

Tab 1	CS/SB 844 by IS, Berman ; (Similar to CS/H 00305) At-Risk Adult Alert Plan				
Tab 2	CS/SB 1070 by BI, Lee ; (Similar to H 01033) Continuing Care Contracts				
Tab 3	SB 1102 by Harrell ; (Identical to H 01005) Defendants With Mental Illness				
Tab 4	SB 1144 by Montford (CO-INTRODUCERS) Harrell ; (Similar to H 01367) Child Care Subsidies for Foster Parents				
Tab 5	SB 1214 by Book ; Child Abuse, Abandonment, and Neglect				
201704	D	S	RCS	CF, Book	Delete everything after 03/25 06:38 PM
Tab 6	SB 1218 by Book ; (Similar to CS/H 01353) Homelessness				
371296	A	S	RCS	CF, Book	Delete L.219 - 220: 03/25 06:39 PM
Tab 7	SB 1466 by Gibson ; (Similar to CS/H 00143) Protection for Vulnerable Investors				
Tab 8	SB 1492 by Book ; (Similar to H 01305) Government-sponsored Recreation Programs				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Book, Chair
Senator Mayfield, Vice Chair

MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Book, Chair; Senator Mayfield, Vice Chair; Senators Bean, Harrell, Rader, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 844 Infrastructure and Security / Berman (Similar CS/H 305)	At-Risk Adult Alert Plan; Redefining the term "missing endangered person" to include a missing adult who meets the criteria for activation of the At-Risk Adult Alert Plan of the Department of Law Enforcement; requiring the Department of Law Enforcement, in cooperation with the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, to establish and implement the At-Risk Adult Alert Plan; authorizing local law enforcement agencies to broadcast to subscribers of notifications, to the media, and on lottery terminals about certain missing adults, etc. IS 03/12/2019 Fav/CS CF 03/25/2019 Favorable AP	Favorable Yeas 7 Nays 0
2	CS/SB 1070 Banking and Insurance / Lee (Similar H 1033)	Continuing Care Contracts; Adding certain Florida Insurance Code provisions to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; revising requirements for certain persons relating to provider acquisitions; specifying requirements for the office if a regulatory action level event occurs; specifying requirements for certain management company contracts; prohibiting certain actions by certain persons of an impaired or insolvent continuing care facility, etc. BI 03/11/2019 Fav/CS CF 03/25/2019 Favorable AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, March 25, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1102 Harrell (Identical H 1005)	Defendants With Mental Illness; Requiring a jail's staff to screen each defendant booked into a jail on misdemeanor charges using a certain instrument to determine if there is an indication of a mental health disorder; requiring an authorized professional completing a certain evaluation to issue a professional certificate if an evaluation of the defendant demonstrates that the defendant appears to meet the criteria for involuntary examination under the Baker Act, etc. CF 03/25/2019 Favorable ACJ AP	Favorable Yeas 7 Nays 0
4	SB 1144 Montford (Similar H 1367)	Child Care Subsidies for Foster Parents; Providing an early education or child care subsidy for certain foster parents, etc. CF 03/25/2019 Favorable AHS AP	Favorable Yeas 7 Nays 0
5	SB 1214 Book	Child Abuse, Abandonment, and Neglect; Relocating provisions relating to the central abuse hotline of the Department of Children and Families; requiring animal control officers and certain agents to provide their names to hotline staff; requiring individuals who are required to investigate child abuse, abandonment, or neglect to also report certain animal abuse to specified persons or agencies; requiring the department to include certain training in the training program for persons required to investigate child abuse, abandonment, or neglect, etc. CF 03/25/2019 Fav/CS JU AP	Fav/CS Yeas 7 Nays 0
6	SB 1218 Book (Similar CS/H 1353)	Homelessness; Requiring that certain taxes of a specified amount be transferred annually to the Grants and Donations Trust Fund within the Department of Children and Families for the purpose of funding challenge grants; increasing the number of members on the Council on Homelessness to include a representative of the Florida Housing Coalition and the Secretary of the Department of Elder Affairs or his or her designee; revising the duties of the State Office on Homelessness, etc. CF 03/18/2019 Not Considered CF 03/25/2019 Fav/CS AHS AP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, March 25, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1466 Gibson (Similar CS/H 143)	Protection for Vulnerable Investors; Requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe exploitation of specified adults has occurred, is occurring, has been attempted, or will be attempted, etc. CF 03/25/2019 Favorable BI RC	Favorable Yeas 7 Nays 0

8	SB 1492 Book (Similar H 1305)	Government-sponsored Recreation Programs; Revising the definition of the term "child care facility" to exclude government-sponsored recreation programs; defining the term "government-sponsored recreation program", etc. CF 03/25/2019 Temporarily Postponed GO RC	Temporarily Postponed
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
9	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		

Secretary of Children and Families

10	Poppell, Patterson Chad ()	Pleasure of Governor	Recommend Confirm Yeas 7 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 844

INTRODUCER: Infrastructure and Security Committee and Senator Berman

SUBJECT: At-Risk Adult Alert Plan

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The committee substitute (CS) to SB 844 creates the At-Risk Adult Alert Plan which aids in the search for a missing adult:

- Who has an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability;
- Whose disappearance poses a credible threat to the person's welfare and safety; and
- Who does not meet the criteria for activation of the Silver Alert Plan.

The CS also:

- Requires the Florida Department of Law Enforcement (FDLE), in cooperation with the Department of Transportation (DOT), Department of Highway Safety and Motor Vehicles (DHSMV), the Department of the Lottery (DOL) and local law enforcement agencies, to establish and implement the plan;
- Requires a local law enforcement agency to broadcast information to the public and media about certain missing adults;
- Allows local law enforcement to request a case to be opened with the FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC); and
- Requires the FDLE to adopt rules to implement the plan.

The CS may have a negative fiscal impact on state government due to increased technological and hiring expenditures for the FDLE.

The CS provides an effective date of July 1, 2019.

II. Present Situation:

Missing Person Investigations

All of Florida's state and local law enforcement agencies are required to submit information concerning missing endangered persons to the FDLE's MEPIC.¹ MEPIC serves as the central repository of information regarding missing endangered persons. Upon receiving information about a missing endangered person, MEPIC disseminates the information in an effort to locate the person.

A "missing endangered person" is:

- a missing child;²
- a missing adult younger than 26 years of age;
- a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or
- a missing adult who meets the criteria for activation of the FDLE Silver Alert Plan.³

Upon receiving a report that a child is missing, a law enforcement agency must inform all on-duty officers of the report, communicate the report to every other law enforcement agency having jurisdiction in the county where the child was last seen, and transmit the report for inclusion within the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases within two hours.⁴

When a missing adult report is filed, the law enforcement agency receiving the report must transmit the report for inclusion within the FCIC and NCIC databases within two hours.⁵

Section 937.021, F.S., provides civil immunity for specified entities requested by law enforcement to record, report, transmit, display, or release information pertaining to a missing person if such entity complied with the request in good faith. These entities include:

- the FDLE, a state or local law enforcement agency, and agency personnel;
- a radio or television network, broadcaster, or other media representative; or
- a dealer of communications services as defined in s. 202.11, F.S.⁶

¹ Section 937.022(3)(b), F.S.

² Florida Department of Law Enforcement, Missing Child Alert, "Missing child" means a person younger than 18 years of age, <http://www.fdle.state.fl.us/AMBER-Plan/Missing-Child-Alert> (last visited March 21, 2019).

³ *Id.*

⁴ Section 937.021(4)(a), F.S.

⁵ Section 937.021(4)(b), F.S.

⁶ Examples of a dealer of communications services include a cable or satellite television service provider, a telephone service provider, or a mobile communication service provider. s. 937.021, F.S.

Entities who report, transmit, display, or release information pertaining to a missing person are presumed to have acted in good faith.⁷ The presumption of good faith is not overcome if a technical or clerical error is made by an agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the missing person information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.⁸

Silver Alert

The Silver Alert Plan broadcasts information to the public about a missing elderly person.⁹ A law enforcement agency can issue a local or regional Silver Alert when a missing person:

- Is age 60 or older; and
- Suffers from a verified irreversible deterioration of intellectual faculties.¹⁰

To maintain the integrity of the system and not dilute its effectiveness, law enforcement issues a Silver Alert primarily for this narrow population. However, a Silver Alert may be issued in rare instances when:

- a missing adult is 18 to 59 years old and has irreversible deterioration of intellectual faculties;
- law enforcement has determined the individual lacks the capacity to consent; and
- the use of dynamic message signs may be the only possible way to rescue the missing person.¹¹

The Silver Alert Plan has two levels of activation: local and state. If an adult meeting the Silver Alert criteria goes missing on foot, local law enforcement will activate a local Silver Alert. Although each agency has its own criteria for activation of a local Silver Alert, law enforcement generally:

- conducts a preliminary investigation to conclude that the disappearance poses a credible threat to the person's welfare and safety;
- enters the missing adult's identifying information into FCIC;
- contacts media outlets in the area and surrounding jurisdictions; and
- issues a statewide "Be On The Look Out" notice to other law enforcement and 911 centers.¹²

If an adult meeting the Silver Alert criteria goes missing in a vehicle, local law enforcement may request that the FDLE activate a statewide Silver Alert. After local law enforcement determines that the disappearance poses a credible threat to the person's welfare and safety and enters the missing adult into FCIC, the agency contacts MEPIC at the FDLE. Once the FDLE confirms the case meets Silver Alert criteria, the FDLE notifies the:

- Florida Highway Patrol to send a statewide officer notification;

⁷ Section 937.021(5)(c), F.S.

⁸ *Id.*

⁹ Florida Department of Law Enforcement, *Silver Activation Steps* (2018), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps> (last visited March 21, 2019).

¹⁰ *Id.* Agency policy determines how the local law enforcement agency verifies that the person suffers from an irreversible deterioration of intellectual faculties.

¹¹ *Id.*

¹² *Id.*

- DOT to activate dynamic message signs¹³ on highways; and
- Department of Elder Affairs to notify the public through an email alert system.¹⁴

As of January 31, 2019, law enforcement has recovered 260 individuals through the use of the Silver Alert activation.¹⁵

Department of the Lottery

The DOL partners with the FDLE to distribute information pertaining to emergency alerts to the public. The alerts include: Amber¹⁶, Silver¹⁷, Blue¹⁸ and Missing Child.¹⁹ Upon notification by the FDLE of an active alert, the DOL disseminates information provided by the FDLE to retailer based terminal systems. All alerts provided through the terminal system discontinue sales and must be acknowledged by the retailer before transactions may continue. At the request of the FDLE, Amber alerts are the only alerts that are currently displayed to the public at lottery ticket sales locations, although the DOL does have the ability to add other alerts for display to the public. At the present, alerts are sent state-wide but can be sent out to specific regions if requested.²⁰

Cognitive Disorder

Cognitive disorder includes a wide range of mental deficits in adults and children and can impair a person's thinking, communication, understanding and memory.²¹ A person may suffer from an illness creating progressive impairment, or have lower levels of ability to learn or remember that will remain constant throughout life. Common cognitive disorders include Alzheimer's disease and related dementias, Parkinson's disease, brain injury, brain tumor, developmental and intellectual disability, and HIV-associated dementia.²²

¹³ Dynamic message signs are electronic signs on the highway that typically display information about travel lane blockage information, travel times, scheduled construction activities, safety messages and special events. Florida Department of Transportation, <https://sunguide.info/its-program/dynamic-message-signs-dms/> (last visited March 21, 2019).

¹⁴ Members of the public may sign up to receive Silver Alert email updates on the DOEA website. Department of Elder Affairs, <https://lists.elderaffairs.org/listmanager/listinfo/silveralert> (last visited March 21, 2019).

¹⁵ Law enforcement has directly recovered 215 individuals and indirectly recovered 45 individuals due to the Silver Alert activation. A direct recovery is recovery due to the activation of the State Silver Alert, primarily through state agency action. An indirect recovery is recovery through local agency actions in coordination with the Silver Alert Plan. Florida Department of Law Enforcement, *Silver Alert Monthly Report* (Jan. 2019), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Monthly-Reports/2019-Monthly-Reports/January-2019> (last visited March 21, 2019).

¹⁶ Section 937.021, F.S.

¹⁷ *Id.*

¹⁸ Section 784.071, F.S.

¹⁹ Section 937.021, F.S.

²⁰ Email from Jake Felder, Legislative Affairs Director, Department of the Lottery, SB 844 Answers (March 13, 2019), (On file with the Committee on Infrastructure and Security).

²¹ Disabled World, *Cognitive Disability: Information on Intellectual Disabilities* (June 4, 2016), <https://www.disabled-world.com/disability/types/cognitive/> (last visited March 21, 2019).

²² Family Caregiver Alliance, *Caring for Adults with Cognitive and Memory Impairment* (2004), <https://www.caregiver.org/caring-adults-cognitive-and-memory-impairment> (last visited March 21, 2019).

Developmental Disability

Developmental disability is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, Autism Spectrum Disorder (ASD), spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before age 18; and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.²³

ASD is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication.²⁴ The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published. Although there has been little research on the prevalence of ASD in adults, analysis from the Centers for Disease Control and Prevention estimates that approximately one in 59 children have been identified with ASD.²⁵ A 2011 British study found ASD rates in adults are similar to the rates observed among children.²⁶

Intellectual Disability

Intellectual disability is significantly sub average intellectual functioning²⁷ existing concurrently with deficits in adaptive behavior²⁸ which manifests before age 18 and can reasonably be expected to continue indefinitely. An individual with an intellectual disability is more likely to have a coexisting psychiatric or cognitive condition than a member of the general population.²⁹ At least 25 percent of individuals with an intellectual disorder also have a psychiatric condition including schizophrenia, depression, or attention deficit hyperactivity disorder.³⁰ About 10 percent of individuals with an intellectual disability also have ASD or autistic traits.³¹

²³ Section 393.063(12), F.S.

²⁴ Center for Disease Control and Prevention, *Facts about ASD*, <https://www.cdc.gov/ncbddd/autism/facts.html> (last visited March 21, 2019).

²⁵ Center for Disease Control and Prevention, *Data & Statistics on Autism Spectrum Disorder*, <https://www.cdc.gov/ncbddd/autism/data.html> (last visited March 21, 2019).

²⁶ Gael Orsmond et al., *Social Participation Among Young Adults with an Autism Spectrum Disorder* (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3795788/> (last visited March 21, 2019).

²⁷ Significantly sub average general intellectual functioning is performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the Agency for Persons with Disabilities rules. s. 393.063(24), F.S.

²⁸ Adaptive behavior is the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of their age, cultural group, and community. s. 393.063(24), F.S.

