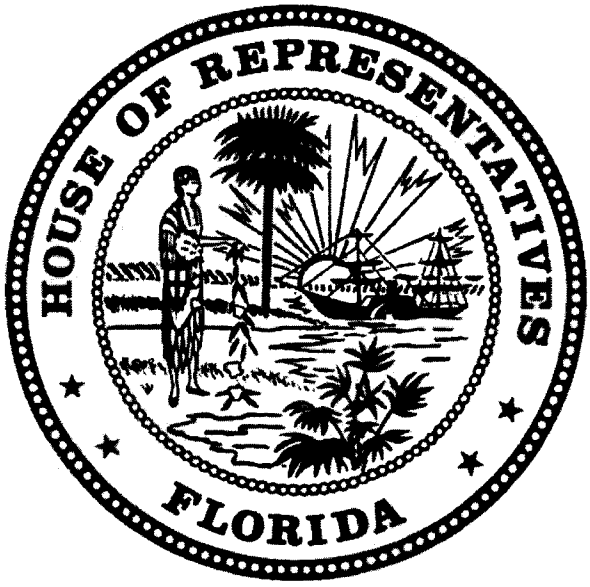

Commerce Committee

Thursday, January 23, 2020
9:30 AM –11:30 AM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Mike La Rosa
Chair

The Florida House of Representatives

Commerce Committee

Jose Oliva
Speaker

Mike La Rosa
Chair

Meeting Agenda

Thursday, January 23, 2020
9:30 am – 11:30 am
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 307 Law Enforcement Vehicles by Business & Professions Subcommittee, LaMarca

CS/HB 437 Nurse Registries by Insurance & Banking Subcommittee, Stone

HB 1189 Genetic Information for Insurance Purposes by Sprowls, Williamson

HB 6055 Telegraph Companies by Gregory

V. Workshop on the following:

Intercollegiate Athlete Compensation and Rights Legislation

VI. Closing Remarks

VII. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Law Enforcement Vehicles
SPONSOR(S): Business & Professions Subcommittee, LaMarca and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee	14 Y, 0 N	Mawn	Luczynski
3) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

Condominium associations, homeowners' associations, and cooperatives are allowed to create and enforce restrictive covenants that limit the use of association property. Owners, tenants, and guests must comply with these restrictions or they could be subject to monetary fines or suspension of their right to use the association's common elements.

A common restrictive covenant created by such associations includes a restriction or prohibition on parking certain vehicles, such as commercial vehicles, in certain location within the association's property.

The bill prohibits condominium associations, homeowners' associations, and cooperatives from preventing a law enforcement officer who is an owner, or an owner's tenant, guest, or invitee, from parking his or her assigned law enforcement vehicle in an area where the owner, or the owner's tenant, guest, or invitee, has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the association's administration.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., the Cooperative Act. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2) and (26), F.S.
[4] S. 720.301(9), F.S.

ch. 720, F.S., the Homeowners' Association Act. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the Homeowners' Association Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. However, Florida law provides HOA procedures, minimum operating requirements, and for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes.

Community Association Fines and Suspensions

Owners, tenants, and guests must comply with a condominium, cooperative, or HOA's declaration, bylaws, and rules. Condominium associations, cooperatives, and HOAs (community associations) may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association's governing documents. A suspension for failing to comply with the community association's declaration, bylaws, or rules may not be for an unreasonable amount of time.[5]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000. However, a fine levied by an HOA may exceed $1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property, and fines levied by an HOA that do not exceed $1,000 may not become a lien on the property.[6]

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property if the owner is more than 90 days delinquent in paying a monetary obligation, including a fine. The suspension may remain in effect until the fine is paid.[7] A community association may also suspend an owner's voting rights for any monetary obligation that exceeds $1,000 and is more than 90 days delinquent.[8]

Restrictive Covenants

A community association may enact and enforce covenants as a condition for living in the association. A covenant is an agreement or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.[9]

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association's declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association's board of directors must also be reasonable.[10]

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[5] Ss. 718.303, 719.303, & 720.305, F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ss. 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), & 720.304(1), F.S.; Peter Dunbar, The Condominium Concept, 10-11 (15th ed. 2017-18).
[10] *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

Commercial Vehicles

A common community association restrictive covenant is restricting or prohibiting the parking of certain vehicles, such as commercial vehicles, on association property. However, many times the community association's governing documents do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.[11]

Florida Courts have upheld HOA provisions restricting the parking of commercial vehicles even where the HOA has failed to define "commercial vehicle."[12]

In June of 2005, the Town of Davie (Davie) requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle.[13] Specifically, Davie inquired as to whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking in a community association.[14] This followed after an HOA in Davie prohibited commercial vehicles from parking in the driveways within the HOA and informed a property owner that the owner's law enforcement vehicle was a commercial vehicle and could not be parked in the driveway.[15]

The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law enforcement services are an integral part of government and are not provided for economic gain.[16] The Attorney General also noted that assigning a police vehicle to an officer to drive during off-duty hours to provide a quicker response when called to an emergency would directly benefit the public, and the presence of a police vehicle in a neighborhood may serve as a crime deterrent.[17]

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in HOA fines if the officer continued to park a marked police cruiser in her driveway instead of her garage,[18] as the HOA's declaration prohibits owners from parking commercial vehicles and marked law enforcement vehicles in driveways.[19] According to the media reports, the HOA has changed its position and now lets the police officer park a marked cruiser in her driveway.[20] However, media reports indicate that the exception only applies to that specific police officer, and all future owners with law enforcement vehicles may not park them in their driveways.[21]

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[11] Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017), https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles (last visited Jan. 6, 2020); Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016), https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/ (last visited Jan. 6, 2020).

[12] *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

[13] 05-36 Fla. Op. Att'y Gen.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Heather Leigh, *HOA Tells Clearwater Officer to Move Her Police Cruiser into Her Garage or Face Legal Action*, ABC Action News Tampa Bay, (Aug. 27, 2019), https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action (last visited Jan. 6, 2020); WFTS Staff, *HOA Tells Florida Officer to Move Her Police Cruiser off Her Driveway or Face Legal Action*, News Channel 5 Nashville (Sep. 1, 2019), https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action (last visited Jan. 6, 2020).

[19] Amended and Restated Master Declaration of Covenants and Restrictions for Cross Pointe, http://crosspointehoa.com/wp-content/uploads/2013/06/Cross-Pointe-Declaration-Final-031813.pdf (last visited Jan. 6, 2020).

