating, or marketing information of the alternative investment vehicle. - Information regarding the portfolio positions in which the alternative investment vehicles invest. - Capital call and distribution notices to investors of an alternative investment vehicle. - Alternative investment agreements and related records. - Information concerning investors, other than the Florida Opportunity Fund, in an alternative investment vehicle.

The bill also defines what information does not meet the definition of proprietary confidential business information and which would continue to be available as a public record:

1. The name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.

2. The dollar amount of the commitment made by the Florida Opportunity Fund to each alternative investment vehicle since inception.

3. The dollar amount and date of cash contributions made by the Florida Opportunity Fund to each alternative investment vehicle since inception.

4. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund from each alternative investment vehicle.

5. The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the Florida Opportunity Fund plus the remaining value of alternative-vehicle assets that are attributable to the Florida Opportunity Fund's investment in each alternative investment vehicle.

6. The net internal rate of return of each alternative investment vehicle since inception.

7. The investment multiple of each alternative investment vehicle since inception.

8. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the Florida Opportunity Fund to each alternative investment vehicle.

9. The dollar amount of cash profit received by the Florida Opportunity Fund from each alternative investment vehicle on a fiscal-year-end basis.

The bill also provides definitions for alternative investment vehicle, portfolio company, and portfolio positions.

Public Records Exemption for Alternative Investments: Operation

The bill makes proprietary confidential business information held by the Florida Opportunity Fund confidential and exempt[1] from public records requirements for 10 years after the termination of the alternative investment. The bill, however, permits access to inspect or copy a particular record if a proprietor, within a reasonable period after the public records request is received by the Florida Opportunity Fund, fails to verify through a written declaration[2] that a particular record contains the following information:

- The identity of the proprietary confidential business information and its specific location in the requested record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in the Uniform Trade Secrets Act;[3]
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and
- That the disclosure of such information to the public would harm the business operations of the proprietor.

Public Records Exemption for Alternative Investments: Petition for Public Release

Any person may petition a court of competent jurisdiction in Orange County, Florida for an order for the public release of those portions of any record made confidential and exempt by operation of this bill. The petition must be served, along with any other initial pleadings, on the Florida Opportunity Fund and on the proprietor of the information sought to be released, if the proprietor can be determined through diligent inquiry.

The court must make three findings in any order for the release of a public record:

- That the record or portion thereof is not a trade secret as defined in the Uniform Trade Secrets Act;
- That a compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and
- That the release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, the Florida Opportunity Fund, or any trust fund, the assets of which are invested by the Florida Opportunity Fund.

Public Records Exemption for Alternative Investments: Other

The bill provides for future review and repeal of the exemption on October 2, 2011, provides a public necessity statement, and provides an effective date contingent on the passage of HB 1467 or similar legislation.

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[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

[2] Pursuant to s. 92.525, F.S., verification may be accomplished under oath or affirmation taken or administered before an officer authorized to administer oaths, or by the signing of a written declaration. A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

[3] Section 688.002, Florida Statutes

C. SECTION DIRECTORY:

Section 1 creates s. 288.9623, F.S., creating a public records exemption for the Florida Opportunity Fund.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   <u>Vote Requirement</u>

   Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Economic Development, Trade and Banking Committee

The Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill on March 30, 2006. The amendment removed references to the exemption of social security numbers, which are already exempted from public records under ch. 119, F.S., revised the references to the definition of "trade secret" as it is defined in s. 688.002, F.S., and made related technical clarifying and conforming changes.

Governmental Operations Committee

On April 17, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Created definitions.
- Created a public records exemption for proprietary confidential business information held by the Florida Opportunity Fund regarding alternative investments.
- Provided for expiration of the exemption.
- Authorized access to inspect or copy a particular record if requested and if a proprietor failed to verify certain required information through a written declaration.
- Permitted any person to petition the courts in Orange County, Florida, for the public release of any record made confidential and exempt by the bill.

This analysis is drawn to the committee substitute.