²⁹ Committee to Evaluate the Supplemental Security Income Disability Program for Children with Mental Disorders, *Mental Disorders and Disabilities Among Low-Income Children* (Oct. 28, 2015), <https://www.ncbi.nlm.nih.gov/books/NBK332877/> (last visited March 21, 2019).

³⁰ *Id.*

³¹ The Children's Hospital of Philadelphia, *Intellectual Disability and ASD* (June 29, 2016), <https://www.carautismroadmap.org/intellectual-disability-and-asd/> (last visited March 21, 2019).

Wandering

Wandering is generally characterized by aimless, slow, or pointless movement that is not associated with normal daily activity.³² Twelve to 60 percent of individuals with a cognitive disorder wander and approximately 5 percent of wandering instances result in physical harm.³³ Missing incidents can be life-threatening and an impaired person is at risk even in a closely monitored setting. For those missing more than 24 hours, the death rate can be as high as 50 percent, with the most common causes of death being exposure to natural elements, drowning and vehicular accidents.³⁴

Wandering occurs frequently in individuals with ASD, and the risk of wandering behavior increases with autism severity.³⁵ From 2009 to early 2017, 158 individuals with ASD died after wandering from their home, a public place, or a group home.³⁶ Although children represent the largest percentage of reported ASD missing person cases, over 30 percent of reported ASD wandering cases involve individuals 20 or older.³⁷

III. Effect of Proposed Changes:

The CS creates the At-Risk Adult Alert Plan which will aid in the search for a missing adult:

- with an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability;³⁸
- whose disappearance poses a credible threat to the person's welfare and safety; and
- who does not meet the criteria for the activation of the Silver Alert Plan.

The CS requires the FDLE, in cooperation with the DOT, the DHSMV, the DOL and local law enforcement agencies, to establish and implement the At-Risk Adult Alert Plan. The CS expands the definition of "missing endangered person" to include a missing adult who meets the At-Risk Adult Alert Plan activation criteria. It further requires the At-Risk Adult Alert Plan provide for the protection of the privacy, dignity, independence, and autonomy of the missing adult by

³² Merriam-Webster, <https://www.merriam-webster.com/dictionary/wandering> (last visited Mar. 6, 2019).

³³ Joseph Wherton et al., *Wandering as a Sociomaterial Practice: Extending the Theorization of GPS Tracking in Cognitive Impairment*, *Qualitative Health Research* (2019), <https://journals.sagepub.com/doi/10.1177/1049732318798358#articleCitationDownloadContainer> (last visited Mar. 6, 2019).

Wandering estimates range from 12 to 60 percent due to difficulties defining and recording such instances.

³⁴ *Id.*

³⁵ National Autism Association, *Wandering* (2017), <http://nationalautismassociation.org/resources/awaare-wandering/> (last visited Mar. 6, 2019).

³⁶ National Autism Association, *Mortality & Risk in ASD Wandering/Elopement 2011-2016* (March 2017), <http://nationalautismassociation.org/wp-content/uploads/2017/04/NAAMortalityRiskASDElopement.pdf> (last visited Mar. 6, 2019).

³⁷ *Id.*

³⁸ See s. 393.063, F.S., which defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Defines "intellectual disability" as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of the term "intellectual disability", the term: "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community, "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

including standards that aim to safeguard their civil liberties through preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information.

The CS provides that the broadcasting and dissemination of alerts and related information be limited to the geographic areas where the missing adult could reasonably be, considering the person's circumstances and physical and mental condition, the modes of transportation available to the person, and the circumstances of the person's disappearance.

The CS requires the local law enforcement agency broadcasting information for the At-Risk Adult Alert Plan be the agency that is best able to notify the media and disseminate the information by cellular telephone alerts and other technologies in order to communicate with the residents in the jurisdiction where the missing adult is believed to be, including, but not limited to, the lottery terminals in gas stations, convenience stores, and supermarkets in those areas.

Under the CS, the following entities are immune from civil liability for performing actions related to an At-Risk Adult Alert in good faith:

- The FDLE, a state or local law enforcement agency, and the personnel of these agencies;
- A radio or television network, broadcaster, or other media representative; or
- A dealer of communications services, such as a cable television provider, as defined in s. 202.11, F.S.

The CS authorizes a local law enforcement agency to open an At-Risk Adult Alert case with the FDLE's MEPIC, the central repository of missing endangered person information that provides analytical services to law enforcement agencies and engages the public in a missing person search. In cases in which a vehicle is involved, the clearinghouse must coordinate with the DOT and the DHSMV for the activation of dynamic message signs on state highways and the broadcast of critical information to the public about the missing adult.

The CS requires the FDLE to develop procedures to monitor the use and activation of the plan and the results from its use. The At-Risk Adult Alert Plan must also include a strategy for informing and educating law enforcement, the media, and other stakeholders about the plan. The CS also requires the FDLE to adopt rules to implement the plan.

The CS provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CS may have a negative fiscal impact on state government as the FDLE estimates it may require three Crime Intelligence Analyst I positions (\$164,101 in year one for salary, benefits, expense and human resources services and \$152,836 recurring) to maintain current caseload and alerts while also training, activating and maintaining the newly added alerts. The FDLE may also require the hiring of one programmer which is estimated to cost \$170,000 per year. The total estimated nonrecurring fiscal impact may be up to \$334,101 (\$322,836 recurring).³⁹

The CS may have an indeterminate negative fiscal impact to local law enforcement agencies to develop policies, train staff, including dispatchers and officers, establish or enhance necessary systems to perform mandated notifications and maintain readiness to issue At-Risk Adult Alerts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁹ Florida Department of Law Enforcement, Agency Analysis of 2019 Senate Bill 844 (February 25, 2019). On file with the Senate Committee on Children, Families, and Elder Affairs.

VIII. Statutes Affected:**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on March 12, 2019:

- The CS replaces “verified mental or cognitive impairment” with “irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability”.
- The CS also adds the DOL to the list of entities that will cooperate with the FDLE, which will allow alert information to be displayed on lottery terminals.

- B. **Amendments:**

None.

By the Committee on Infrastructure and Security; and Senator
Berman

596-02974-19

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1 A bill to be entitled
2 An act relating to the At-Risk Adult Alert Plan;
3 amending s. 937.0201, F.S.; redefining the term
4 "missing endangered person" to include a missing adult
5 who meets the criteria for activation of the At-Risk
6 Adult Alert Plan of the Department of Law Enforcement;
7 creating s. 937.0205, F.S.; providing legislative
8 findings and intent; requiring the Department of Law
9 Enforcement, in cooperation with the Department of
10 Transportation, the Department of Highway Safety and
11 Motor Vehicles, the Department of the Lottery, and
12 local law enforcement agencies, to establish and
13 implement the At-Risk Adult Alert Plan; providing plan
14 requirements; authorizing local law enforcement
15 agencies to broadcast to subscribers of notifications,
16 to the media, and on lottery terminals about certain
17 missing adults; specifying which local law enforcement
18 agency may broadcast such information; authorizing the
19 local law enforcement agency to request that a case be
20 opened with the Department of Law Enforcement's
21 Missing Endangered Persons Information Clearinghouse;
22 requiring the clearinghouse to coordinate with the
23 Department of Transportation and the Department of
24 Highway Safety and Motor Vehicles for the activation
25 of dynamic message signs on state highways and the
26 immediate broadcast of certain critical information
27 under certain circumstances; specifying that an agency
28 responsible for posting an At-Risk Adult Alert on
29 dynamic message signs does not violate the act if

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30 other emergency information must be posted instead;
31 requiring the At-Risk Adult Alert Plan to include
32 certain procedures; specifying additional requirements
33 for the plan; authorizing the Department of Law
34 Enforcement to adopt rules; amending s. 937.021, F.S.;
35 providing that the Department of Law Enforcement, as
36 the At-Risk Adult Alert coordinator, and certain
37 agencies, employees, individuals, and entities are
38 immune from civil liability for damages for performing
39 certain actions in good faith; providing that the
40 presumption of good faith is not overcome under
41 certain circumstances; providing construction;
42 amending s. 937.022, F.S.; authorizing only the law
43 enforcement agency having jurisdiction over a case to
44 make a request to the clearinghouse for the activation
45 of a state At-Risk Adult Alert involving a missing
46 adult under certain circumstances; amending s.
47 429.918, F.S.; conforming provisions to changes made
48 by the act; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (4) of section 937.0201, Florida
53 Statutes, is amended to read:
54 937.0201 Definitions.—As used in this chapter, the term:
55 (4) "Missing endangered person" means any of the following:
56 (a) A missing child.~~†~~
57 (b) A missing adult younger than 26 years of age.~~†~~
58 (c) A missing adult 26 years of age or older who is

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59 suspected by a law enforcement agency of being endangered or the
60 victim of criminal activity.~~7-08~~

61 (d) A missing adult who meets the criteria for activation
62 of the Silver Alert Plan of the Department of Law Enforcement.

63 (e) A missing adult who meets the criteria for activation
64 of the At-Risk Adult Alert Plan of the Department of Law
65 Enforcement pursuant to s. 937.0205.

66 Section 2. Section 937.0205, Florida Statutes, is created
67 to read:

68 937.0205 At-Risk Adult Alert Plan.-

69 (1) The Legislature finds that a standardized state system
70 is necessary to aid in the search for a missing adult who has an
71 irreversible cognitive disorder or syndrome or brain injury,
72 whose disappearance poses a credible threat to the person's
73 welfare and safety, and who does not meet the criteria for
74 activation of the Silver Alert Plan of the Department of Law
75 Enforcement. The Legislature also finds that a coordinated local
76 law enforcement and state agency response with prompt and
77 widespread sharing of information will improve the chances of
78 the person being found. Therefore, the Legislature intends to
79 establish the At-Risk Adult Alert Plan pursuant to this section.

80 (2) It is the intent of the Legislature that the At-Risk
81 Adult Alert Plan be established and implemented in a manner that
82 seeks to safeguard the privacy rights and related health and
83 diagnostic information of the missing adult to the greatest
84 extent practicable.

85 (3) The Department of Law Enforcement, in cooperation with
86 the Department of Transportation, the Department of Highway
87 Safety and Motor Vehicles, the Department of the Lottery, and

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88 local law enforcement agencies, shall establish and implement
89 the At-Risk Adult Alert Plan. At a minimum, the At-Risk Adult
90 Alert Plan must:

91 (a) Provide for the protection of the privacy, dignity,
92 independence, and autonomy of the missing adult by including
93 standards that aim to safeguard these civil liberties through
94 preventing the inadvertent or unnecessary broadcasting or
95 dissemination of sensitive health and diagnostic information in
96 unwarranted circumstances; and

97 (b) Provide that the broadcasting and dissemination of
98 alerts and related information be limited to the geographic
99 areas where the missing adult could reasonably be, considering
100 the person's circumstances and physical and mental condition,
101 the modes of transportation available to the person, and the
102 circumstances of the person's disappearance.

103 (4) (a) Under the At-Risk Adult Alert Plan, a local law
104 enforcement agency may broadcast to persons who subscribe for
105 notifications and to the media about a missing adult:

106 1. Who has an irreversible cognitive disorder or syndrome
107 or brain injury, including, but not limited to, a developmental
108 disability or an intellectual disability, as those terms are
109 defined in s. 393.063;

110 2. Whose disappearance poses a credible threat to the
111 person's welfare and safety; and

112 3. Who does not meet the criteria for activation of the
113 Silver Alert Plan of the Department of Law Enforcement.

114 (b) The local law enforcement agency broadcasting such
115 information must be the agency that is best able to notify the
116 media and the subscribers for such notifications in the

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117 jurisdiction where the missing adult is believed to be. Such
 118 local law enforcement agency may also request that the
 119 notification be broadcast on lottery terminals within the
 120 geographic regions where the missing adult may reasonably be,
 121 including, but not limited to, the lottery terminals in gas
 122 stations, convenience stores, and supermarkets in such regions.

123 (c) Under the plan, the local law enforcement agency may
 124 also request that a case be opened with the Department of Law
 125 Enforcement's Missing Endangered Persons Information
 126 Clearinghouse. To enhance the local or regional efforts, in
 127 cases in which a vehicle is involved, the clearinghouse must
 128 coordinate with the Department of Transportation and the
 129 Department of Highway Safety and Motor Vehicles for the
 130 activation of dynamic message signs on state highways and the
 131 immediate broadcast of critical information to the public about
 132 the missing adult in accordance with the plan.

133 (d) If a traffic emergency arises requiring that
 134 information pertaining to the traffic emergency be displayed on
 135 a dynamic message sign on a state highway in lieu of an At-Risk
 136 Adult Alert, the agency responsible for posting the At-Risk
 137 Adult Alert on the dynamic message sign does not violate this
 138 section.

139 (5) The At-Risk Adult Alert Plan must include procedures to
 140 monitor the use and activation of this system and the results
 141 from its use. The plan must also include a strategy for
 142 informing and educating law enforcement, the media, and other
 143 stakeholders about the plan.

144 (6) The Department of Law Enforcement may adopt rules to
 145 implement and administer this section.

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146 Section 3. Paragraphs (c), (d), and (e) of subsection (5)
 147 of section 937.021, Florida Statutes, are amended to read:
 148 937.021 Missing child and missing adult reports.—
 149 (5)

150 (c) Upon receiving a request to record, report, transmit,
 151 display, or release Silver Alert or At-Risk Adult Alert
 152 information from the law enforcement agency having jurisdiction
 153 over the missing adult, the Department of Law Enforcement as the
 154 state Silver Alert and the At-Risk Adult Alert coordinator, any
 155 state or local law enforcement agency, and the personnel of
 156 these agencies; any radio or television network, broadcaster, or
 157 other media representative; any dealer of communications
 158 services as defined in s. 202.11; or any agency, employee,
 159 individual, or entity is immune from civil liability for damages
 160 for complying in good faith with the request and is presumed to
 161 have acted in good faith in recording, reporting, transmitting,
 162 displaying, or releasing Silver Alert or At-Risk Adult Alert
 163 information pertaining to the missing adult.

164 (d) The presumption of good faith is not overcome if a
 165 technical or clerical error is made by any agency, employee,
 166 individual, or entity acting at the request of the local law
 167 enforcement agency having jurisdiction, or if the Amber Alert,
 168 Missing Child Alert, missing child information, missing adult
 169 information, ~~or~~ Silver Alert, or At-Risk Adult Alert information
 170 is incomplete or incorrect because the information received from
 171 the local law enforcement agency was incomplete or incorrect.