[20] Heather Leigh, *HOA Now Allowing Clearwater Police Officer to Park Cruiser in Driveway*, ABC Action News Tampa Bay, (Sep. 11, 2019), https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway (last visited Jan. 6, 2020).

[21] *Id.*

Law Enforcement Officer

Chapter 943, F.S., is the Department of Law Enforcement Act.[22] Section 943.10(1), F.S, defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is crime prevention and detection or the enforcement of the state's penal, criminal, traffic, or highway laws. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time, part-time, and auxiliary law enforcement officers but does not include support personnel employed by the employing agency.[23]

Effect of the Bill

The bill prohibits HOAs, condominium associations, and cooperatives from preventing a law enforcement officer, as defined in s. 943.10(1), F.S., who is an owner, or an owner's tenant, guest, or invitee, from parking his or her assigned law enforcement vehicle in an area where the owner, or the owner's tenant, guest, or invitee, has a right to park.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 718.129, F.S., relating to law enforcement vehicles.

Section 2: Creates s. 719.131, F.S., relating to law enforcement vehicles.

Section 3. Creates s. 720.318, F.S., relating to law enforcement vehicles.

Section 4: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[22] S. 943.01, F.S.
[23] S. 943.10(1), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may save a law enforcement officer who is an owner, or an owner's tenant, guest, or invitee, in a community association from being assessed and subsequently paying fines for parking his or her assigned law enforcement vehicle in an area where the owner, or the owner's tenant, guest, or invitee, has a right to park. Other private sector economic impacts are unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defines "law enforcement officer" by adopting the definition of "law enforcement officer" under the Department of Law Enforcement Act; and
- Clarifies that a law enforcement officer may only park his or her "assigned" law enforcement vehicle in an area the officer has a right to park as an owner, tenant, guest, or invitee.

A bill to be entitled

An act relating to law enforcement vehicles; creating ss. 718.129, 719.131, and 720.318, F.S.; providing that community associations may not prohibit a law enforcement officer from parking his or her assigned law enforcement vehicle in certain areas; providing an effective date.

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

Section 1. Section 718.129, Florida Statutes, is created to read:

718.129 Law enforcement vehicles.—An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or tenant, guest, or invitee of the unit owner, otherwise has a right to park.

Section 2. Section 719.131, Florida Statutes, is created to read:

719.131 Law enforcement vehicles.—An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or tenant, guest, or invitee of

the unit owner, otherwise has a right to park.

Section 3. Section 720.318, Florida Statutes, is created to read:

720.318 Law enforcement vehicles.—An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a parcel owner, or a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle in an area where the parcel owner, or tenant, guest, or invitee of the parcel owner, otherwise has a right to park.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Nurse Registries
SPONSOR(S): Insurance & Banking Subcommittee; Stone
TIED BILLS: **IDEN./SIM. BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Cooper
2) Health Market Reform Subcommittee	13 Y, 0 N	Guzzo	Calamas
3) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Under the workers' compensation law, injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires. Among other services, workers' compensation covers attendant care. Attendant care is care rendered by trained professional attendants that is beyond the scope of household duties. Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.

A nurse registry is an agency licensed to secure temporary employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, certified nursing assistants, homemakers, and companions in a patient's home or with health care facilities or other entities. The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity. A workers' compensation carrier may use a nurse registry to place attendant care services to be rendered to an injured worker, but nurse registries are not expressly mentioned in the workers' compensation statute.

The bill specifically authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

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

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Workers' Compensation Attendant Care Benefits

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.[1] Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.[2] Medical services must be provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).[3]

There are serval types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties.[4] Attendant care includes a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.[5]

Providing in-home attendant care has significant advantages for both the injured worker and the carrier. The injured worker can be more comfortable than in an institution and realize better outcomes, both physically and mentally. The carrier can achieve significant cost savings. Current law does not expressly authorize carriers to use any particular provider type or provider business model.

Placement of Attendant Care Services

Nurse Registries

A nurse registry is an agency licensed to secure temporary employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, certified nursing assistants, homemakers, and companions in a patient's home or with health care facilities or other entities.[6] Nurse registries are governed by part II of chapter 408, F.S.,[7] associated rules in Chapter 59A-35, F.A.C., and the nurse registry rules in Chapter 59A-18, F.A.C. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA) to offer contracts in Florida.[8]

The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity (e.g., a workers' compensation carrier).[9] This is a key defining

[1] S. 440.09(1), F.S.
[2] S. 440.13(2)(a), F.S.
[3] S. 440.13(3)(a), F.S.
[4] S. 440.13(1)(b), F.S. Attendant care must be medically necessary and performed at the direction and control of an authorized treating physician pursuant to a written prescription. S. 440.13(2)(b), F.S.
[5] The valuation of family-member provided attendant care is limited in both duration and cost. S. 440.13(2)(b), F.S.
[6] S. 400.462(21), F.S.
[7] S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.
[8] S. 400.506(1), F.S.
[9] S. 400.506(6)(d), F.S.

feature of a nurse registry; it cannot have any employees except for the administrator, alternate administrator, and office staff – all individuals who enter the home of patients to provide direct care must be independent contractors.[10]

Home Health Agencies

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual's home or place of residence.[11] HHAs are governed by part II of chapter 408, F.S.,[12] associated rules in Chapter 59A-35, F.A.C., and Chapter 59A-8, F.A.C. Like a nurse registry, a HHA must be licensed by AHCA, pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.[13]

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with a HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and a HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; a HHA qualifies for such reimbursement.

The workers' compensation law is silent regarding how attendant care providers are selected to provide authorized compensable care for injured workers. A workers' compensation carrier has the discretion to choose attendant care providers directly or to use a nurse registry or HHA to place attendant care providers for the benefit of an injured worker.

Effect of the Bill

The bill specifically authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.
Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[10] S. 400.506(6)(e), F.S.
[11] S. 400.462(12), (14), F.S.
[12] S. 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.
[13] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker, rather than defining nurse registry services as "attendant care."