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to public records; creating s. 288.9623,
8 F.S.; providing definitions; defining "proprietary
9 confidential business information" and specifying
10 information which does not constitute proprietary
11 confidential business information; creating an exemption
12 from public records requirements for proprietary
13 confidential business information held by the Florida
14 Opportunity Fund regarding alternative investments;
15 providing for limited duration of the exemption;
16 authorizing the inspection and copying of confidential and
17 exempt records if the proprietor of the information fails
18 to verify that a record contains certain information
19 within a specified period of time; authorizing a court to
20 order the release of confidential and exempt records upon
21 making certain findings; providing for future review and
22 repeal; providing a statement of public necessity;
23 providing a contingent effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Section 288.9623, Florida Statutes, is created
28 to read:
29 288.9623 Florida Opportunity Fund; public records
30 exemption.--
31 (1) As used in this paragraph, the term:
32 (a) "Alternative investment" means an investment by the
33 Florida Opportunity Fund in a private equity fund, venture fund,
34 or angel fund or a direct investment in a portfolio company
35 through a distribution of securities to its partners or
36 shareholders by an alternative investment vehicle.
37 (b) "Alternative investment vehicle" means the limited
38 partnership, limited liability company, or similar legal
39 structure through which the Florida Opportunity Fund invests in
40 a portfolio company.
41 (c) "Florida Opportunity Fund" means the Florida
42 Opportunity Fund authorized in s. 288.9621.
43 (d) "Portfolio company" means a corporation or other
44 issuer, any of whose securities are owned by an alternative
45 investment vehicle or the Florida Opportunity Fund and any
46 subsidiary of such corporation or other issuer.
47 (e) "Portfolio positions" means individual investments in
48 portfolio companies which are made by the alternative investment
49 vehicles, including information or specific investment terms
50 associated with any portfolio company investment.

51 (f) "Proprietor" means an alternative investment vehicle,
52 a portfolio company in which the alternative investment vehicle
53 is invested, or an outside consultant, including the respective
54 authorized officers, employees, agents, or successors in
55 interest, which controls or owns information provided to the
56 Florida Opportunity Fund.
57 (g)1. "Proprietary confidential business information"
58 means information that has been designated by the proprietor
59 when provided to the Florida Opportunity Fund as information
60 that is owned or controlled by a proprietor; that is intended to
61 be and is treated by the proprietor as private, the disclosure
62 of which would harm the business operations of the proprietor
63 and has not been intentionally disclosed by the proprietor
64 unless pursuant to a private agreement that provides that the
65 information will not be released to the public except as
66 required by law or legal process, or pursuant to law or an order
67 of a court or administrative body; and that concerns:
68 a. Trade secrets as defined in s. 688.002.
69 b. Information provided to the Florida Opportunity Fund
70 regarding a prospective investment in a private equity fund,
71 venture fund, angel fund, or portfolio company which is
72 proprietary to the provider of the information.
73 c. Financial statements and auditor reports of an
74 alternative investment vehicle.
75 d. Meeting materials of an alternative investment vehicle
76 relating to financial, operating, or marketing information of
77 the alternative investment vehicle.

78 e. Information regarding the portfolio positions in which
79 the alternative investment vehicles invest.
80 f. Capital call and distribution notices to investors of
81 an alternative investment vehicle.
82 g. Alternative investment agreements and related records.
83 h. Information concerning investors, other than the
84 Florida Opportunity Fund, in an alternative investment vehicle.
85 2. "Proprietary confidential business information" does
86 not include:
87 a. The name, address, and vintage year of an alternative
88 investment vehicle and the identity of the principals involved
89 in the management of the alternative investment vehicle.
90 b. The dollar amount of the commitment made by the Florida
91 Opportunity Fund to each alternative investment vehicle since
92 inception.
93 c. The dollar amount and date of cash contributions made
94 by the Florida Opportunity Fund to each alternative investment
95 vehicle since inception.
96 d. The dollar amount, on a fiscal-year-end basis, of cash
97 or other fungible distributions received by the Florida
98 Opportunity Fund from each alternative investment vehicle.
99 e. The dollar amount, on a fiscal-year-end basis, of cash
100 or other fungible distributions received by the Florida
101 Opportunity Fund plus the remaining value of alternative-vehicle
102 assets that are attributable to the Florida Opportunity Fund's
103 investment in each alternative investment vehicle.
104 f. The net internal rate of return of each alternative
105 investment vehicle since inception.