172 (e) Neither this subsection nor any other provision of law
 173 creates a duty of the agency, employee, individual, or entity to
 174 record, report, transmit, display, or release the Amber Alert,

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175 Missing Child Alert, missing child information, missing adult
 176 information, ~~or Silver Alert~~, or At-Risk Adult Alert information
 177 received from the local law enforcement agency having
 178 jurisdiction. The decision to record, report, transmit, display,
 179 or release information is discretionary with the agency,
 180 employee, individual, or entity receiving the information.

181 Section 4. Paragraph (b) of subsection (3) of section
 182 937.022, Florida Statutes, is amended to read:

183 937.022 Missing Endangered Persons Information
 184 Clearinghouse.—

185 (3) The clearinghouse shall:

186 (b) Provide a centralized file for the exchange of
 187 information on missing endangered persons.

188 1. Every state, county, or municipal law enforcement agency
 189 shall submit to the clearinghouse information concerning missing
 190 endangered persons.

191 2. Any person having knowledge may submit a missing
 192 endangered person report to the clearinghouse concerning a child
 193 or adult younger than 26 years of age whose whereabouts is
 194 unknown, regardless of the circumstances, subsequent to
 195 reporting such child or adult missing to the appropriate law
 196 enforcement agency within the county in which the child or adult
 197 became missing, and subsequent to entry by the law enforcement
 198 agency of the child or person into the Florida Crime Information
 199 Center and the National Crime Information Center databases. The
 200 missing endangered person report shall be included in the
 201 clearinghouse database.

202 3. Only the law enforcement agency having jurisdiction over
 203 the case may submit a missing endangered person report to the

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204 clearinghouse involving a missing adult age 26 years or older
 205 who is suspected by a law enforcement agency of being endangered
 206 or the victim of criminal activity.

207 4. Only the law enforcement agency having jurisdiction over
 208 the case may make a request to the clearinghouse for the
 209 activation of a state Silver Alert or an At-Risk Adult Alert
 210 involving a missing adult if circumstances regarding the
 211 disappearance have met the criteria for activation of the Silver
 212 Alert or the At-Risk Adult Alert Plan.

213 Section 5. Paragraph (d) of subsection (6) and subsection
 214 (9) of section 429.918, Florida Statutes, are amended to read:

215 429.918 Licensure designation as a specialized Alzheimer's
 216 services adult day care center.—

217 (6)

218 (d) Each employee hired on or after July 1, 2012, who
 219 provides direct care to ADRD participants, must receive and
 220 review an orientation plan that includes, at a minimum:

221 1. Procedures to locate an ADRD participant who has
 222 wandered from the center. These procedures shall be reviewed
 223 regularly with all direct care staff.

224 2. Information on the Silver Alert program and the At-Risk
 225 Adult Alert Plan in this state.

226 3. Information regarding available products or programs
 227 used to identify ADRD participants or prevent them from
 228 wandering away from the center, their home, or other locations.

229 (9) An adult day care center having a license designated
 230 under this section must give to each person who enrolls as an
 231 ADRD participant in the center, or the caregiver, a copy of the
 232 ADRD participant's plan of care, as well as information

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233 regarding resources to assist in ensuring the safety and
234 security of the ADRD participant, which must include, but need
235 not be limited to, information pertaining to driving for those
236 persons affected by dementia, available technology on wandering-
237 prevention devices and identification devices, the Silver Alert
238 program and the At-Risk Adult Alert Plan in this state, and
239 dementia-specific safety interventions and strategies that can
240 be used in the home setting.

241 Section 6. This act shall take effect July 1, 2020.



2019 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

BILL NUMBER:	CS/SB 844
BILL TITLE:	<u>At-Risk Adult Alert Plan</u>
BILL SPONSOR:	Berman
EFFECTIVE DATE:	July 1, 2019

COMMITTEES OF REFERENCE

1) Infrastructure and Security
2) Children, Families, and Elder Affairs
3) Appropriations
4)
5)

CURRENT COMMITTEE

Children, Families, and Elder Affairs

SIMILAR BILLS

BILL NUMBER:	HB 305
SPONSOR:	Ausley

PREVIOUS LEGISLATION

BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	Revised March 19, 2019 February 25, 2019
LEAD AGENCY ANALYST:	Sherry Gomez
ADDITIONAL ANALYST(S):	Donna Uzzell, Seth Montgomery, Mary Coffee, Becky Bezemek
LEGAL ANALYST:	Jason Jones; Jeff Dambly; Elisabeth Yerkes
FISCAL ANALYST:	Cynthia Barr, Deshawn Byrd

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Requires FDLE, in cooperation with the Department of Transportation (DOT), the Department of Highway Safety and Motor Vehicles (DHSMV), and local law enforcement agencies, to establish and implement an At-Risk Adult Alert Plan for certain missing adults with a verified mental or cognitive impairment; requires local law enforcement agencies to broadcast information to public and media via cellular telephone alerts subscribers and other technologies regarding certain missing adults; requires FDLE to coordinate with DOT and DHSMV to activate dynamic message signs when a vehicle is involved with an At-Risk Adult Alert. If approved, this bill would be effective July 1, 2019.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

There is not currently a provision for an At-Risk Adult Alert Plan in Florida Statutes. FDLE coverage of all existing alert types is 24 hours per day, seven days a week by analysts, on-call Inspectors and supervisors.

2. EFFECT OF THE BILL:

Proposes an "At-Risk Adult Alert Plan" amending s. 937.0201, s. 937.021, and s. 937.022, F.S., and creates s. 937.0205, F.S., requiring FDLE, in cooperation with DOT, DHSMV, the Department of the Lottery, and local law enforcement agencies, to establish and implement an At-Risk Adult Alert Plan for missing adults who have a verified mental or cognitive impairment (CS/SB844 amends this to missing adults with an irreversible cognitive disorder or syndrome or brain injury including, but not limited to, a developmental disability or an intellectual disability, as defined in s. 393.063, F.S.), whose disappearance poses a credible threat to their welfare or safety, and who does not meet the criteria for activation under the Silver Alert Plan.

Local law enforcement agencies are required to broadcast information to the public and the media regarding At-Risk Adult Alerts and are required to disseminate the alert information by cellular telephone alerts. This bill requires local law enforcement dissemination of alert information via cellular telephone alerts, which utilize the Emergency Alert System (EAS) to send out Wireless Emergency Alerts (WEAs), and other technologies to communicate with residents in the jurisdiction where the missing adult is believed to be located. When a vehicle is involved, FDLE must coordinate with DOT and DHSMV for the activation of dynamic message signs on state highways and the immediate broadcast of information to the public regarding the missing adult. CS/SB844 removes the requirement for EAS/WEA use and amends the language to allow local law enforcement agencies to broadcast to persons who subscribe for notifications and to the media about a missing adult. Local law enforcement may request that the notification be broadcast on lottery terminals in the geographic regions where the missing adult may reasonably be.

Specifies the At-Risk Adult Alert Plan be established to safeguard the privacy rights and related health and diagnostic information of the missing adult to the greatest extent practicable. Additionally, the plan must include procedures to monitor the use and activation of this system and the results from its use must include a strategy for informing and educating law enforcement, the media and other stakeholders regarding the plan.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y N

If yes, explain:	This bill directs FDLE, in conjunction with DOT, DHSMV, Department of the Lottery, and local law enforcement, to establish and implement the At-Risk Adult Alert Plan. This would require FDLE to create the criteria that must be met to issue an At-Risk Adult Alert and establish policies and procedures on how to activate and cancel such an alert. Also included is the requirement to monitor the use and activation of this system and the results from its use, as well as a requirement to create a strategy for informing and educating law enforcement, the media and other stakeholders about the plan. New policies and procedures would be required to implement these requirements.
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	The At-Risk Adult Alert Plan must include procedures to monitor the activation, use and results of this system.
Date Due:	None specified.
Bill Section Number:	2

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	
Expenditures:	Indeterminate cost to local law enforcement agencies to develop policies, train staff, including dispatchers and officers, establish or enhance necessary infrastructure and systems to perform mandated notifications and maintain 24/7 readiness to issue At-Risk Adult Alerts.
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	
Expenditures:	<p>FDLE coverage of all alert types is 24 hours per day, seven days a week by analysts, on-call inspectors, and supervision. Based on the estimated number of new alerts this bill would create each year (287), FDLE would require three Crime Intelligence Analyst I positions to maintain current caseload and alerts while also training, activating and maintaining the newly added alerts. (\$164,101 in year one for salary, benefits, expense and human resources services and \$152,836 recurring). Depending on how the alert criteria are written and how many new alerts are activated, additional sworn staff may also be required.</p> <p>As noted in the Technological Impact section, the fiscal impact of hiring one programmer is estimated to be \$170,000/year.</p> <p>Total Fiscal Impact: \$334,101 (322,836 recurring)</p>
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

<p>If yes, describe the anticipated impact to the agency including any fiscal impact.</p>	<p>Requires establishment and implementation of an At-Risk Adult Alert Plan, including modifications to existing information technology systems. These modifications are estimated to take 12 months to complete and will require the efforts of a dedicated programmer. FDLE is requesting recurring funds for this programmer, estimated at \$170,000/year.</p> <p>Due to the time estimated to complete the changes outlined in this bill, FDLE is recommending that the effective date be amended to July 1, 2020.</p>
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FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	The Electronic Code of Federal Regulations states that participating commercial mobile service providers are required to receive and transmit the following classes of Alert Messages: <i>Presidential Alerts, Imminent Threat Alerts, Child Abduction Emergency/AMBER Alerts</i> , and (as of May 1, 2019) <i>Public Safety Messages</i> . This Federal Code does not account for missing persons that do not fall under the criteria for a Child Abduction Emergency/AMBER Alert. The code would likely have to be amended to include non-abduction missing adult emergencies. Should that code be so amended, local law enforcement agencies without Wireless Emergency Alert (WEA) alerting authority would be required to successfully apply through the Federal Emergency Management Agency (FEMA) for alerting authority and obtain the necessary training and credentials to issue WEAs (see Additional Comments below for further information). CS/SB844 addresses this concern by removing EAS/WEA notifications.
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LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	<ul style="list-style-type: none"> • Recommend defining “mental or cognitive impairment,” (line 71, 105) as that can be interpreted broadly to incorporate unintentional concerns. CS/SB844 changes the criteria to a missing adult with an “irreversible cognitive disorder or syndrome or brain injury including, but not limited to, a developmental disability or an intellectual disability, as those terms are defined in s. 393.063, F.S.” (line 106-107). Recommend defining “irreversible cognitive disorder or syndrome” to avoid an overbroad application of the term. Recommend defining “brain injury” or specifying a brain injury which results in impairment of cognitive abilities to avoid the term being applied broadly. • Verification (line 71, 105) of impairment may be problematic as true verification would require medical documentation, which may usually be obtained only pursuant to a court order in a criminal investigation. CS/SB844 addresses this concern by removing the verification of the impairment.
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ADDITIONAL COMMENTS

- The proposed bill offers insufficient information regarding the intended criteria required to activate the At-Risk Adult Alert Plan. The plan requires a “verified mental or cognitive impairment.” **CS/SB844 changes the criteria to a missing adult with an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability, as those terms are defined in s. 393.063, F.S.**
 - “Mental or cognitive impairment” is not defined and is exceptionally broad and vague. As written in the bill, “cognitive impairment” could include impairment due to drugs or alcohol. According to the 2017 Uniform Crime Report, there were 32,588 adult DUI arrests in Florida that year. Therefore, the amount of missing/endangered adults who could fit under “cognitive impairment” and meet the criteria for an At-Risk Adult Alert could be astronomical. **CS/SB844 makes the criteria more specific and eliminates the possibility that this alert could encompass those who are impaired due to drugs/alcohol. However, there are still elements to the new criteria of the missing adult that are not defined, and the use of “including, but not limited to” in the criteria still presents a significant broadness issue.**
 - Neither FDLE nor local law enforcement agencies have the capacity, expertise, or records access to determine mental illness or cognitive impairment **(now an irreversible cognitive disorder or syndrome or brain injury per CS/SB844).**
- The proposed bill specifies that the plan must be established in a manner that seeks to safeguard the privacy rights and related health and diagnostic information of the missing adult, **including protection of dignity, independence, and**

autonomy, to the greatest extent practicable. Issuing an alert of this type to the public may raise privacy concerns simply by the nature of what an At-Risk Alert is (the public will immediately know the adult has mental or cognitive impairment [now an irreversible cognitive disorder or syndrome or brain injury per CS/SB844]), and the very nature of the alert requires restriction or lack of autonomy.

- Public engagement is paramount to the proven effectiveness of alert programs. The carefully vetted and precisely defined criteria for issuing Amber, Silver and Missing Child alerts are in place to locate and protect those missing endangered individuals most effectively. Increasing the number and frequency of alerts activated is likely to have a desensitizing effect on the public, and may significantly decrease the perceived gravity and actual effectiveness of *all* alerts including emergency weather, AMBER, Silver and Missing Child alerts.
- During 2018, the number of adult “endangered/disability/other” missing persons cases entered into the Florida Crime Information Center (FCIC) was 422.64% greater than the missing child cases entered of the same category.
 - During calendar year 2018, FDLE issued 9 AMBER Alerts and 59 Missing Child Alerts for a total of 68 child related alerts.
 - Based on 422.64% larger population of “endangered/disability/other” adults over children in the same category, implementation of the At-Risk Adult Alert could lead to a potential minimum of 287 additional alerts per year in Florida.
 - In addition to the AMBER and Missing Child Alerts issued in 2018, FDLE issued 257 Silver Alerts. Combined Florida alerts in 2018, totaled 325.
 - Adding the estimated 287 potential At-Risk Adult Alerts to the actual statistics for the most recent calendar year results in a projected total of 612 alerts per year, an 88% increase in alerts, averaging 51 alerts per month and more than one alert every day.
- **CS/SB844 addresses this concern by removing EAS/WEA notifications.** This bill requires local law enforcement dissemination of alert information via cellular telephone alerts, which utilize the EAS to send out WEAs. **Title 47, Chapter 1, Part 10**, Subpart D of the Electronic Code of Federal Regulations states that participating commercial mobile service providers are required to receive and transmit the following classes of WEAs:
 - Presidential Alerts;
 - Imminent Threat Alerts (used for weather emergencies and local emergencies requiring immediate action or evacuation);
 - Child Abduction Emergency/AMBER Alerts; and
 - As of May 1, 2019, Public Safety Messages (defined in the Code as an essential public safety advisory that prescribes one or more actions likely to save lives and/or safeguard property during an emergency and may only be issued in connection with a Presidential Alert, Imminent Threat Alert, or a Child Abduction Emergency/AMBER Alert).
- The federal code does not account for missing persons that do not fall under the criteria for a Child Abduction Emergency/AMBER Alert. The code would likely have to be amended to include non-abduction missing adult emergencies. If so amended, use of the EAS is not currently authorized for all of Florida’s local law enforcement agencies. Local agencies without alerting authority would be required to successfully apply through the Federal Emergency Management Agency (FEMA) for alerting authority and obtain the necessary training and credentials to issue WEAs. **CS/SB844 addresses this concern by removing EAS/WEA notifications.**
- Currently, the National Center for Missing and Exploited Children (NCMEC), in coordination with state and local public safety officials, issues WEAs via the EAS system specifically limited to AMBER Alerts. At this time a child abduction emergency is explicitly required to issue a NCMEC WEA. If the Electronic Code of Federal Regulations was amended to include non-abduction missing adult emergencies, it is probable that changes to both policy and system capabilities would be required for NCMEC to allow and have the capacity to issue WEAs for adult, non-abduction emergencies. **CS/SB844 addresses this concern by removing EAS/WEA notifications.**
- Established missing endangered person alert programs include AMBER, Missing Child and Silver Alerts. The determining criteria, issuance protocol and systems access and authority relating to each of these alerts are clearly defined and set forth under state and/or federal guidance.
 - AMBER Alerts are proscribed and authorized under TITLE III -- Subtitle A of the federal “PROTECT” Act. AMBER Alerts utilize the Emergency Alert System and law enforcement is authorized through the PROTECT Act and by the Federal Communications Commission to utilize and interrupt regular services of radio, television and mobile communications within the strict parameters allowed for under the Act.
 - Similarly, Florida Missing Child Alert (MCA) and Silver Alert criteria and protocols were developed drawing heavily from existing practices vetted through partnerships involving multiple Florida stakeholders including Florida Governor’s Office, Legislature, FDLE, the Florida Department of Transportation (DOT), the Florida Sheriffs Association (FSA), the Florida Police Chiefs Association (FPCA), the Florida Department of Elder

Affairs (FDEA), the Florida Highway Patrol (FHP), the Florida Lottery, etc. Neither MCAs nor Silver Alerts utilize any Emergency Alert communications systems.