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to nurse registries; amending s. 440.13, F.S.; authorizing the use of licensed nurse registries for the placement of attendant care provided for workers' compensation purposes; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 440.13, Florida Statutes, is amended to read:

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

(2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

(b)1. The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The physician shall prescribe such care in writing. The employer or carrier shall not be responsible for such care until the prescription for attendant care is received by the employer and carrier, which shall specify the time periods for such care, the level of care required, and the type of assistance required. A prescription for attendant care shall not prescribe such care retroactively. The value of nonprofessional attendant care provided by a family member must be determined as

follows:

a.~~1.~~ If the family member is not employed or if the family member is employed and is providing attendant care services during hours that he or she is not engaged in employment, the per-hour value equals the federal minimum hourly wage.

b.~~2.~~ If the family member is employed and elects to leave that employment to provide attendant or custodial care, the per-hour value of that care equals the per-hour value of the family member's former employment, not to exceed the per-hour value of such care available in the community at large. A family member or a combination of family members providing nonprofessional attendant care under this paragraph may not be compensated for more than a total of 12 hours per day.

c.~~3.~~ If the family member remains employed while providing attendant or custodial care, the per-hour value of that care equals the per-hour value of the family member's employment, not to exceed the per-hour value of such care available in the community at large.

2. The employer or carrier may use a nurse registry licensed pursuant to s. 400.506 for the placement of authorized compensable attendant care services.

Failure of the carrier to timely comply with this subsection shall be a violation of this chapter and the carrier shall be subject to penalties as provided for in s. 440.525.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1189 Genetic Information for Insurance Purposes
SPONSOR(S): Sprowls
TIED BILLS: **IDEN./SIM. BILLS:** SB 1564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee	17 Y, 0 N	Grabowski	Calamas
2) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The availability and use of genetic tests has increased dramatically in recent years. The resulting genetic information is generally used by individuals or their physicians to determine whether any action should be taken to improve long-term wellbeing.

Since the advent of genetic testing, there have been concerns about the use of personal genetic information by third parties. In particular, there is a concern that insurers may discriminate against individuals who have genetic markers indicating a heightened risk of developing certain diseases or health conditions.

The federal Health Insurance Portability and Accountability Act of 1996 prohibits health insurers from making coverage decisions solely based on personal genetic information. The federal Genetic Information Nondiscrimination Act of 2008 extended this concept by prohibiting health insurers from using genetic information in the underwriting process, and in the setting of premiums.

Florida law also prohibits health insurers from considering genetic information, both when issuing insurance policies and when setting applicable premium rates. This prohibition, however, does not extend to issuers of life insurance, disability income insurance, and long-term care insurance policies.

The bill expands existing prohibitions on the use of genetic information by insurers to include entities that issue policies for life insurance and long-term care insurance. Specifically, the bill prohibits issuers of life insurance and long-term care insurance from canceling, limiting, or denying coverage, and from setting different premium rates, based on personal genetic information without a specific diagnosis related to the genetic information. The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic information, using genetic test results, or considering a person's decisions or actions relating to genetic testing for any insurance purpose.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates insurers, including life, health, and long-term care insurers, under the Florida Insurance Code.[1] Parts III and V of ch. 627, F.S., specifically address life insurers. Part VI of ch. 627, F.S. specifically addresses health insurers. The Agency for Healthcare Administration (AHCA) regulates the quality of care provided by health maintenance organizations (HMOs) under part III of ch. 641, F.S., and part I of ch. 641, F.S., focuses on OIR's regulatory role of HMOs. Before receiving a certificate of authority from OIR, an HMO must receive a health care provider certificate from AHCA.[2] Part XVIII of ch. 627, F.S., specifically addresses long-term care insurance, which is coverage for medical and personal care services provided in a setting other than an acute care unit of a hospital.[3]

Genetic Testing

The availability and use of genetic tests has increased dramatically in recent years. As of March 2017, there were nearly 70,000 genetic testing products on the market, with an average of 10.6 new testing products entering the market *a day* since 2015.[4] A 2016 survey indicated that 5.5 percent of adults in the U.S. had undergone genetic testing. Over half of those tested did so based on a concern about future health problems for them or their children, while 18 percent were tested to learn more about family heritage.[5] The U.S. Centers for Disease Control and Prevention (CDC) recognizes the development of genomic tests for thousands of diseases and health conditions, while also acknowledging that such tests are not necessarily a conclusive indication that an individual will develop a particular disease or condition.[6]

A wide range of health-related DNA screenings are available. The National Institutes for Health (NIH) categorizes these tests as follows.

- ***Diagnostic testing*** - identifies a genetic condition or disease that is making or in the future will make a person ill. The results of diagnostic testing can help in treating and managing the disorder.
- ***Predictive and pre-symptomatic genetic testing*** - identifies genetic variations that increase a person's chance of developing specific diseases. This type of genetic testing may help provide information about a person's risk of developing a disease, and can help in decisions about lifestyle and health care.

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[1] Chapters 624–632, 634–636, 641, 642, 648, and 651, F.S. constitute the Florida Insurance Code.
[2] Ss. 641.21(1) and 641.48, F.S.
[3] S. 627.9404, F.S. Long-term care services may encompass a wide array of medical, social, and personal care services required by an individual with a chronic disability. American Academy of Actuaries, *The Use of Genetic Information in Disability Income and Long-Term Care Insurance*, Issue Brief, Spring 2002, available at https://www.actuary.org/files/publications/genetic_25apr02.pdf (last accessed January 10, 2020).
[4] *The Current Landscape of Genetic Testing*, Concert Genetics, March 2017, available at https://www.concertgenetics.com/wp-content/uploads/2017/05/10_ConcertGenetics_CurrentLandscapeofGeneticTesting_2017Update.pdf (last accessed January 10, 2020).
[5] Harvard University T.H. Chan School of Public Health, *The Public and Genetic Editing, Testing, and Therapy*, Jan. 2016, available at https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2016/01/STAT-Harvard-Poll-Jan-2016-Genetic-Technology.pdf (last accessed January 10, 2020). Genetic testing has also given rise to a novel industry aimed at providing individuals with customized data related to family ancestry, including companies like 23andMe, Ancestry.com, FamilyTree DNA, and Living DNA.
[6] U.S. Centers for Disease Control and Prevention, *Genomic Testing*, last updated July 19, 2017, available at https://www.cdc.gov/genomics/gtesting/ (last accessed January 10, 2020).