106 g. The investment multiple of each alternative investment
107 vehicle since inception.
108 h. The dollar amount of the total management fees and
109 costs paid on an annual fiscal-year-end basis by the Florida
110 Opportunity Fund to each alternative investment vehicle.
111 i. The dollar amount of cash profit received by the
112 Florida Opportunity Fund from each alternative investment
113 vehicle on a fiscal-year-end basis.
114 (2) Proprietary confidential business information held by
115 the Florida Opportunity Fund regarding alternative investments
116 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
117 I of the State Constitution for 10 years after the termination
118 of the alternative investment.
119 (3) Notwithstanding the provisions of subsection (2), a
120 request to inspect or copy a public record which contains
121 proprietary confidential business information shall be granted
122 if the proprietor of the information fails, within a reasonable
123 period of time after the request is received by the Florida
124 Opportunity Fund, to verify the following to the Florida
125 Opportunity Fund through a written declaration in the manner
126 provided by s. 92.525:
127 (a) That the requested record contains proprietary
128 confidential business information and the specific location of
129 such information within the record;
130 (b) If the proprietary confidential business information
131 is a trade secret, a verification that it is a trade secret as
132 defined in s. 688.002;

133 (c) That the proprietary confidential business information
134 is intended to be and is treated by the proprietor as private,
135 is the subject of efforts of the proprietor to maintain its
136 privacy, and is not readily ascertainable or publicly available
137 from any other source; and
138 (d) That the disclosure of the proprietary confidential
139 business information to the public would harm the business
140 operations of the proprietor.
141 (4)(a) Any person may petition a court of competent
142 jurisdiction for an order for the public release of those
143 portions of any record made confidential and exempt by
144 subsection (2).
145 (b) Any action under this subsection must be brought in
146 Orange County, Florida, and the petition or other initial
147 pleading shall be served on the Florida Opportunity Fund and, if
148 determinable upon diligent inquiry, on the proprietor of the
149 information sought to be released.
150 (c) In any order for the public release of a record under
151 this subsection, the court shall make a finding that:
152 1. The record or portion thereof is not a trade secret as
153 defined in s. 688.002;
154 2. A compelling public interest is served by the release
155 of the record or portions thereof which exceed the public
156 necessity for maintaining the confidentiality of such record;
157 and
158 3. The release of the record will not cause damage to or
159 adversely affect the interests of the proprietor of the released
160 information, other private persons or business entities, the

161 Florida Opportunity Fund, or any trust fund, the assets of which
162 are invested by the Florida Opportunity Fund.
163 (5) This section is subject to the Open Government Sunset
164 Review Act in accordance with s. 119.15 and shall stand repealed
165 on October 2, 2011, unless reviewed and saved from repeal
166 through reenactment by the Legislature.
167 Section 2. The Legislature finds that it is a public
168 necessity that proprietary confidential business information
169 held by the Florida Opportunity Fund regarding alternative
170 investments be held confidential and exempt from s. 119.07(1),
171 Florida Statutes, and s. 24(a), Art. I of the State Constitution
172 for 10 years after the termination of the alternative
173 investment. Disclosing proprietary confidential business
174 information, including trade secrets as defined in s. 688.002,
175 Florida Statutes, used in determining how private equity
176 investments are made or managed by private partnerships
177 investing assets on behalf of the Florida Opportunity Fund would
178 negatively affect the business interests of private partnerships
179 that rely heavily on their information advantage to generate
180 investment returns, and competitor partnerships could gain an
181 unfair competitive advantage if provided access to such
182 information. The release of proprietary confidential business
183 information, including trade secrets, revealing how alternative
184 investments are made could result in inadequate returns and
185 ultimately frustrate attainment of the investment objective of
186 the Florida Opportunity Fund. It is the Legislature's intent to
187 allow the public access to sufficient information in order to be
188 informed regarding the alternative investments of the Florida

189 Opportunity Fund and to balance the public's right to
190 information against the right of private business entities to be
191 protected from harmful disclosure of confidential and exempt
192 proprietary confidential business information, the disclosure of
193 which would injure them in the marketplace. It is also the
194 Legislature's intent to establish consistency with regard to the
195 classification of information relating to alternative
196 investments by the Florida Opportunity Fund as either
197 confidential or suitable for public disclosure. In finding that
198 the public records exemption created by this act is a public
199 necessity, the Legislature finds that the public and private
200 harm in disclosing proprietary confidential business information
201 relating to alternative investments by the Florida Opportunity
202 Fund significantly outweighs any public benefit derived from
203 disclosure; that the exemption created by this act will enhance
204 the ability of the Florida Opportunity Fund to fulfill its
205 duties as an investment fiduciary by making it more effective
206 and competitive in the marketplace as an investor that is able
207 to gain access to the best alternative investment vehicles; and
208 that the public's ability to be informed regarding the
209 alternative investments made by the Florida Opportunity Fund is
210 preserved by the disclosure of information excepted from the
211 created exemption.
212 Section 3. This act shall take effect July 1, 2006, if
213 House Bill 1467 or similar legislation is adopted in the same
214 legislative session or an extension thereof and becomes law.