- AMBER alerts are the sole alert protocol that utilize and are authorized for WEAs. In 2018, 316 Missing Child Alerts and Silver Alerts were issued and 100% of them were resolved without the use of a WEA. Additionally, if WEAs are utilized for At-Risk Adult alerts, it may appear the state is prioritizing at-risk adults over missing endangered children or the elderly and other adults that meet the criteria for a Silver Alert. **CS/SB844 addresses this concern by removing EAS/WEA notifications.**
- This bill requires dissemination of cellular telephone alerts by local law enforcement agencies which do not currently have that capability. This would likely necessitate that FDLE distribute the WEA for the At-Risk Adult Alerts. **CS/SB844 addresses this concern by removing EAS/WEA notifications.**
- The bill also requires notification from local law enforcement via “other technologies,” which could mean the state Lottery system. As written, local silver alerts may fall into the At-Risk Adult Alert plan. Currently, FDLE does not participate in the activation of local Silver Alerts. **CS/SB844 removes reference to the phrase “other technologies,” but adds that “local law enforcement” agencies may request broadcasting on lottery terminals “within the geographic regions where the missing adult may reasonably be.”**
 - Lottery terminals are not activated by local law enforcement agencies; FDLE is the agency that requests lottery terminal activation.
 - Lottery terminals cannot be activated in geographic regions, they must be statewide activations.
 - A local Silver Alert is similar to a State Silver Alert, but is used when the missing person is on-foot. There were at least 374 local silver alerts issued by local law enforcement agencies in 2018.
 - Local Silver Alerts are not administered under the Silver Alert Plan and therefore would fall under the proposed criteria for the At-Risk Adult Alert Plan.
 - Consequently, FDLE may be required to issue a WEA (**CS/SB844 removes the requirement to issue a WEA**) and, **if lottery activation is required for on-foot At-Risk Adult Alerts, FDLE may be required to activate lottery terminals for every local Silver Alert and At-Risk Adult Alert that is issued, and notifications on lottery terminals will be broadcast statewide.**
 - **This can be remedied by specifying that FDLE may activate lottery terminals state wide for cases in which a vehicle is involved. Additionally, lottery terminals can only effectively display one image at a time and it is common for multiple alerts to be active at once. Therefore, lottery terminal activation is best served only when utilized in cases involving a missing adult who is traveling in a vehicle.**
- The bill notes that the agency responsible for posting the At-Risk Adult Alert on a dynamic message sign does not violate the statute if a traffic emergency requiring use of the dynamic message sign arises. However, the bill does not define a priority hierarchy with simultaneous active **At-Risk Adult**, AMBER, Missing Child, Silver Alerts, or Blue Alerts utilizing the dynamic message signs, **it does not speak to allowing agencies to modify notification methods to allow for such simultaneous alerts or hierarchy regarding display on lottery terminals**, nor is there an accounting for liability if an active AMBER, Missing Child, or Silver Alert is displayed instead of an At-Risk Adult Alert.

Additional suggestions:

- Limit alerts to subjects who cannot consent or lack the *intellectual* capacity to consent. See s. 825.101(8), F.S., as an example, minus the references to the elderly, drug use, and intoxication: “Lacks capacity to consent” means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability... short-term memory loss, or other cause, that causes... [a] disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the...disabled adult’s person or property.”
- Clarify the difference between statewide alerts handled by FDLE, which require the person to be traveling in a vehicle, and local alerts handled by local law enforcement. This is clarified to a certain extent relating to dynamic message signs, but not in any other aspect of the situational elements of the At-Risk Adult Alert. This is especially important for lottery terminal broadcasting, which can only be done statewide.
- With the exception of lottery terminals and DOT dynamic message signs (which are coordinated by FDLE), the local law enforcement agency of jurisdiction should be responsible for requesting the alert and citizen notifications, not the “agency that is best able to notify media and subscribers for such notification in the jurisdiction where the missing adult is believed to be.” This language fails to define and therefore assign the responsibility for issuing a local/regional At-Risk Adult Alert or requesting a statewide At-Risk Adult Alert. Such subjective ambiguity may delay the issuance of an alert.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 844

Bill Number (if applicable)

Topic At Risk Alert

Name Olivia Babis

Job Title Public Policy Analyst

Address 2473 Care Dr.

Street

Phone 850-488-9071

Tallahassee FL 32308

City

State

Zip

Email oliviab@drflorida.org

Speaking: [] For [] Against [x] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Disability Rights Florida

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 25, 2019

Meeting Date

844

Bill Number (if applicable)

Topic At Risk Adult Alert Plan

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president

Address 319 E Park Ave

Street

Phone 850 570-1967

Tallahassee

FL

32301

City

State

Zip

Email danbhendrickson@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Tallahassee Veterans Legal Collaborative

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

844

Bill Number (if applicable)

Topic At-Risk Adult Alert Plan

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

SB 844

Bill Number (if applicable)

Topic At-Risk Alert bill

Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Marriott Dr. #203

Phone 850-922-6703

Tallahassee FL 32301

Email Margaret.Hooper@fdpc.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: CS/SB 844
FINAL ACTION: Favorable
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1070

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Continuing Care Contracts

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1070 revises provisions within ch. 651, F.S., of the Insurance Code governing continuing care retirement communities (CCRC) or providers, which are regulated by the Office of Insurance Regulation (OIR). The CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become unable to care for themselves, they will receive the additional care they need.

The bill provides the following changes relating to CCRCs:

Regulatory Oversight

- Creates an early intervention system, based on the CCRC's performance, designed to identify, mitigate, or resolve financial issues so that a provider may avoid bankruptcy, as well as protect the interests of the residents. The bill revises monthly, quarterly, and annual reporting by CCRCs to provide more relevant and timely information about financial performance.
- Imposes an express duty on CCRCs to produce records during an examination and gives the OIR standing to petition a court for production of such records.
- Authorizes the OIR, under certain conditions, to issue an immediate suspension order on a CCRC as well as cease and desist order on a person that violates specified laws.

- Revises and streamlines provisions of law relating to applications for licensure and acquisition of a CCRC.
- Provides additional authority for the OIR to disapprove and remove unqualified management.

Protections and Transparency for Residents

- Requires providers to make additional information, notices, and reports available to the residents or residents' council.
- Revises the current process for the resolution of resident's complaints to provide greater transparency regarding the process.
- Revises the membership of the Continuing Care Advisory Council to increase the number of resident members from three to four.

The bill does not have a fiscal impact on the Office of Insurance Regulation.

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

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider or a CCRC offer shelter and nursing care or personal services upon the payment of an entrance fee.¹ The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.² A CCRC enters into contracts with seniors (residents) to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident as entrance fees range from around \$100,000 to over \$1 million.

Regulation of CCRCs

In Florida, regulatory oversight responsibility of CCRCs is shared between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).³ The OIR regulates CCRC providers⁴ as specialty insurers. The AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.⁵ There are currently 70 licensed continuing care retirement communities in Florida.⁶ About 30,000 residents live in CCRCs.⁷

¹ Section 651.011(2), F.S.

² Sections 651.057 and 651.118, F.S.

³ Chapter 651, F.S., and s. 20.121, F.S.

⁴ Section 651.011(12), F.S., a provider means an owner or operator.

⁵ Agency for Health Care Administration reports, available at <http://www.floridahealthfinder.gov/reports-guides/nursinghomesfl.aspx> (last viewed Feb. 7, 2019) and s. 651.118, F.S.

⁶ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Aug. 2017), available at <https://www.floir.com/siteDocuments/CCRCAdvisoryCouncilOIRPresentation08172017.pdf> (last viewed Feb. 28, 2019).

⁷ *Id.*

Oversight by the Office of Insurance Regulation

The OIR has primary responsibility to license, regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.⁸ Continuing care services are governed by a contract between the facility and the resident of a CCRC, which are subject to approval by the OIR.⁹ If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., the OIR may waive requirements of the chapter.¹⁰

In order to operate a CCRC in Florida, a provider must obtain from the OIR a certificate of authority predicated upon first receiving a provisional certificate of authority.¹¹ The application process involves submitting various financial statements and information, feasibility studies, and copies of contracts.¹² Further, the applicant must provide evidence that the applicant is reputable and of responsible character.¹³ A certificate of authority will be issued once a provider meets the requirements prescribed in s. 651.023, F.S.¹⁴

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional certificate of authority or a COA, the OIR must notify the provider of any deficiencies and require the provider to take corrective action within a period determined by the OIR. If the provider does not correct the deficiencies by the expiration of such time required by the OIR, the OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S. The OIR may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider for grounds specified in s. 651.106, F.S.

Continuing Care Contracts

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident, during the first 4 years of occupancy in the CCRC by the resident.¹⁵ However, some contracts may exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.

Financial Requirements/Solvency

Each CCRC is required to file an annual report with the OIR, which includes an audited financial report and other detailed financial information, such as a listing of assets maintained in the liquid reserve, as required under s. 651.035, F.S., and information about fees required of residents.¹⁶ Providers are required to maintain a minimum liquid reserve, as applicable, as prescribed in s. 651.035, F.S., and provide quarterly reports to the OIR.

⁸ See ss. 651.021, 651.22, and 651.023, F.S.

⁹ Section 651.055(1), F.S.

¹⁰ Section 651.028, F.S.

¹¹ Section 651.022, F.S.

¹² See ss. 651.021-651.023, F.S.

¹³ Section 651.022(2)(c), F.S.

¹⁴ Section 651.023(4)(a), F.S.

¹⁵ Section 651.055, F.S.

¹⁶ Section 651.026, F.S.

Rights of Residents in a Continuing Care Retirement Community

The OIR is authorized to discipline a provider for violations of residents' rights.¹⁷ These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and the right to present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.¹⁸

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.¹⁹ The CCRCs are required to maintain and make available certain public information and records.²⁰

Residents are also represented on the Continuing Care Advisory Council, which acts in an advisory capacity to OIR, meeting at least once a year to recommend to the OIR changes in statutes and rules, and upon the request of OIR to assist with any corrective action, rehabilitation or cessation of the business plan of a provider. The Council is composed of ten members, including:

- Three administrators of CCRC facilities;
- Three residents of CCRCs;
- An attorney;
- A certified public accountant;
- A representative of the business community whose expertise is in the area of management; and,
- A representative of the financial community who is not a facility owner or administrator.²¹

Department of Financial Services

The Department of Financial Services (DFS) may interact with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.²² Typically, residents will contact the Division of Consumer Services of the Department of Financial Services, which receives inquiries and complaints involving products and entities regulated by the OIR or the DFS.²³ The DFS coordinates with the OIR in the resolution of complaints or inquiries.

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. Federal law provides that insurance companies may not file for

¹⁷ Section 651.083, F.S.

¹⁸ *Id.*

¹⁹ Section 651.081, F.S.

²⁰ Section 651.091, F.S.

²¹ Section 651.121, F.S.

²² See Rules 69O-193.062 and 69O-193.063, F.A.C.

²³ Section 624.307, F.S.

bankruptcy.²⁴ Instead, the state, through the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS), is responsible for rehabilitating or liquidating an insurer.²⁵ If an insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. If the DFS institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.²⁶ Such claims are subordinate, however, to any secured claim. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions of the following terms: actuarial opinion, actuarial study, actuary, controlling company, corrective order, days cash on hand, debt service coverage ratio, department, impaired, manager, management, or management company, obligated group, occupancy, and regulatory action level event. The term, “impaired,” means any of the following has occurred:

- A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, F.S., unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6), F.S., and is compliant with the approved payment schedule; or
- Effective January 1, 2021:
 - For a provider with mortgage financing from a third-party lender or public bond issue, the provider’s debt service coverage ratio is less than 1:1 and the provider’s days cash on hand is less than 90; or
 - For a provider without mortgage financing from a third-party lender or public bond issue, the provider’s days cash on hand is less than 90.

The term, “regulatory action level event,” is defined to mean that any two of the following has occurred:

- The provider’s debt service coverage ratio is less than the minimum ratio specified in the provider’s bond covenants or lending agreement for long-term financing, or, if the provider does not have a debt service coverage ratio required by its lending institution, the provider’s debt service coverage ratio is less than 1.20:1 as of the most recent report filed with the OIR. If the provider is a member of an obligated group having cross-collateralized debt, the obligated group’s debt service coverage ratio must be used as the provider’s debt service coverage ratio.
- The provider’s days cash on hand is less than the minimum number of days cash on hand specified in the provider’s bond covenants or lending agreement for long-term financing. If the provider does not have a days cash on hand required by its lending institution, the days cash on hand may not be less than 100 as of the most recent report filed with the OIR. If the provider is a member of an obligated group having cross-collateralized debt, the days cash on hand of the obligated group must be used as the provider’s days cash on hand.