- ***Carrier testing*** – identifies whether a person "carries" a genetic change that can cause a disease. Carriers usually show no signs of the disorder; however, they can pass on the genetic variation to their children, who may develop the disorder or become carriers themselves.
- ***Prenatal testing*** - identifies fetuses that have certain diseases.
- ***Pre-implantation genetic testing*** – identifies whether embryos for implantation carry genes that could cause disease. This is often done in conjunction with *in vitro* fertilization.
- ***Newborn screening*** - is used to test babies one or two days after birth to determine if those newborns have certain diseases known to cause problems with health and development.
- ***Pharmacogenetic testing*** - provides information about how certain medicines are processed in a person's body. This type of testing can help a healthcare provider choose the medicines that work best with a person's genetic makeup. For example, genetic testing is now available to guide treatments for certain cancers.
- ***Research genetic testing*** – helps scientists learn more about how genes contribute to health and disease, as well as develop gene-based treatments. Sometimes the results do not directly help the research participant, but they may benefit others in the future by helping researchers expand their understanding of the human body.[7]

One often-cited use of genetic testing involves screening of female patients for a gene mutation that can be an early predictor of breast cancer. *BRCA 1* and *BRCA 2* gene mutations are relatively rare, but women having these mutations develop breast cancer at much higher rates than those without.[8] *BRCA* testing has become increasingly prevalent among women in families with histories of breast cancer.[9]

Use of Personal Genetic Information in Insurance Markets

The now-widespread availability of genetic tests has given rise to questions and concerns over the appropriate use of genetic information. While an individual may voluntarily submit to genetic testing in an effort to gain insights into his or her own genetic history, third parties may seek to obtain this same information for other purposes, such as for use in insurance markets.

For example, insurers might use genetic information to exclude high-risk individuals from established risk pools. Insurers might also charge higher premium rates to an individual whose genetic information indicates that the individual is at an increased risk of developing a degenerative health condition.[10] Conversely, exclusion of higher-risk insureds could reduce premium inflation for those left in the risk pool.

Similarly, consumers could use personal genetic information to the detriment of insurers. For example, an individual may discover through genetic testing that he or she is likely to develop a serious health condition, and only then purchase life insurance. An insurer is at a disadvantage and cannot accurately gauge the risk posed by covering an individual in this situation.[11] Adverse selection[12] of this nature could destabilize insurance markets if access to personal genetic information leads to widespread changes in consumer behavior.[13] Specifically, the risk-spreading ability of insurance could be compromised if only those who are likely to become ill purchase insurance.[14]

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[7] U.S. Department of Health and Human Services, National Institutes for Health, *Genetic Testing: How it is Used for Healthcare*, available at https://report.nih.gov/nihfactsheets/ViewFactSheet.aspx?csid=43 (last accessed January 10, 2020).
[8] McCarthy, Anne Marie and Armstrong, Katrina, "The Role of Testing for *BRCA1* and *BRCA2* Mutations in Cancer Prevention." *JAMA Intern Med.* 2014;174(7):1023–1024. doi:10.1001/jamainternmed.2014.1322, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4169670/ (last accessed January 10, 2020).
[9] Id.
[10] Klitzman, Robert, Appelbaum, Paul S., Chung, Wendy K, "Should Life Insurers Have Access to Genetic Test Results?". *JAMA.* 2014;312(18):1855–1856. doi:10.1001/jama.2014.13301, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4259574/ (last accessed January 10, 2020).
[11] Id.
[12] Adverse selection is defined as an imbalance in an exposure group created when persons who perceive a high probability of loss for themselves seek to buy insurance to a much greater degree than those who perceive a low probability of loss. IRMI, https://www.irmi.com/term/insurance-definitions/adverse-selection (last accessed January 10, 2020).
[13] American Academy of Actuaries, *The Use of Genetic Information in Disability Income and Long-Term Care Insurance*, Issue Brief, Spring 2002, available at https://www.actuary.org/files/publications/genetic_25apr02.pdf (last accessed January 10, 2020).

While the specific information provided by the genetic testing industry regarding medical conditions and their associated risks is limited at present, it is rapidly evolving. In 2013, the United States Food and Drug Administration (FDA) instructed *23andMe* to stop giving health information to consumers.[15] However, by 2018, *23andMe* received approval from the FDA to provide reports regarding certain health conditions or risks, including the genetic variants in the *BRCA 1 and BRCA 2* genes.[16] Other vendors also provide lists of genetic variants, available to consumers, with information regarding the scientific significance of each variant.[17] In the future, consumers may be able to take the ever-evolving information provided by genetic testing, compare it to the information provided by these vendors, and determine they have a genetic condition or disease, or are likely to develop a health condition. Based upon this determination, they may decide to purchase insurance they otherwise would not, without disclosing the results of their genetic testing, and thereby receive the insurance at a rate that is actuarially unsound for their true risk class.

Federal Laws

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) includes the first federal regulations on the use of personal genetic information.[18] HIPAA prohibits health insurers from using "preexisting condition" exclusions based solely on an individual's genetic information. Under HIPAA, insurers can make coverage decisions using information reflecting diagnosed health conditions, but not based on genetic indicators alone.[19]

The Genetic Information Nondiscrimination Act of 2008 (GINA) extended federal patient protections by preventing health insurers from using genetic information in the underwriting of health insurance products.[20] Health insurers may not charge higher premiums or make coverage decisions based solely on an individual's genetic information. However, the prohibitions outlined in GINA do not extend to other types of insurance, such as life insurance and long-term care insurance. There are currently no federal limitations on the use of genetic information by these insurers.

The federal Patient Protection and Affordable Care Act[21] (PPACA) prohibits most individual and group health insurers from excluding coverage to or otherwise discriminating against persons with pre-existing or complex health conditions. Moreover, the law prohibits plans from using most forms of medical underwriting, which had previously been used to link personal health status to the cost and availability of health insurance.[22]

State Laws

States have adopted various regulations related to the use of genetic information by insurers. In general, states address patient privacy for personal genetic information by: [23]

1. Requiring informed consent before performing genetic testing;

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[14] Id.
[15] Tina Hesman Saey, *What consumer DNA data can and can't tell you about your risk for certain diseases,* ScienceNews (Jun. 3, 2018), https://www.sciencenews.org/article/health-dna-genetic-testing-disease (last accessed January 10, 2020).
[16] Id.
[17] Id.
[18] Hall, Mark A. and Rich, Stephen S., "Laws Restricting Health Insurers' Use of Genetic Information: Impact on Genetic Discrimination." *AJHG* 2000: 66(1): 293-307, available at https://doi.org/10.1086/302714 (last accessed January 10, 2020).
[19] Id.
[20] U.S. Equal Employment Opportunity Commission, *The Genetic Information Nondiscrimination Act of 2008*, available at https://www.eeoc.gov/laws/statutes/gina.cfm (last accessed January 10, 2020).
[21] Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148. On March 30, 2010, PPACA was amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.
[22] 42 U.S.C. 300gg. The law allows insurers to consider an individual's age and tobacco use in the development of applicable rates. However, virtually all other underwriting is prohibited.
[23] Miller, Amalia R. and Tucker, Catherine E., "Privacy Protection, Personalized Medicine and Genetic Testing" (July 31, 2014), available at https://ssrn.com/abstract=2411230 (last accessed January 10, 2020).