²⁴ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.

²⁵ Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.

²⁶ Section 651.071, F.S.

- The 12-month average occupancy of the provider's facility is less than 80 percent. The average occupancy is calculated using the facility's occupancy as of the last day of each month.

Sections 2 and 21 amend ss. 651.012 and 651.057, F.S., by providing technical, conforming changes.

Regulatory Oversight and Solvency

Section 3 amends s. 651.013, F.S., to expand the scope of laws applicable to continuing care retirement communities (CCRCs) to include ss. 624.307, 624.308, 624.310, 624.102, 624.311, 624.312, 624.318 and 624.422, F.S. These provisions provide the OIR with additional authority to take enforcement authority against licensed entities, affiliates, and unlicensed entities subject to OIR's regulation. Further, these provisions specify that CCRCs must appoint the Chief Financial Officer for service of process; clarify the role of the DFS Division of Consumer Services in resolving consumer complaints; specify requirements for the retention of records by the OIR; provide immunity from civil liability for persons providing the DFS, Financial Services Commission (FSC), or the OIR with information about the condition of an insurer, clarify the authority of the OIR in regards to examinations and investigations; and specify the duty of every person being examined to provide records during an examination or investigation. Finally, s. 624.312, F.S., provides that reproductions and certified copies of records are admissible as evidence.

Section 5 amends s. 651.021, F.S., which relates to the certificate of authority process, is amended to delete provisions relating to expansion of a certified facility. The provisions are transferred to the newly created s. 651.0246, F.S.

Section 6 creates s. 651.0215, F.S., to allow an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority if certain conditions are met, including:

- Placement of all reservation deposits and entrance fees in escrow and not pledging initial entrance fees for construction or purchase of the facility or as a security for long-term financing.
- Compliance with reservation deposit requirements that it may not exceed the lesser of \$40,000 or 10 percent of the then-current fee for the unit selected by a resident, which is refundable in certain circumstances.
- Submission of a feasibility study, financial forecasts or projections, an audited financial report, quarterly unaudited financial reports, and evidence of compliance with conditions of the lenders' conditions;
- Documentation evidencing that aggregate amount of entrance fee received by or pledged by the applicant and other specified sources equal at least 100 percent of the aggregate cost of constructing, acquiring, equipping, and furnishing the facility plus 100 percent of the anticipated start-up losses of the facility;
- Evidence that the applicant will meet minimum liquid requirements; and
- Such other reasonable data and information requested by the OIR.

The section provides a timeline for the review and approval or disapproval of the application.

Section 7 amends s. 651.022, F.S., which relates to the provisional certificate of authority process, to clarify that an applicant must disclose material changes that occur while a provisional certificate of authority application is pending before the OIR. The section provides a timeline for the review and approval or disapproval of the application.

Section 8 amends s. 651.023, F.S., relating to the requirements for a certificate of authority application. The section provides the OIR may not approve a COA if it includes in the financing plan any encumbrance on renewal or replacement reserves required by ch. 651, F.S. After issuance of a provisional certificate of authority, the OIR will issue the holder a certificate of authority if the holder provides certain information. The bill clarifies the deadlines for the OIR's approval or denial of completed applications. In order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of \$40,000 or 10 percent of the then-current entrance fee for that unit.

Section 9 amends s. 651.024, F.S., to clarify which filing or application for acquisition applies to each type of transaction, including the new, consolidated provisions of s. 651.0245, F.S. The section clarifies that the assumption of the role of a general partner of a CCRC or the assumption of ownership, or possession of, or control over, 10 percent or more of a provider's assets requires an acquisition filing. However, this type of acquisition is not subject to the filing requirements pursuant to s. 651.022, s. 651.023, or s. 651.0245, F.S. A person who seeks to acquire and become the provider for a facility will be subject to s. 651.0245, F.S., and is not required to make filings pursuant to ss. 651.4615, 651.022, and 651.023, F.S.

Section 10 creates s. 651.0245, F.S., to consolidate the application for the simultaneous acquisition of a facility and issuance of a certificate of authority into a single application. The section provides that a person must obtain the OIR's prior approval before acquiring a facility operating under an existing certificate of authority and engaging in the business of continuing care.

Section 11 creates s. 651.0246, F.S., relating to expansions, to clarify the requirements and approval process. The section establishes financial and reporting requirements for an expansion of a facility equivalent to the addition of at least 20 percent of the existing units or 20 percent more continuing care at-home contracts. If a facility meets certain conditions, an expansion is not subject to prior approval by the OIR.

Section 12 amends s. 651.026, F.S., to require a facility to submit on an annual basis, an audited financial report and the management's calculation of the provider's debt service coverage ratio occupancy rate, calculation of minimum liquid reserves, and day's cash on hand for the current reporting period. The OIR is required to publish an annual industry benchmarking report that contains specified information about the industry's performance.

Section 13 amends s. 651.0261, F.S., to codify the current discretionary monthly financial reporting rule²⁷ and revise the quarterly financial reporting requirements for providers. The section requires a provider to submit quarterly unaudited financial statements, day's cash on hand, debt service coverage ratio, occupancy rate, and a detailed listing of assets in the minimum

²⁷ Rule 69O-193.005, F.A.C.

liquid reserve with the quarterly and monthly unaudited financial statement filings, if applicable.. The OIR may waive the quarterly reporting requirements if a written request from a provider that is accredited or that has obtained an investment grade credit rating from a U.S. credit rating agency. This section specifies conditions that may trigger a monthly financial reporting to the OIR, such as the provider is subject to administrative supervision proceedings, a corrective action plan, or the provider or facility displays a declining financial condition. The OIR may not waive the quarterly reporting requirement for a period of 12 months for any provider that is impaired, or does not comply with a requirement for debt services coverage ratio, days cash on hand, or average facility occupancy as provided in s. 651.011(25), F.S.

Section 14 amends s. 651.028, F.S., to provide that if a provider or obligated group has obtained an investment grade credit rating from Moody's Investors Services, Standard & Poor's, or Fitch Ratings, the OIR may waive any requirements of ch. 631, F.S., if the OIR finds that such waivers are not inconsistent with the protections intended by this chapter. Currently, the OIR may waive ch. 631, F.S., requirements if a provider is accredited.

Section 15 amends s. 651.033, F.S., to clarify the terms and conditions relating to an escrow account, withdrawals, and the duties of escrow agents.

Section 16 creates s. 651.034, F.S., to establish a financial and operating framework of required actions if a regulatory action level event or an impairment occurs. Once a regulatory action level event is triggered, the OIR is required to examine the provider, review the provider's corrective action plan, and issue a corrective order specifying any corrective actions that the OIR deems necessary with exceptions. The OIR may consult with members of the Continuing Care Advisory Council and other consultants to review a provider's corrective action plan, examine a provider, and formulate the corrective order with respect to a provider. Further, this section details the information the provider must submit to the OIR if a regulatory action level event occurs, which would include the submission of a corrective action plan within 30 days after the regulatory action level event. The OIR must approve or disapprove the corrective plan within 15 days.

If an impairment of a provider occurs, the OIR may take action, which could include "any remedy available under ch. 631, F.S." An impairment is sufficient grounds for the Department of Financial Services to be appointed as receiver. The section provides that the OIR may exempt a provider from provisions relating to the regulatory action level event and impairment if certain conditions are met. This section does not preclude or limit any power or duty of the DFS or the OIR. The current intervention framework for CCRCs is triggered only after a provider becomes insolvent, meaning it is unable to pay its obligations as they come due in the normal course of business.

Section 17 amends s. 651.035, F.S., revises provisions relating to the minimum liquid reserve requirements. The section allows a provider to withdraw funds held in escrow without the approval of the OIR if the amount in escrow exceeds the requirements of this section and the withdrawal will not affect compliance with this section. For all other proposed withdrawals, the provider must file information documenting the necessity of the withdrawal, and within 30 days after the file is deemed complete, the OIR must notify the provider of its approval or disapproval of the request. The section also requires a provider that does not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of its annual property tax

liability. The section authorizes the OIR to require the transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the Bureau of Collateral Management of the DFS if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets. The section provides that if the market value of the minimum liquid reserve is less than the required amount at the end of any fiscal quarter, the provider must fund the shortfall within 10 business days. The section requires a provider to fund any increases in the minimum liquid reserve not later than 61 days after the minimum liquid reserve calculation is due to be filed as provided in s. 651.026, F.S.

Section 18 creates s. 651.043, F.S., relating to changes in management. This section establishes criteria for the OIR to use in determining whether management meets minimum qualification standards and allows for the disapproval and removal of unqualified management. Providers are required to file notices of a change in management with the OIR within 10 days of the appointment of new management. The OIR must approve or disapprove the filing within 15 days after the filing is deemed complete. Disapproved management must be removed within 30 days after receipt of the OIR's notice. Currently, the OIR does not have authority to disapprove unaffiliated management except by taking action against the certificate of authority of the provider. Effective July 1, 2019, management contracts must be in writing and include a provision that the contract will be canceled, without application of a cancellation fee or penalty, upon issuance of an order pursuant to this section.

Section 19 amends s. 651.051, F.S., to clarify requirements for the maintenance of records and assets to provide that they must be maintained or readily accessible to the OIR.

Section 24 amends s. 651.095, F.S., to clarify that the terms, "life plan and life plan at-home" may not be used in advertisements by entities not licensed pursuant to ch. 651, F.S.

Section 25 amends s. 651.105, F.S., relating to examinations by the OIR. The section requires a provider to respond to written correspondence from the OIR. Further, the section provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records. Unless a provider or facility is impaired or subject to a regulatory level event, any parent, subsidiary, or affiliate is not subject to examination by the OIR as part of a routine examination. However, an exception is provided if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility is in compliance with ch. 651, F.S.

Section 26 amends s. 651.106, F.S., to provide additional grounds for the OIR to refuse, suspend, or revoke a COA. The section provides that the OIR may deny an application, suspend, or revoke the provisional certificate of authority or certificate of authority if the provider is impaired or the owners, managers, or controlling persons are not reputable or lack sufficient management expertise or experience to operate a CCRC.

Section 27 creates s. 651.1065, F.S., which prohibits an impaired or insolvent provider from soliciting or accepting new contracts after the proprietor, general partner, its member, officer, director, trustee, or manager knew, or reasonably should have known, that the CCRC is impaired or insolvent, even if a delinquency hearing had not been initiated. The section provides discretion

for the OIR to allow the issuance of new contracts where safeguards are adequate unless the facility has declared bankruptcy. A violation of this section is a felony of the third degree.

Section 29 amends s. 651.114, F.S., relating to delinquency proceedings and remedial rights. A provider must develop a plan for obtaining compliance or solvency within 30 days after a request from the advisory council or the office. The advisory council is required to respond within 30 days after receipt of a plan. The section clarifies that the OIR may take other regulatory action while a plan is under review. If the financial condition of the provider is impaired or the provider fails to submit a corrective plan within 30 days of the request or submits an insufficient plan, the OIR may specify a plan, and direct the provider to implement it.

The section requires a provider to give residents a written notice of a delinquency proceeding under ch. 631, F.S., within 3 business days of initiation. If a ch. 631, F.S., show a cause order is issued, the provider must respond within 20 days after service. Any hearing must be held within 60 days after the order to show cause. A hearing to determine whether cause exists for the DFS to be appointed a receiver must be commenced within 60 days after an order directing a provider to show cause.

Section 30 creates s. 651.1141, F.S., to provide that the following statutory violations are an immediate danger to the public health, safety, or welfare of the residents of this state:

- The installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024, F.S., or s. 651.0245, F.S.;
- The removal or commitment of 10 percent or more for the required minimum liquid reserve funds in violation of s. 651.035, F.S.; or
- The assumption of control over a facility's operations in violation of s. 651.043, F.S., has occurred.

If the OIR determines that a person or entity is engaging or has engaged in one or more of the above activities, the OIR may, pursuant to s. 120.569, F.S., issue an immediate final order directing that such person or entity cease and desist that activity; or suspend the certificate of authority of the facility. This provision will allow the OIR to take more expedited action to protect the assets of the provider and the significant investments of the residents.

Section 32 amends s. 651.125, F.S., to clarify that any person who assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to ch. 651, F.S., without a valid provisional certificate of authority or certificate of authority commits a felony of the third degree.

Increased Transparency and Protections for Residents

Section 4 amends s. 651.019, F.S., to require a provider to provide a general outline of the amount and terms of any new financing or refinancing to the residents' council at least 30 days before the closing date of the transaction. Such documents must be submitted to the OIR within 30 days after the closing date. Under current law, the residents' council receives notice of all financing documents filed with the OIR.

Section 20 amends s. 651.055, F.S., to require all contracts to include a notice that a copy of ch. 651, F.S., is on file at the facility, and disclose that an individual has a right to inspect financial statements and inspection report of the facility before signing the contract.

Section 22 amends s. 651.071, F.S., to deem all continuing care and continuing care at-home contracts preferred claims or policyholder loss claims pursuant to s. 631.271(1)(b), F.S., in the event the provider is liquidated or put into receivership.

Section 23 amends s. 651.091, F.S., to create additional provider notice and reporting requirements to the residents or residents' council. These reports assist residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests. The section requires the provider to furnish information to the chair of the residents' council, such as, a notice of the issuance of any examination reports, a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS, and the reasons for any increase in the monthly fee that exceeds the consumer price index. A facility is required to post in a prominent place the contact information for the OIR and the Division of Consumer Services of the Department of Financial Services.

Section 28 amends s. 651.111, F.S., by revising provisions relating to the OIR's authority to conduct inspections initiated by resident complaints. The section requires the OIR to acknowledge receipt of a complaint within 15 days and issue a written closure statement to the complainant upon the final disposition of the complaint.

Section 31 amends s. 651.121, F.S., relating to the Continuing Care Advisory Council, to increase the number of residents on the council from three to four and remove the requirement that one of the 10 members is an attorney.

Section 33 provides that, except as otherwise expressly provided in this bill and except for this section, the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill consolidates various applications, which may result in reduced application fees incurred by applicants.

B. Private Sector Impact:

The bill provides additional consumer protections for current and potential residents of a continuing care retirement community (CCRC). The establishment of the early intervention framework will allow the OIR to work with a provider much sooner in order to mitigate or resolve any potential issues that would put resident interests in jeopardy.

The consolidation of the acquisition filings may result in a reduction of administrative costs for affected CCRCs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some of the provisions in the bill relating or referencing to ch. 631, F.S., are inconsistent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.019, 651.021, 861.022, 651.023, 651.026, 651.0261, 651.028, 651.035, 651.051, 651.055, 651.057, 651.071, 651.091, 651.095, 651.105, 651.106, 651.111, 651.114, 651.121, and 651.125.

This bill creates the following sections of the Florida Statutes: 651.0215, 651.0245, 651.0246, 651.043, 651.034, 651.1065, and 651.1141.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 11, 2019:

The CS:

- Revises the definition of regulatory action event level.
- Revises minimum liquid reserve requirements.
- Revises and clarifies reporting requirements.
- Clarifies the timeline and process for the approval or disapproval of applications.
- Provides technical and clarifying changes.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Lee

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1 A bill to be entitled
 2 An act relating to continuing care contracts; amending
 3 s. 651.011, F.S.; adding and revising definitions;
 4 amending s. 651.012, F.S.; conforming a cross-
 5 reference; deleting an obsolete date; amending s.
 6 651.013, F.S.; adding certain Florida Insurance Code
 7 provisions to the Office of Insurance Regulation's
 8 authority to regulate providers of continuing care and
 9 continuing care at-home; amending s. 651.019, F.S.;
 10 revising requirements for providers and facilities
 11 relating to financing and refinancing transactions;
 12 amending s. 651.021, F.S.; conforming provisions to
 13 changes made by the act; creating s. 651.0215, F.S.;
 14 specifying conditions, requirements, procedures, and
 15 prohibitions relating to consolidated applications for
 16 provisional certificates of authority and for
 17 certificates of authority and to the office's review
 18 of such applications; specifying conditions under
 19 which a provider is entitled to secure the release of
 20 certain escrowed funds; providing construction;
 21 amending s. 651.022, F.S.; revising and specifying
 22 requirements, procedures, and prohibitions relating to
 23 applications for provisional certificates of authority
 24 and to the office's review of such applications;
 25 amending s. 651.023, F.S.; revising and specifying
 26 requirements, procedures, and prohibitions relating to
 27 applications for certificates of authority and to the
 28 office's review of such applications; conforming
 29 provisions to changes made by the act; amending s.

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30 651.024, F.S.; revising requirements for certain
 31 persons relating to provider acquisitions; specifying
 32 procedures for rebutting a presumption of control;
 33 providing standing to the office to petition a circuit
 34 court in certain proceedings; creating s. 651.0245,
 35 F.S.; specifying procedures, requirements, and a
 36 prohibition relating to an application for the
 37 simultaneous acquisition of a facility and issuance of
 38 a certificate of authority and to the office's review
 39 of such application; specifying rulemaking
 40 requirements and authority of the Financial Services
 41 Commission; providing standing to the office to
 42 petition a circuit court in certain proceedings;
 43 specifying procedures for rebutting a presumption of
 44 control; creating s. 651.0246, F.S.; specifying
 45 requirements, conditions, procedures, and prohibitions
 46 relating to provider applications to commence
 47 construction or marketing for expansions of
 48 certificated facilities and to the office's review of
 49 such applications; defining the term "existing units";
 50 specifying escrow requirements for certain moneys;
 51 specifying conditions under which providers are
 52 entitled to secure release of such moneys; providing
 53 applicability and construction; amending s. 651.026,
 54 F.S.; revising requirements for annual reports filed
 55 by providers with the office; revising the
 56 commission's rulemaking authority; requiring the
 57 office to annually publish a specified industry
 58 benchmarking report; amending s. 651.0261, F.S.;

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59 requiring providers to file quarterly unaudited
60 financial statements; authorizing the office to waive
61 such requirement under certain circumstances;
62 providing an exception for filing a certain quarterly
63 statement; revising information that the office may
64 require providers to file and the circumstances under
65 which such information must be filed; revising the
66 commission's rulemaking authority; amending s.
67 651.028, F.S.; revising requirements that the office
68 may waive under certain circumstances; revising the
69 entities that may qualify for such waiver; requiring
70 such entities to provide certain information within a
71 certain timeframe to the office under certain
72 circumstances; amending s. 651.033, F.S.; revising
73 applicability of escrow requirements; revising
74 requirements for escrow accounts and agreements;
75 revising the office's authority to allow a withdrawal
76 of a specified percentage of the required minimum
77 liquid reserve; revising applicability of requirements
78 relating to the deposit of certain funds in escrow
79 accounts; prohibiting an escrow agent, except under
80 certain circumstances, from releasing or allowing the
81 transfer of funds; creating s. 651.034, F.S.;
82 specifying requirements for the office if a regulatory
83 action level event occurs; specifying requirements for
84 corrective action plans; authorizing the office to use
85 members of the Continuing Care Advisory Council and to
86 retain consultants for certain purposes; requiring
87 affected providers to bear costs and expenses relating

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88 to such consultants; specifying requirements for, and
89 authorized actions of, the office and the Department
90 of Financial Services if an impairment occurs;
91 providing construction; authorizing the office to
92 exempt a provider from certain requirements for a
93 certain timeframe; authorizing the commission to adopt
94 rules; amending s. 651.035, F.S.; revising minimum
95 liquid reserve requirements for providers; specifying
96 requirements, limitations, and procedures for a
97 provider's withdrawal of funds held in escrow and the
98 office's review of certain requests for withdrawal;
99 authorizing the office to order certain transfers
100 under certain circumstances; requiring facilities to
101 annually file with the office a minimum liquid reserve
102 calculation; requiring increases in the minimum liquid
103 reserve to be funded within a certain timeframe;
104 requiring providers to fund shortfalls in minimum
105 liquid reserves under certain circumstances within a
106 certain timeframe; creating s. 651.043, F.S.;
107 specifying requirements for certain management company
108 contracts; specifying requirements, procedures, and
109 authorized actions relating to changes in provider
110 management and to the office's review of such changes;
111 requiring that disapproved management be removed
112 within a certain timeframe; authorizing the office to
113 take certain disciplinary actions under certain
114 circumstances; requiring providers to immediately
115 remove management under certain circumstances;
116 amending s. 651.051, F.S.; revising requirements for

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117 the maintenance of provider records and assets;
 118 amending s. 651.055, F.S.; revising a required
 119 statement in continuing care contracts; amending s.
 120 651.057, F.S.; conforming provisions to changes made
 121 by the act; amending s. 651.071, F.S.; specifying the
 122 priority of continuing care contracts and continuing
 123 care at-home contracts in receivership or liquidation
 124 proceedings against a provider; amending s. 651.091,
 125 F.S.; revising requirements for continuing care
 126 facilities relating to posting or providing notices;
 127 amending s. 651.095, F.S.; adding terms to a list of
 128 prohibited terms in certain advertisements; amending
 129 s. 651.105, F.S.; adding a certain Florida Insurance
 130 Code provision to the office's authority to examine
 131 certain providers and applicants; requiring providers
 132 to respond to the office's written correspondence and
 133 to provide certain information; providing standing to
 134 the office to petition certain circuit courts for
 135 certain relief; revising, and specifying limitations
 136 on, the office's examination authority; amending s.
 137 651.106, F.S.; authorizing the office to deny
 138 applications on specified grounds; adding and revising
 139 grounds for suspension or revocation of provisional
 140 certificates of authority and certificates of
 141 authority; creating s. 651.1065, F.S.; prohibiting
 142 certain actions by certain persons of an impaired or
 143 insolvent continuing care facility; providing that
 144 bankruptcy courts or trustees have jurisdiction over
 145 certain matters; requiring the office to approve or

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146 disapprove the continued marketing of new contracts
 147 within a certain timeframe; providing a criminal
 148 penalty; amending s. 651.111, F.S.; defining the term
 149 "inspection"; revising procedures and requirements
 150 relating to requests for inspections to the office;
 151 amending s. 651.114, F.S.; revising and specifying
 152 requirements, procedures, and authorized actions
 153 relating to providers' corrective action plans;
 154 providing construction; revising and specifying
 155 requirements and procedures relating to delinquency
 156 proceedings against a provider; revising circumstances
 157 under which the office must provide a certain notice
 158 to trustees or lenders; creating s. 651.1141, F.S.;
 159 providing legislative findings; authorizing the office
 160 to issue certain immediate final orders under certain
 161 circumstances; amending s. 651.121, F.S.; revising the
 162 composition of the Continuing Care Advisory Council;
 163 amending s. 651.125, F.S.; revising a prohibition to
 164 include certain actions performed without a valid
 165 provisional certificate of authority; providing
 166 effective dates.

167
 168 Be It Enacted by the Legislature of the State of Florida:

169
 170 Section 1. Section 651.011, Florida Statutes, is amended to
 171 read:

172 651.011 Definitions.—As used in this chapter, the term:
 173 (1) "Actuarial opinion" means an opinion issued by an
 174 actuary in accordance with Actuarial Standards of Practice No. 3

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175 for Continuing Care Retirement Communities, Revised Edition,
 176 effective May 1, 2011.

177 (2) "Actuarial study" means an analysis prepared for an
 178 individual facility, or consolidated for multiple facilities,
 179 for either a certified provider, as of a current valuation date
 180 or the most recent fiscal year, or for an applicant, as of a
 181 projected future valuation date, which includes an actuary's
 182 opinion as to whether such provider or applicant is in
 183 satisfactory actuarial balance in accordance with Actuarial
 184 Standards of Practice No. 3 for Continuing Care Retirement
 185 Communities, Revised Edition, effective May 1, 2011.

186 (3) "Actuary" means an individual who is qualified to sign
 187 an actuarial opinion in accordance with the American Academy of
 188 Actuaries' qualification standards and who is a member in good
 189 standing of the American Academy of Actuaries.

190 (4)(1) "Advertising" means the dissemination of written,
 191 visual, or electronic information by a provider, or any person
 192 affiliated with or controlled by a provider, to potential
 193 residents or their representatives for the purpose of inducing
 194 such persons to subscribe to or enter into a contract for
 195 continuing care or continuing care at-home.

196 (5)(2) "Continuing care" or "care" means, pursuant to a
 197 contract, furnishing shelter and nursing care or personal
 198 services to a resident who resides in a facility, whether such
 199 nursing care or personal services are provided in the facility
 200 or in another setting designated in the contract for continuing
 201 care, by an individual not related by consanguinity or affinity
 202 to the resident, upon payment of an entrance fee.

203 (6)(3) "Continuing Care Advisory Council" or "advisory

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204 council" means the council established in s. 651.121.

205 (7)(4) "Continuing care at-home" means, pursuant to a
 206 contract other than a contract described in subsection (5) (2),
 207 furnishing to a resident who resides outside the facility the
 208 right to future access to shelter and nursing care or personal
 209 services, whether such services are provided in the facility or
 210 in another setting designated in the contract, by an individual
 211 not related by consanguinity or affinity to the resident, upon
 212 payment of an entrance fee.

213 (8) "Controlling company" means any corporation, trust, or
 214 association that directly or indirectly owns 25 percent or more
 215 of:

216 (a) The voting securities of one or more providers or
 217 facilities that are stock corporations; or

218 (b) The ownership interest of one or more providers or
 219 facilities that are not stock corporations.

220 (9) "Corrective order" means an order issued by the office
 221 which specifies corrective actions that the office determines
 222 are required in accordance with this chapter or commission rule.

223 (10) "Days cash on hand" means the quotient obtained by
 224 dividing the value of paragraph (a) by the value of paragraph
 225 (b).

226 (a) The sum of unrestricted cash, unrestricted short-term
 227 and long-term investments, provider restricted funds, and the
 228 minimum liquid reserve as of the reporting date.

229 (b) Operating expenses less depreciation, amortization, and
 230 other noncash expenses and nonoperating losses, divided by 365.
 231 Operating expenses, depreciation, amortization, and other
 232 noncash expenses and nonoperating losses are each the sum of

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233 their respective values over the 12-month period ending on the
 234 reporting date.

236 With prior written approval of the office, a demand note or
 237 other parental guarantee may be considered a short-term or long-
 238 term investment for the purposes of paragraph (a). However, the
 239 total of all demand notes issued by the parent may not, at any
 240 time, be more than the sum of unrestricted cash and unrestricted
 241 short-term and long-term investments held by the parent.

242 (11) "Debt service coverage ratio" means the quotient
 243 obtained by dividing the value of paragraph (a) by the value of
 244 paragraph (b).

245 (a) The sum of total expenses less interest expense on the
 246 debt facility, depreciation, amortization, and other noncash
 247 expense and nonoperating losses, subtracted from the sum of
 248 total revenues, excluding noncash revenues and nonoperating
 249 gains, and gross entrance fees received less earned entrance
 250 fees and refunds paid. Expenses, interest expense on the debt
 251 facility, depreciation, amortization, and other noncash expense
 252 and nonoperating losses, revenues, noncash revenues,
 253 nonoperating gains, gross entrance fees, earned entrance fees,
 254 and refunds are each the sum of their respective values over the
 255 12-month period ending on the reporting date.

256 (b) Total annual principal and interest expense due on the
 257 debt facility over the 12-month period ending on the reporting
 258 date. For the purposes of this paragraph, principal excludes any
 259 balloon principal payment amounts, and interest expense due is
 260 the sum of the interest over the 12-month period immediately
 261 preceding the reporting date.

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262 (12) "Department" means the Department of Financial
 263 Services.

264 ~~(13)-(5)~~ "Entrance fee" means an initial or deferred payment
 265 of a sum of money or property made as full or partial payment
 266 for continuing care or continuing care at-home. An accommodation
 267 fee, admission fee, member fee, or other fee of similar form and
 268 application are considered to be an entrance fee.

269 ~~(14)-(6)~~ "Facility" means a place where continuing care is
 270 furnished and may include one or more physical plants on a
 271 primary or contiguous site or an immediately accessible site. As
 272 used in this subsection, the term "immediately accessible site"
 273 means a parcel of real property separated by a reasonable
 274 distance from the facility as measured along public
 275 thoroughfares, and the term "primary or contiguous site" means
 276 the real property contemplated in the feasibility study required
 277 by this chapter.

278 ~~(7) "Generally accepted accounting principles" means those~~
 279 ~~accounting principles and practices adopted by the Financial~~
 280 ~~Accounting Standards Board and the American Institute of~~
 281 ~~Certified Public Accountants, including Statement of Position~~
 282 ~~90-8 with respect to any full year to which the statement~~
 283 ~~applies.~~

284 (15) "Impaired" or "impairment" means that either of the
 285 following has occurred:

286 (a) A provider has failed to maintain its minimum liquid
 287 reserve as required under s. 651.035, unless the provider has
 288 received prior written approval from the office for a withdrawal
 289 pursuant to s. 651.035(6) and is compliant with the approved
 290 payment schedule.

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291 (b) Beginning January 1, 2021:

292 1. For a provider with mortgage financing from a third-
 293 party lender or a public bond issue, the provider's debt service
 294 coverage ratio is less than 1.00:1 and the provider's days cash
 295 on hand is less than 90; or

296 2. For a provider without mortgage financing from a third-
 297 party lender or public bond issue, the provider's days cash on
 298 hand is less than 90.