2. Restricting the use of genetic data by health insurance, employers or providers of long-term life care or insurance; and,
3. Limiting disclosure of the personal genetic information without the consent of the individual or defining genetic data as the 'property' of the individual.

Most states have enacted laws that prohibit genetic discrimination by health insurers.[24] A number of states have taken actions to limit or prohibit the use of genetic information in other lines of insurance as well.[25] For example, Arizona, California, Massachusetts and New Jersey restrict use of genetic information by life insurers, and Kansas, Maryland and Massachusetts restrict use by long-term care insurers. Similarly, Arizona, California, Idaho, Kansas, Massachusetts and New Jersey restrict use by disability[26] insurers.[27]

Florida Law

Section 760.40, F.S., makes the results of genetic testing the exclusive personal property of the person tested, and makes it a first degree misdemeanor to sharing test results without the informed consent of the person tested.

Section 627.4301, F.S., prohibits health insurers from considering genetic information, both when issuing insurance policies and when setting applicable premium rates.[28] Insurers cannot require or solicit genetic information, or employ underwriting based on the results of any genetic testing that an individual may choose to complete, and cannot use such results for any purpose. This prohibition is currently limited to self-insured health plans, fully-insured health plans, HMOs, prepaid limited health service organizations, prepaid health clinics, fraternal benefit societies, or any other health care arrangement where risk is assumed. This section of law expressly exempts several forms of insurance from the prohibition: life insurance, disability income, long-term care, accident-only, hospital indemnity or fixed indemnity, dental, and vision.

Effect of Proposed Changes

The bill amends s. 627.4301, F.S., existing prohibitions on the use of genetic information by insurers to include entities that issue policies for life insurance and long-term care insurance. Specifically, the bill prohibits issuers of life insurance and long-term care insurance from canceling, limiting, or denying coverage, and from setting different premium rates, based on personal genetic information without a specific diagnosis[29] related to the genetic information. The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic information, using genetic test results, or considering a person's decisions or actions relating to genetic testing for any insurance purpose.

The bill has an effective date of July 1, 2020, and applies to insurance policies entered into or renewed on or after January 1, 2021.

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[24] Rothstein, Mark A., "Putting the Genetic Nondiscrimination Act in context." *Genetics in Medicine* 2008: 10: 655-656, available at https://www.nature.com/articles/gim200899 (last accessed January 10, 2020).

[25] The National Human Genome Human Research Institute maintains a searchable database of legislation related to genetic information that has either been enacted or considered by state legislatures. U.S. Department of Health and Human Services, National Institutes of Health – National Human Genome Human Research Institute, *Genome Statute and Legislation Database*, available at https://www.genome.gov/policyethics/legdatabase/pubsearch.cfm?CFID=22285441&CFTOKEN=7fc536f1b99bbd21-2342A48B-03C6-03BE-03FEEF39A8695C0F (last accessed January 10, 2020).

[26] Disability income insurance protects earned income against potential loss due to disabling injury or illness. American Academy of Actuaries, *The Use of Genetic Information in Disability Income and Long-Term Care Insurance*, Issue Brief, Spring 2002, available at https://www.actuary.org/files/publications/genetic_25apr02.pdf (last accessed January 10, 2020).

[27] *Supra* note 19.

[28] See also s. 626.9706, F.S., which prohibits insurers from refusing coverage or charging higher premiums to individuals determined to carry the sickle-cell trait.

[29] Florida law does not define "diagnosis." However, "diagnosis" is generally defined as the "art or act of identifying a disease from its signs and symptoms." Merriam-Webster, https://www.merriam-webster.com/dictionary/diagnosis (last accessed January 10, 2020).

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4301, F.S., relating to genetic information for insurance purposes.
Section 2: Establishes that the bill's requirements are applicable to insurance policies entered into or renewed on or after January 1, 2021.
Section 3: Provides an effective date of July 1, 2020.

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:

It is unclear whether or how, issuers of life insurance and long-term care insurance are currently using personal genetic information, so the economic impact of the bill's prohibition on its use is unknown. As genetic testing evolves, it may provide additional information that indicates an increased risk of developing certain health conditions, and the availability of this information may have an impact on the life and long-term care insurance markets.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to genetic information for insurance purposes; amending s. 627.4301, F.S.; providing definitions; prohibiting life insurers and long-term care insurers from canceling, limiting, or denying coverage, or establishing differentials in premium rates based on genetic information under certain circumstances; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose; providing applicability; providing an effective date.

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

Section 1. Section 627.4301, Florida Statutes, is amended to read:

627.4301 Genetic information for insurance purposes.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Genetic information" means information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome, or are associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is

asymptomatic at the time of testing. Such testing does not include routine physical examinations or chemical, blood, or urine analysis, unless conducted purposefully to obtain genetic information, or questions regarding family history.

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a self-insured plan as defined in s. 624.031, a multiple-employer welfare arrangement as defined in s. 624.437, a prepaid limited health service organization as defined in s. 636.003, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, a fraternal benefit society as defined in s. 632.601, or any health care arrangement whereby risk is assumed.

(c) "Life insurer" has the same meaning as in s. 624.602 and includes an insurer issuing life insurance contracts that grant additional benefits in the event of the insured's disability.

(d) "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404.

(2) USE OF GENETIC INFORMATION.—

(a) In the absence of a diagnosis of a condition related to genetic information, ~~no~~ health insurers, life insurers, and long-term care insurers ~~insurer~~ authorized to transact insurance in this state may not cancel, limit, or deny coverage, or establish differentials in premium rates, based on such

information.

(b) Health insurers, life insurers, and long-term care insurers may not require or solicit genetic information, use genetic test results, or consider a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

(c) This section does not apply to the underwriting or issuance of an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy or any other actions of an insurer directly related to an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy.

Section 2. This act applies to policies entered into or renewed on or after January 1, 2021.

Section 3. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6055 Telegraph Companies
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N	Keating	Keating
2) Commerce Committee		Keating	Hamon

SUMMARY ANALYSIS

The bill repeals the entirety of chapter 363, F.S., which establishes penalties and liability provisions related to the intrastate transmission of messages by telegraph. The provisions of chapter 363, F.S., appear to be outdated and no longer applicable.

The bill has no fiscal impact on state or local government.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

On May 26, 1844, Samuel Morse, inventor of the Morse code, sent the first message by telegraph in the United States, ushering in the telegraph era that displaced the Pony Express. It read "WHAT HATH GOD WROUGHT?"[1] We now have a more modern answer to that question, as transmitting and receiving messages by telegraph has been replaced almost entirely by the speed and widespread availability of e-mail, faxes, inexpensive long-distance telephone service, instant messaging, and social media, such as Facebook and Twitter.[2]

Still, Florida law includes an entire chapter related to the provision of telegraph service. Chapter 363, F.S., establishes penalties and liability provisions related to the transmission and delivery of telegrams. Sections 363.02 through 363.05, F.S., establish penalties and liability provisions for a telegraph company[3] that owns or operates a telegraph line[4] wholly or partly in the state and negligently fails to promptly transmit and deliver messages[5] or refuses to receive for transmission any legible messages provided to the company for transmission. Further, section 363.06, F.S., provides that persons engaged in the business of sending telegrams[6] are liable for damages for mental anguish and physical suffering resulting from negligent failure to promptly and correctly transmit or deliver a telegram. Section 363.08, F.S., establishes liability for persons engaged in the business of sending telegrams in cipher for negligent failure to promptly transmit and deliver a telegram in cipher. Section 363.10, F.S., provides that contractual provisions intended to limit the liability imposed in this chapter are illegal and void. The provisions of this chapter apply only to intrastate transmission of telegraph messages.[7]

The current provisions of ch. 363, F.S., have remained substantively unchanged since at least 1913.[8] Sections 363.02, 363.03, and 363.05, F.S., were adopted in 1907 and have remained in law since then without amendment. Section 363.04, F.S., was adopted in 1907 and was changed once, in 1945, with a one word technical amendment. Sections 363.06-.10, F.S., were adopted in 1913 and have remained in law since then without amendment. No court opinions related to this chapter have been published since 1945.[9]

Western Union Telegraph Company, perhaps the most well-known telegram service provider, sent its last telegram on January 27, 2006.[10] Based on an Internet search by staff, a handful of businesses still advertise telegram service, some claiming to utilize, at least in part, the telegraph system operated by

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[1] *See, e.g., Telegram Passes into History*, Wired (Feb. 2, 2006), https://www.wired.com/2006/02/telegram-passes-into-history/ (last visited Jan. 9, 2020).

[2] In a twist of historical irony, some commenters, at the time of the telegraph's invention, found the service to be "superficial, sudden, unsifted, too fast for the truth." *See* Adrienne LaFrance, *I Tried to Send a Telegram in 2016*, The Atlantic (Jan. 22, 2016), https://www.theatlantic.com/technology/archive/2016/01/rip-stop-telegrams/425136/ (last visited Jan. 9, 2020).

[3] The term "telegraph company" is not defined for purposes of chapter 363, F.S.

[4] The term "telegraph line" is not defined for purposes of chapter 363, F.S.

[5] The provisions concerning delivery of messages apply only to deliveries in incorporated cities and towns. S. 363.02, F.S.

[6] The term "telegram" is not defined for purposes of chapter 363, F.S.

[7] *Price v. Western Union Tel. Co.*, 23 So.2d 491 (Fla. 1945) ("sending of a telegraph message from one state into another is a transaction in interstate commerce").

[8] Former s. 363.01, F.S., adopted in 1885, established a per-word rate cap for telegraph messages. This provision was repealed in 2000.

[9] *See supra*, note 7.

[10] Robert Seigel, *Western Union Sends Its Last Telegram*, NPR (Feb. 2, 2006), https://www.npr.org/templates/story/story.php?storyId=5186113?storyId=5186113 (last visited Jan. 9, 2020).

Western Union.[11] The terms of service for these companies do not specify exactly how the customer's message will be transmitted, and some specifically state that transmission may occur through means other than telegraph. In each case, the ultimate service provided is the delivery of a message to the recipient on paper, with proof of delivery established by some service providers.

In a 2017 Order removing "outmoded regulations," the Federal Communications Commission indicated that it was not aware of any interstate telegraph service providers and that "[t]elegraph service is obsolete."[12] Further, none of the businesses identified in staff's search are registered to do business in Florida. As a result, it appears that the provisions of chapter 363, F.S., are outdated and no longer applicable.

Effect of Proposed Changes

The bill repeals the entirety of chapter 363, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, F.S., relating to liability and damages for failure to transmit or deliver telegraph messages.

Section 2. Provides an effective date of July 1, 2020.

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.

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[11] For example, USCOMM LLC operates a service at sendtelegram.com. The website for the service indicates that "[a]fter closure of retail operations by Western Union, we effectively replaced them in the domestic market." Further, International Telegram operates a service at iTelegram.com, whose website states that the company "operate[s] the former Western Union telex/cablegram network covering most of the globe."

[12] 32 FCC Rcd 7132 (8) (2017).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to telegraph companies; repealing chapter 363, F.S., relating to the regulation of telegraph companies and telegrams; providing an effective date.

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

Section 1. Chapter 363, Florida Statutes, consisting of sections 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, is repealed.

Section 2. This act shall take effect July 1, 2020.

Draft Bill on Intercollegiate Athlete Compensation and Rights SUMMARY

The bill authorizes intercollegiate athletes to earn compensation for their name, image, likeness, or persona (NILP). The bill seeks to preserve the integrity, quality, character, and amateur nature of intercollegiate athletics while maintaining a clear distinction between amateur intercollegiate athletics and professional sports by:

- Providing that compensation for athletic performance or attendance at a particular institution remains prohibited.
- Allowing NILP compensation only if it is provided by a third party unaffiliated with the athlete's postsecondary educational institution.