299

300 If the provider is a member of an obligated group having cross-
 301 collateralized debt, the obligated group's debt service coverage
 302 ratio and days cash on hand must be used to determine if the
 303 provider is impaired.

304 (16)(8) "Insolvency" means the condition in which a the
 305 provider is unable to pay its obligations as they come due in
 306 the normal course of business.

307 (17)(9) "Licensed" means that a the provider has obtained a
 308 certificate of authority from the office department.

309 (18) "Manager", "management," or "management company" means
 310 a person who administers the day-to-day business operations of a
 311 facility for a provider, subject to the policies, directives,
 312 and oversight of the provider.

313 (19)(10) "Nursing care" means those services or acts
 314 rendered to a resident by an individual licensed or certified
 315 pursuant to chapter 464.

316 (20) "Obligated group" means one or more entities that
 317 jointly agree to be bound by a financing structure containing
 318 security provisions and covenants applicable to the group. For
 319 the purposes of this subsection, debt issued under such a

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320 financing structure must be a joint and several obligation of
 321 each member of the group.

322 (21) "Occupancy" means the total number of occupied
 323 independent living units, assisted living units, and skilled
 324 nursing beds in a facility divided by the total number of units
 325 and beds in that facility, excluding units and beds that are
 326 unavailable to market or that are reserved by prospective
 327 residents.

328 (22)(11) "Personal services" has the same meaning as in s.
 329 429.02.

330 (23)(12) "Provider" means the owner or operator, whether a
 331 natural person, partnership or other unincorporated association,
 332 however organized, trust, or corporation, of an institution,
 333 building, residence, or other place, whether operated for profit
 334 or not, which owner or operator provides continuing care or
 335 continuing care at-home for a fixed or variable fee, or for any
 336 other remuneration of any type, whether fixed or variable, for
 337 the period of care, payable in a lump sum or lump sum and
 338 monthly maintenance charges or in installments. The term does
 339 not apply to an entity that has existed and continuously
 340 operated a facility located on at least 63 acres in this state
 341 providing residential lodging to members and their spouses for
 342 at least 66 years on or before July 1, 1989, and has the
 343 residential capacity of 500 persons, is directly or indirectly
 344 owned or operated by a nationally recognized fraternal
 345 organization, is not open to the public, and accepts only its
 346 members and their spouses as residents.

347 (24)(13) "Records" means all documents, correspondence, and
 348 the permanent financial, directory, and personnel information

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349 and data maintained by a provider pursuant to this chapter,
350 regardless of the physical form, characteristics, or means of
351 transmission.

352 (25) "Regulatory action level event" means that any two of
353 the following have occurred:

354 (a) The provider's debt service coverage ratio is less than
355 the minimum ratio specified in the provider's bond covenants or
356 lending agreement for long-term financing, or, if the provider
357 does not have a debt service coverage ratio required by its
358 lending institution, the provider's debt service coverage ratio
359 is less than 1.20:1 as of the most recent report filed with the
360 office. If the provider is a member of an obligated group having
361 cross-collateralized debt, the obligated group's debt service
362 coverage ratio must be used as the provider's debt service
363 coverage ratio.

364 (b) The provider's days cash on hand is less than the
365 minimum number of days cash on hand specified in the provider's
366 bond covenants or lending agreement for long-term financing. If
367 the provider does not have a days cash on hand required by its
368 lending institution, the days cash on hand may not be less than
369 100 as of the most recent report filed with the office. If the
370 provider is a member of an obligated group having cross-
371 collateralized debt, the days cash on hand of the obligated
372 group must be used as the provider's days cash on hand.

373 (c) The 12-month average occupancy of the provider's
374 facility is less than 80 percent. The average occupancy must be
375 calculated using the facility's occupancy as of the last day of
376 each month.

377 (26)(14) "Resident" means a purchaser of, a nominee of, or

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378 a subscriber to a continuing care or continuing care at-home
379 contract. Such contract does not give the resident a part
380 ownership of the facility in which the resident is to reside,
381 unless expressly provided in the contract.

382 (27)(15) "Shelter" means an independent living unit, room,
383 apartment, cottage, villa, personal care unit, nursing bed, or
384 other living area within a facility set aside for the exclusive
385 use of one or more identified residents.

386 Section 2. Section 651.012, Florida Statutes, is amended to
387 read:

388 651.012 Exempted facility; written disclosure of
389 exemption.—Any facility exempted under ss. 632.637(1)(e) and
390 651.011(23) ~~651.011(12)~~ must provide written disclosure of such
391 exemption to each person admitted to the facility ~~after October~~
392 ~~1, 1996~~. This disclosure must be written using language likely
393 to be understood by the person and must briefly explain the
394 exemption.

395 Section 3. Subsection (2) of section 651.013, Florida
396 Statutes, is amended to read:

397 651.013 Chapter exclusive; applicability of other laws.—

398 (2) In addition to other applicable provisions cited in
399 this chapter, the office has the authority granted under ss.
400 624.302 and 624.303, ~~624.307-624.312, 624.318~~ ~~624.308-624.312,~~
401 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and
402 624.422 of the Florida Insurance Code to regulate providers of
403 continuing care and continuing care at-home.

404 Section 4. Section 651.019, Florida Statutes, is amended to
405 read:

406 651.019 New financing, additional financing, or

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407 refinancing.-

408 (1) (a) A provider shall provide a written general outline
 409 of the amount and the anticipated terms of any new financing or
 410 refinancing, and the intended use of proceeds, to the residents'
 411 council at least 30 days before the closing date of the
 412 financing or refinancing transaction. If there is a material
 413 change in the noticed information, a provider shall provide an
 414 updated notice to the residents' council within 10 business days
 415 after the provider becomes aware of such change.

416 (b) If the facility does not have a residents' council, the
 417 facility must make available, in the same manner as other
 418 community notices, the information required under paragraph (a)
 419 After issuance of a certificate of authority, the provider shall
 420 submit to the office a general outline, including intended use
 421 of proceeds, with respect to any new financing, additional
 422 financing, or refinancing at least 30 days before the closing
 423 date of such financing transaction.

424 (2) Within 30 days after the closing date of such financing
 425 or refinancing transaction, The provider shall furnish any
 426 information the office may reasonably request in connection with
 427 any new financing, additional financing, or refinancing,
 428 including, but not limited to, the financing agreements and any
 429 related documents, escrow or trust agreements, and statistical
 430 or financial data. the provider shall also submit to the office
 431 copies of executed financing documents, escrow or trust
 432 agreements prepared in support of such financing or refinancing
 433 transaction, and a copy of all documents required to be
 434 submitted to the residents' council under paragraph (1) (a)
 435 within 30 days after the closing date.

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436 Section 5. Section 651.021, Florida Statutes, is amended to
 437 read:

438 651.021 Certificate of authority required.-

439 ~~(1) A~~ No person may not engage in the business of providing
 440 continuing care, issuing contracts for continuing care or
 441 continuing care at-home, or constructing a facility for the
 442 purpose of providing continuing care in this state without a
 443 certificate of authority obtained from the office as provided in
 444 this chapter. This section ~~subsection~~ does not prohibit the
 445 preparation of a construction site or construction of a model
 446 residence unit for marketing purposes, or both. The office may
 447 allow the purchase of an existing building for the purpose of
 448 providing continuing care if the office determines that the
 449 purchase is not being made to circumvent the prohibitions in
 450 this section.

451 ~~(2) Written approval must be obtained from the office~~
 452 ~~before commencing construction or marketing for an expansion of~~
 453 ~~a certificated facility equivalent to the addition of at least~~
 454 ~~20 percent of existing units or 20 percent or more in the number~~
 455 ~~of continuing care at-home contracts. This provision does not~~
 456 ~~apply to construction for which a certificate of need from the~~
 457 ~~Agency for Health Care Administration is required.~~

458 ~~(a) For providers that offer both continuing care and~~
 459 ~~continuing care at-home, the 20 percent is based on the total of~~
 460 ~~both existing units and existing contracts for continuing care~~
 461 ~~at-home. For purposes of this subsection, an expansion includes~~
 462 ~~increases in the number of constructed units or continuing care~~
 463 ~~at-home contracts or a combination of both.~~

464 ~~(b) The application for such approval shall be on forms~~

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465 ~~adopted by the commission and provided by the office. The~~
 466 ~~application must include the feasibility study required by s.~~
 467 ~~651.022(3) or s. 651.023(1)(b) and such other information as~~
 468 ~~required by s. 651.023. If the expansion is only for continuing~~
 469 ~~care at home contracts, an actuarial study prepared by an~~
 470 ~~independent actuary in accordance with standards adopted by the~~
 471 ~~American Academy of Actuaries which presents the financial~~
 472 ~~impact of the expansion may be substituted for the feasibility~~
 473 ~~study.~~
 474 ~~(c) In determining whether an expansion should be approved,~~
 475 ~~the office shall use the criteria provided in ss. 651.022(6) and~~
 476 ~~651.023(4).~~

477 Section 6. Section 651.0215, Florida Statutes, is created
 478 to read:

479 651.0215 Consolidated application for a provisional
 480 certificate of authority and a certificate of authority;
 481 required restrictions on use of entrance fees.—

482 (1) For an applicant to qualify for a certificate of
 483 authority without first obtaining a provisional certificate of
 484 authority, all of the following conditions must be met:

485 (a) All reservation deposits and entrance fees must be
 486 placed in escrow in accordance with s. 651.033. The applicant
 487 may not use or pledge any part of an initial entrance fee for
 488 the construction or purchase of the facility or as security for
 489 long-term financing.

490 (b) The reservation deposit may not exceed the lesser of
 491 \$40,000 or 10 percent of the then-current fee for the unit
 492 selected by a resident and must be refundable at any time before
 493 the resident takes occupancy of the selected unit.

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494 (c) The resident contract must state that collection of the
 495 balance of the entrance fee is to occur after the resident is
 496 notified that his or her selected unit is available for
 497 occupancy and on or before the occupancy date.

498 (2) The consolidated application must be on a form
 499 prescribed by the commission and must contain all of the
 500 following information:

501 (a) All of the information required under s. 651.022(2).

502 (b) A feasibility study prepared by an independent
 503 consultant which contains all of the information required by s.
 504 651.022(3) and financial forecasts or projections prepared in
 505 accordance with standards adopted by the American Institute of
 506 Certified Public Accountants or in accordance with standards for
 507 feasibility studies for continuing care retirement communities
 508 adopted by the Actuarial Standards Board.

509 1. The feasibility study must take into account project
 510 costs, actual marketing results to date and marketing
 511 projections, resident fees and charges, competition, resident
 512 contract provisions, and other factors that affect the
 513 feasibility of operating the facility.

514 2. If the feasibility study is prepared by an independent
 515 certified public accountant, it must contain an examination
 516 report, or a compilation report acceptable to the office,
 517 containing a financial forecast or projections for the first 5
 518 years of operations which take into account an actuary's
 519 mortality and morbidity assumptions as the study relates to
 520 turnover, rates, fees, and charges. If the study is prepared by
 521 an independent consulting actuary, it must contain mortality and
 522 morbidity assumptions as it relates to turnover, rates, fees,

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523 and charges and an actuary's signed opinion that the project as
 524 proposed is feasible and that the study has been prepared in
 525 accordance with Actuarial Standards of Practice No. 3 for
 526 Continuing Care Retirement Communities, Revised Edition,
 527 effective May 1, 2011.

528 (c) Documents evidencing that commitments have been secured
 529 for construction financing and long-term financing or that a
 530 documented plan acceptable to the office has been adopted by the
 531 applicant for long-term financing.

532 (d) Documents evidencing that all conditions of the lender
 533 have been satisfied to activate the commitment to disburse
 534 funds, other than the obtaining of the certificate of authority,
 535 the completion of construction, or the closing of the purchase
 536 of realty or buildings for the facility.

537 (e) Documents evidencing that the aggregate amount of
 538 entrance fees received by or pledged to the applicant, plus
 539 anticipated proceeds from any long-term financing commitment and
 540 funds from all other sources in the actual possession of the
 541 applicant, equal at least 100 percent of the aggregate cost of
 542 constructing or purchasing, equipping, and furnishing the
 543 facility plus 100 percent of the anticipated startup losses of
 544 the facility.

545 (f) A complete audited financial report of the applicant,
 546 prepared by an independent certified public accountant in
 547 accordance with generally accepted accounting principles, as of
 548 the date the applicant commenced business operations or for the
 549 fiscal year that ended immediately preceding the date of
 550 application, whichever is later; and complete unaudited
 551 quarterly financial statements attested to by the applicant

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552 after the date of the last audit.

553 (g) Documents evidencing that the applicant will be able to
 554 comply with s. 651.035.

555 (h) Such other reasonable data, financial statements, and
 556 pertinent information as the commission or office may require
 557 with respect to the applicant or the facility to determine the
 558 financial status of the facility and the management capabilities
 559 of its managers and owners.

560
 561 If any material change occurs in the facts set forth in an
 562 application filed with the office pursuant to this subsection,
 563 an amendment setting forth such change must be filed with the
 564 office within 10 business days after the applicant becomes aware
 565 of such change, and a copy of the amendment must be sent by
 566 registered mail to the principal office of the facility and to
 567 the principal office of the controlling company.

568 (3) If an applicant has or proposes to have more than one
 569 facility offering continuing care or continuing care at-home, a
 570 separate certificate of authority must be obtained for each
 571 facility.

572 (4) Within 45 days after receipt of the information
 573 required under subsection (2), the office shall examine the
 574 information and notify the applicant in writing, specifically
 575 requesting any additional information that the office is
 576 authorized to require. An application is deemed complete when
 577 the office receives all requested information and the applicant
 578 corrects any error or omission of which the applicant was timely
 579 notified or when the time for such notification has expired.
 580 Within 15 days after receipt of all of the requested additional

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581 information, the office shall notify the applicant in writing
 582 that all of the requested information has been received and that
 583 the application is deemed complete as of the date of the notice.
 584 Failure to notify the applicant in writing within the 15-day
 585 period constitutes acknowledgment by the office that it has
 586 received all requested additional information, and the
 587 application is deemed complete for purposes of review on the
 588 date the applicant files all of the required additional
 589 information.

590 (5) Within 45 days after an application is deemed complete
 591 as set forth in subsection (4) and upon completion of the
 592 remaining requirements of this section, the office shall
 593 complete its review and issue or deny a certificate of authority
 594 to the applicant. If a certificate of authority is denied, the
 595 office shall notify the applicant in writing, citing the
 596 specific failures to satisfy this chapter, and the applicant is
 597 entitled to an administrative hearing pursuant to chapter 120.