The bill prohibits postsecondary educational institutions receiving state aid (Florida College System institutions, State University System institutions, and private colleges and universities) from:

- Preventing or unduly restricting an intercollegiate athlete from earning NILP compensation.
- Preventing or unduly restricting an intercollegiate athlete from obtaining professional representation for purposes of seeking NILP compensation.
- Revoking or reducing grant-in-aid awards for an intercollegiate athlete who earns compensation for his or her NILP.

The terms of a contract for NILP compensation may not conflict with the terms of the intercollegiate athlete's team contract or extend beyond the time of the athlete's participation in an athletic program at a postsecondary educational institution. Athletes under 18 years of age must have any such contract reviewed by a court.

In addition, the bill requires each postsecondary educational institution receiving state aid to:

- Provide intercollegiate athletes with health and disability insurance for the duration of the time it takes the athlete to recover from the sports-related injury and a death benefit of $25,000. Injuries must be timely reported and the right to benefits ends if no benefits are necessary for 2 years.
- Maintain grant-in-aid for intercollegiate athletes for:
    - Up to one academic year or until the athlete graduates, whichever is shorter, when the athlete has exhausted athletic eligibility.
    - Up to five academic years or until the student-athlete graduates, whichever is shorter, when the athlete is determined to be medically ineligible to participate in athletics due to an injury that occurred while participating in an athletic program.
- Conduct a financial and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years.

A bill to be entitled

An act relating to intercollegiate athlete compensation and rights; creating s. 1006.72, F.S.; providing legislative findings; providing definitions; authorizing certain intercollegiate athletes to earn compensation for their names, images, likenesses, and personas; providing requirements for such compensation; prohibiting postsecondary educational institutions from adopting or maintaining rules, regulations, standards, or other requirements that prevents or unduly restricts intercollegiate athletes from earning specified compensation; providing that certain compensation does not affect certain intercollegiate athlete eligibility; prohibiting a postsecondary educational institution from compensating intercollegiate athletes or prospective intercollegiate athletes for their names, images, likenesses, or personas; prohibiting a postsecondary educational institution from preventing or unduly restricting intercollegiate athletes from obtaining specified representation; requiring athlete agents and attorneys to meet specified requirements; providing that specified aid for intercollegiate athletes is not considered compensation; prohibiting the revocation of certain aid as a result of intercollegiate athletes

earning certain compensation; providing approval requirements for certain contracts for compensation for intercollegiate athletes who are minors; providing contract requirements; prohibiting intercollegiate athletes from entering into contracts for specified compensation that conflict with terms of her or his team contract; providing intercollegiate athlete contract disclosure requirements; requiring postsecondary educational institutions to maintain certain insurance for intercollegiate athletes; providing requirements for such insurance; requiring postsecondary educational institutions to provide specified grant-in-aid to intercollegiate athletes under certain circumstances and provide a specified workshop; providing requirements for such grant-in-aid and workshop; providing applicability; prohibiting the use of state funds for specified purposes; providing requirements for reporting certain injuries and claims for benefits related to certain injuries; providing requirements for certain disability compensation benefits; prohibiting a postsecondary educational institution from membership in specified associations, conferences, or organizations; requiring the Board of Governors and the State Board of Education to adopt regulations and rules, respectively; amending s.

468.453, F.S.; providing requirements for certain athlete agents; providing an effective date.

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

Section 1. Section 1006.72, Florida Statutes, is created to read:

1006.72 Intercollegiate athlete compensation and rights.—The Legislature finds that intercollegiate athletics provide intercollegiate athletes with significant educational opportunities. However, participation in intercollegiate athletics should not infringe upon an intercollegiate athlete's ability to earn compensation for her or his name, image, likeness, or persona. An intercollegiate athlete must have an equal opportunity to control and profit from the commercial use of her or his name, image, likeness, and persona and be protected from unauthorized appropriation and commercial exploitation of her or his right to publicity, including her or his name, image, likeness, and persona. Moreover, an intercollegiate athlete's inability to participate in intercollegiate athletics due to an injury should not impair her or his future health or academic success.

(1) DEFINITIONS.—As used in this section, the term:

(a) "Athletic program" means an intercollegiate athletic program at a postsecondary educational institution.

(b) "Disability insurance" means insurance covering disability compensation benefits for an intercollegiate athlete participating in an athletic program.

(c) "Health insurance" means primary health insurance covering injuries resulting from the intercollegiate athlete's participation in an athletic program that provides for all medically necessary treatment and care until the intercollegiate athlete is restored to her or his condition before the injury.

(d) "Injury" means an injury sustained by an intercollegiate athlete while participating in an athletic program's activities.

(e) "Insurance" means health insurance and disability insurance.

(f) "Intercollegiate athlete" means a student who participates in an athletic program. The term includes a former intercollegiate athlete who suffered an injury.

(g) "Partial disability" means the intercollegiate athlete's incapacity because of the injury to earn full-time wages.

(h) "Physician" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a podiatric physician licensed under chapter 461, or an optometrist licensed under chapter 463.

(i) "Postsecondary educational institution" means a state university, a Florida College System institution, or a private

college or university receiving grant-in-aid or other aid under chapter 1009.

(j) "Total disability" means an intercollegiate athlete's inability to earn wages because of an injury.

(2) INTERCOLLEGIATE ATHLETES' COMPENSATION AND RIGHTS AND POSTSECONDARY EDUCATIONAL INSTITUTIONS RESPONSIBILITIES.—

(a) An intercollegiate athlete at a postsecondary educational institution may earn compensation for her or his name, image, likeness, or persona. To preserve the integrity, quality, character, and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports, such compensation must not be based upon athletic performance or attendance at a particular institution and may only be provided by a third party unaffiliated with the intercollegiate athlete's postsecondary educational institution.

(b) A postsecondary educational institution may not adopt or maintain a contract, rule, regulation, standard, or other requirement that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his name, image, likeness, or persona. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid eligibility.

(c) A postsecondary educational institution may not compensate a current intercollegiate athlete or prospective

intercollegiate athlete who may participate in intercollegiate athletics for her or his name, image, likeness, or persona.

(d) A postsecondary educational institution may not prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for her or his name, image, likeness, or persona. Pursuant to s. 468.453(8), an athlete agent representing an intercollegiate athlete for purposes of securing compensation for her or his name, image, likeness, or persona must be licensed under part IX of chapter 468. An attorney representing an intercollegiate athlete for purposes of securing compensation for her or his name, image, likeness, or persona must be a member in good standing of The Florida Bar.

(e) Grant-in-aid awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation for the purposes of this subsection, and grant-in-aid may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining professional representation under this subsection.

(f) An intercollegiate athlete under the age of 18 years must have any contract for compensation for her or his name, image, likeness, or persona approved under ss. 743.08 and 743.09.

(g) An intercollegiate athlete's contract for compensation

for her or his name, image, likeness, or persona may not violate this subsection.

(h) An intercollegiate athlete may not enter into a contract for compensation for her or his name, image, likeness, or persona if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. A postsecondary educational institution asserting a conflict under this paragraph must disclose each relevant contract term that conflicts with the team contract to the intercollegiate athlete or her or his representative.

(i) An intercollegiate athlete who enters into a contract for compensation for her or his name, image, likeness, or persona shall disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.

(j) The duration of a contract for representation of an intercollegiate athlete or compensation of an intercollegiate athlete's name, image, likeness, or persona may not extend beyond her or his participation in an athletic program at a postsecondary educational institution.

(k) Each postsecondary educational institution shall:

1.a. Maintain for each intercollegiate athlete health insurance and disability insurance that meets the requirements of sub-subparagraphs c. and d., respectively, by:

I. Verifying that the intercollegiate athlete is provided

the benefits required by this section by her or his own insurance or insurance provided by an immediate family member;

II. Providing insurance covering the intercollegiate athlete;

III. Participating in an insurance program, which provides at least the benefits required by this section, offered by an intercollegiate athletics sanctioning body or intercollegiate athletics association of which the postsecondary educational institution is a member; or

IV. Any combination of sub-sub-subparagraphs I.-III.

b. If the intercollegiate athlete's insurance under sub-sub-subparagraph I. lapses or does not provide the required medical benefits, the postsecondary educational institution must provide coverage under sub-sub-subparagraph II. or sub-sub-subparagraph III., or a combination thereof, beginning with the first dollar of a claim. If coverage is secured under sub-sub-subparagraph I., any deductible amounts must be paid by the postsecondary educational institution. If coverage is secured under sub-sub-subparagraph II. or sub-sub-subparagraph III., or a combination thereof, the entire premium and any deductible amounts must be paid by the postsecondary educational institution.

c. Health insurance under sub-subparagraph a. must include dental benefits for dental conditions related to the injury, medically necessary emergency and nonemergency medical

transportation, professional and nonprofessional attendant care, prosthetics, orthotics, durable medical equipment, and medically necessary physical rehabilitation and vocational rehabilitation benefits.

d. Disability insurance under sub-subparagraphs a. must provide at least $400 per month for the first 12 months of total disability and $2,700 per month for each month of total disability beyond the first 12 months of total disability; at least $270 per month for the first 12 months of partial disability and $1,800 per month for each month of partial disability beyond the first 12 months of partial disability; and a death benefit of at least $25,000.

2. Provide an intercollegiate athlete who was receiving athletic related grant-in-aid and is in good standing, an equivalent grant-in-aid for:

a. Up to one academic year or until the intercollegiate athlete completes her or his primary undergraduate degree, whichever is shorter, if the intercollegiate athlete has exhausted athletic eligibility.

b. Up to five academic years or until the intercollegiate athlete completes her or his primary undergraduate degree, whichever is shorter, if the intercollegiate athlete suffered an injury, and an independent physician with a specialty appropriate to each applicable injury determines that she or he is medically ineligible to participate in intercollegiate

athletics.

3. Conduct a financial literacy and life skills workshop for a minimum of 5 hours at the beginning of the intercollegiate athlete's first and third academic years. The workshop shall, at a minimum, include information concerning financial aid, debt management, and a recommended budget for full and partial grant-in-aid intercollegiate athletes based on the current academic year's cost of attendance. The workshop shall also include information on time management skills necessary for success as an intercollegiate athlete and available academic resources.

(3) LIMITATIONS.-

(a) This section does not require the medical treatment of a preexisting medical condition except to the extent that the preexisting medical condition is aggravated by the injury or treatment of the preexisting medical condition is medically necessary to the treatment of the injury.

(b) State funds may not be used to comply with the requirements of this section.

(c) An injury must be reported by the earlier of the 30th day after occurrence of the injury, the 30th day after the intercollegiate athlete knew or should have known that an injury existed, or 2 years after the intercollegiate athlete separates from the postsecondary educational institution.

(d) An intercollegiate athlete's claim for benefits related to an injury is barred after 2 years after the report of

injury or 2 years after provision of compensable medical treatment, whichever is later.

(e) For a former intercollegiate athlete receiving disability compensation benefits under this section who is earning wages while receiving such benefits or is determined by a functional capacity expert to be capable of earning wages, beginning 12 months after the date of the injury, the benefit shall be reduced by an amount equal to one half of the former intercollegiate athlete's after tax earnings in excess of the base amount. The base amount shall be $1,000 for the first 12 months the reduction provided by this paragraph is applied and shall increase by 2.5 percent annually thereafter. If the former intercollegiate athlete is determined by a functional capacity expert to have a wage earning capacity, but is not earning wages, the disability compensation benefit shall be reduced by one-half for any period more than 12 months after the date of the injury that the former intercollegiate athlete is not earning wages, unless the former intercollegiate athlete documents her or his employment search, which must include at least four employment applications submitted monthly.

(4) PROHIBITION OF MEMBERSHIP.—A postsecondary educational institution may not be a member of any association, conference, or organization that requires its members to comply with bylaws, regulations, or policies that are inconsistent with this section.

(5) REGULATIONS AND RULES.—The Board of Governors and the State Board of Education shall adopt regulations and rules, respectively, to implement this section.

Section 2. Subsections (8) and (9) are added to section 468.453, Florida Statutes, to read:

468.453 Licensure required; qualifications; license nontransferable; service of process; temporary license; license or application from another state.—

(8) Notwithstanding subsection (3), a person must hold a valid license as an athlete agent to act as an athlete agent representing an intercollegiate athlete for purposes of contracts authorized under s. 1006.72.

(9) Notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary, an athlete agent may represent an intercollegiate athlete in securing compensation for use of her or his name, image, likeness, and persona under s. 1006.72.

Section 3. This act shall take effect July 1, 2020.