598 (6) The office shall issue a certificate of authority upon
 599 determining that the applicant meets all of the requirements of
 600 law and has submitted all of the information required under this
 601 section, that all escrow requirements have been satisfied, and
 602 that the fees prescribed in s. 651.015(2) have been paid.

603 (7) The issuance of a certificate of authority entitles the
 604 applicant to begin construction and collect reservation deposits
 605 and entrance fees from prospective residents. The reservation
 606 contract must state the cancellation policy and the terms of the
 607 continuing care contract. All or any part of an entrance fee or
 608 reservation deposit collected must be placed in an escrow
 609 account or on deposit with the department pursuant to s.

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610 651.033.

611 (8) The provider is entitled to secure release of the
 612 moneys held in escrow within 7 days after the office receives an
 613 affidavit from the provider, along with appropriate
 614 documentation to verify, and notification is provided to the
 615 escrow agent by certified mail, that all of the following
 616 conditions have been satisfied:

617 (a) A certificate of occupancy has been issued.

618 (b) Payment in full has been received for at least 70
 619 percent of the total units of a phase or of the total of the
 620 combined phases constructed. If a provider offering continuing
 621 care at-home is applying for a release of escrowed entrance
 622 fees, the same minimum requirement must be met for the
 623 continuing care contracts and for the continuing care at-home
 624 contracts independently of each other.

625 (c) The provider has evidence of sufficient funds to meet
 626 the requirements of s. 651.035, which may include funds
 627 deposited in the initial entrance fee account.

628 (d) Documents evidencing the intended application of the
 629 proceeds upon release and documents evidencing that the entrance
 630 fees, when released, will be applied as represented to the
 631 office.

632 (9) The office may not approve any application that
 633 includes in the plan of financing any encumbrance of the
 634 operating reserves or renewal and replacement reserves required
 635 by this chapter.

636 (10) The office may not issue a certificate of authority to
 637 a facility that does not have a component that is to be licensed
 638 pursuant to part II of chapter 400 or part I of chapter 429, or

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639 that does not offer personal services or nursing services
 640 through written contractual agreement. A written contractual
 641 agreement must be disclosed in the contract for continuing care
 642 or continuing care at-home and is subject to s. 651.1151.

643 Section 7. Subsections (2), (3), (6), and (8) of section
 644 651.022, Florida Statutes, are amended, and subsection (5) of
 645 that section is republished, to read:

646 651.022 Provisional certificate of authority; application.-

647 (2) The application for a provisional certificate of
 648 authority must ~~shall~~ be on a form prescribed by the commission
 649 and must ~~shall~~ contain the following information:

650 (a) If the applicant or provider is a corporation, a copy
 651 of the articles of incorporation and bylaws; if the applicant or
 652 provider is a partnership or other unincorporated association, a
 653 copy of the partnership agreement, articles of association, or
 654 other membership agreement; and, if the applicant or provider is
 655 a trust, a copy of the trust agreement or instrument.

656 (b) The full names, residences, and business addresses of:

657 1. The proprietor, if the applicant or provider is an
 658 individual.

659 2. Every partner or member, if the applicant or provider is
 660 a partnership or other unincorporated association, however
 661 organized, having fewer than 50 partners or members, together
 662 with the business name and address of the partnership or other
 663 organization.

664 3. The principal partners or members, if the applicant or
 665 provider is a partnership or other unincorporated association,
 666 however organized, having 50 or more partners or members,
 667 together with the business name and business address of the

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668 partnership or other organization. If such unincorporated
 669 organization has officers and a board of directors, the full
 670 name and business address of each officer and director may be
 671 set forth in lieu of the full name and business address of its
 672 principal members.

673 4. The corporation and each officer and director thereof,
 674 if the applicant or provider is a corporation.

675 5. Every trustee and officer, if the applicant or provider
 676 is a trust.

677 6. The manager, whether an individual, corporation,
 678 partnership, or association.

679 7. Any stockholder holding at least a 10 percent interest
 680 in the operations of the facility in which the care is to be
 681 offered.

682 8. Any person whose name is required to be provided in the
 683 application under this paragraph and who owns any interest in or
 684 receives any remuneration from, directly or indirectly, any
 685 professional service firm, association, trust, partnership, or
 686 corporation providing goods, leases, or services to the facility
 687 for which the application is made, with a real or anticipated
 688 value of \$10,000 or more, and the name and address of the
 689 professional service firm, association, trust, partnership, or
 690 corporation in which such interest is held. The applicant shall
 691 describe such goods, leases, or services and the probable cost
 692 to the facility or provider and shall describe why such goods,
 693 leases, or services should not be purchased from an independent
 694 entity.

695 9. Any person, corporation, partnership, association, or
 696 trust owning land or property leased to the facility, along with

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697 a copy of the lease agreement.

698 10. Any affiliated parent or subsidiary corporation or
699 partnership.

700 (c)1. Evidence that the applicant is reputable and of
701 responsible character. If the applicant is a firm, association,
702 organization, partnership, business trust, corporation, or
703 company, the form must shall require evidence that the members
704 or shareholders ~~are reputable and of responsible character,~~ and
705 the person in charge of providing care under a certificate of
706 authority are ~~shall likewise be required to produce evidence of~~
707 ~~being~~ reputable and of responsible character.

708 2. Evidence satisfactory to the office of the ability of
709 the applicant to comply with ~~the provisions of~~ this chapter and
710 with rules adopted by the commission pursuant to this chapter.

711 3. A statement of whether a person identified in the
712 application for a provisional certificate of authority or the
713 administrator or manager of the facility, if such person has
714 been designated, or any such person living in the same location:

715 a. Has been convicted of a felony or has pleaded nolo
716 contendere to a felony charge, or has been held liable or has
717 been enjoined in a civil action by final judgment, if the felony
718 or civil action involved fraud, embezzlement, fraudulent
719 conversion, or misappropriation of property.

720 b. Is subject to a currently effective injunctive or
721 restrictive order or federal or state administrative order
722 relating to business activity or health care as a result of an
723 action brought by a public agency or department, including,
724 without limitation, an action affecting a license under chapter
725 400 or chapter 429.

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726 The statement must shall set forth the court or agency, the date
727 of conviction or judgment, and the penalty imposed or damages
728 assessed, or the date, nature, and issuer of the order. Before
729 determining whether a provisional certificate of authority is to
730 be issued, the office may make an inquiry to determine the
731 accuracy of the information submitted pursuant to subparagraphs
732 1., 2., and 3. 1. and 2.
733 ~~1., 2., and 3. 1. and 2.~~

734 (d) The contracts for continuing care and continuing care
735 at-home to be entered into between the provider and residents
736 which meet the minimum requirements of s. 651.055 or s. 651.057
737 and which include a statement describing the procedures required
738 by law relating to the release of escrowed entrance fees. Such
739 statement may be furnished through an addendum.

740 (e) Any advertisement or other written material proposed to
741 be used in the solicitation of residents.

742 (f) Such other reasonable data, financial statements, and
743 pertinent information as the commission or office may reasonably
744 require with respect to the provider or the facility, including
745 the most recent audited financial report statements of
746 comparable facilities currently or previously owned, managed, or
747 developed by the applicant or its principal, to assist in
748 determining the financial viability of the project and the
749 management capabilities of its managers and owners.

750 (g) The forms of the residency contracts, reservation
751 contracts, escrow agreements, and wait list contracts, if
752 applicable, which are proposed to be used by the provider in the
753 furnishing of care. The office shall approve contracts and
754 escrow agreements that comply with ss. 651.023(1)(c), 651.033,

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755 651.055, and 651.057. Thereafter, no other form of contract or
756 agreement may be used by the provider until it has been
757 submitted to the office and approved.
758

759 If any material change occurs in the facts set forth in an
760 application filed with the office pursuant to this subsection,
761 an amendment setting forth such change must be filed with the
762 office within 10 business days after the applicant becomes aware
763 of such change, and a copy of the amendment must be sent by
764 registered mail to the principal office of the facility and to
765 the principal office of the controlling company.

766 (3) In addition to the information required in subsection
767 (2), an applicant for a provisional certificate of authority
768 shall submit a ~~market~~ feasibility study with appropriate
769 financial, marketing, and actuarial assumptions for the first 5
770 years of operations. The ~~market~~ feasibility study must ~~shall~~
771 include at least the following information:

772 (a) A description of the proposed facility, including the
773 location, size, anticipated completion date, and the proposed
774 construction program.

775 (b) An identification and evaluation of the primary and, if
776 appropriate, the secondary market areas of the facility and the
777 projected unit sales per month.

778 (c) Projected revenues, including anticipated entrance
779 fees; monthly service fees; nursing care revenues rates, if
780 applicable; and all other sources of revenue, ~~including the~~
781 ~~total amount of debt financing required.~~

782 (d) Projected expenses, including staffing requirements and
783 salaries; cost of property, plant, and equipment, including

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784 depreciation expense; interest expense; marketing expense; and
785 other operating expenses.

786 (e) A projected balance sheet ~~Current assets and~~
787 ~~liabilities of the applicant.~~

788 (f) Expectations of the financial condition of the project,
789 including the projected cash flow, and a projected balance sheet
790 ~~and~~ an estimate of the funds anticipated to be necessary to
791 cover startup losses.

792 (g) The inflation factor, if any, assumed in the
793 feasibility study for the proposed facility and how and where it
794 is applied.

795 (h) Project costs and the total amount of debt financing
796 required, marketing projections, resident fees and charges, the
797 competition, resident contract provisions, and other factors
798 that ~~which~~ affect the feasibility of the facility.

799 (i) Appropriate population projections, including morbidity
800 and mortality assumptions.

801 (j) The name of the person who prepared the feasibility
802 study and the experience of such person in preparing similar
803 studies or otherwise consulting in the field of continuing care.
804 The preparer of the feasibility study may be the provider or a
805 contracted third party.

806 (k) Any other information that the applicant deems relevant
807 and appropriate to enable the office to make a more informed
808 determination.

809 (5) (a) Within 30 days after receipt of an application for a
810 provisional certificate of authority, the office shall examine
811 the application and shall notify the applicant in writing,
812 specifically setting forth and specifically requesting any

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813 additional information the office is permitted by law to
 814 require. If the application submitted is determined by the
 815 office to be substantially incomplete so as to require
 816 substantial additional information, including biographical
 817 information, the office may return the application to the
 818 applicant with a written notice that the application as received
 819 is substantially incomplete and, therefore, unacceptable for
 820 filing without further action required by the office. Any filing
 821 fee received shall be refunded to the applicant.

822 (b) Within 15 days after receipt of all of the requested
 823 additional information, the office shall notify the applicant in
 824 writing that all of the requested information has been received
 825 and the application is deemed to be complete as of the date of
 826 the notice. Failure to so notify the applicant in writing within
 827 the 15-day period shall constitute acknowledgment by the office
 828 that it has received all requested additional information, and
 829 the application shall be deemed to be complete for purposes of
 830 review upon the date of the filing of all of the requested
 831 additional information.

832 (6) Within 45 days after the date an application is deemed
 833 complete as set forth in paragraph (5)(b), the office shall
 834 complete its review and issue a provisional certificate of
 835 authority to the applicant based upon its review and a
 836 determination that the application meets all requirements of
 837 law, that the feasibility study was based on sufficient data and
 838 reasonable assumptions, and that the applicant will be able to
 839 provide continuing care or continuing care at-home as proposed
 840 and meet all financial and contractual obligations related to
 841 its operations, including the financial requirements of this

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842 chapter. If the application is denied, the office shall notify
 843 the applicant in writing, citing the specific failures to meet
 844 the provisions of this chapter. Such denial entitles the
 845 applicant to a hearing pursuant to chapter 120.

846 (8) The office ~~may shall~~ not approve any application that
 847 ~~which~~ includes in the plan of financing any encumbrance of the
 848 operating reserves or renewal and replacement reserves required
 849 by this chapter.

850 Section 8. Subsections (1) and (4) through (9) of section
 851 651.023, Florida Statutes, are amended, and subsection (2) of
 852 that section is republished, to read:

853 651.023 Certificate of authority; application.—

854 (1) After issuance of a provisional certificate of
 855 authority, the office shall issue to the holder of such
 856 provisional certificate a certificate of authority if the holder
 857 of the provisional certificate provides the office with the
 858 following information:

859 (a) Any material change in status with respect to the
 860 information required to be filed under s. 651.022(2) in the
 861 application for the provisional certificate.

862 (b) A feasibility study prepared by an independent
 863 consultant which contains all of the information required by s.
 864 651.022(3) and financial forecasts or projections prepared in
 865 accordance with standards adopted by the American Institute of
 866 Certified Public Accountants or in accordance with standards for
 867 feasibility studies or continuing care retirement communities
 868 adopted by the Actuarial Standards Board.

869 ~~1. The study must also contain an independent evaluation~~
 870 ~~and examination opinion, or a comparable opinion acceptable to~~

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871 the office, by the consultant who prepared the study, of the
 872 underlying assumptions used as a basis for the forecasts or
 873 projections in the study and that the assumptions are reasonable
 874 and proper and the project as proposed is feasible.

875 ~~1.2.~~ The study must take into account project costs, actual
 876 marketing results to date and marketing projections, resident
 877 fees and charges, competition, resident contract provisions, and
 878 any other factors which affect the feasibility of operating the
 879 facility.

880 ~~2.3.~~ If the study is prepared by an independent certified
 881 public accountant, it must contain an examination opinion or a
 882 compilation report acceptable to the office containing a
 883 financial forecast or projections for the first ~~5~~ 3 years of
 884 operations which take into account an actuary's mortality and
 885 morbidity assumptions as the study relates to turnover, rates,
 886 fees, and charges ~~and financial projections having a compilation~~
 887 ~~opinion for the next 3 years.~~ If the study is prepared by an
 888 independent consulting actuary, it must contain mortality and
 889 morbidity assumptions as the study relates to turnover, rates,
 890 fees, and charges ~~data~~ and an actuary's signed opinion that the
 891 project as proposed is feasible and that the study has been
 892 prepared in accordance with standards adopted by the American
 893 Academy of Actuaries.

894 (c) Subject to subsection (4), a provider may submit an
 895 application for a certificate of authority and any required
 896 exhibits upon submission of documents evidencing proof that the
 897 project has a minimum of 30 percent of the units reserved for
 898 which the provider is charging an entrance fee. ~~This does not~~
 899 ~~apply to an application for a certificate of authority for the~~

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900 ~~acquisition of a facility for which a certificate of authority~~
 901 ~~was issued before October 1, 1983, to a provider who~~
 902 ~~subsequently becomes a debtor in a case under the United States~~
 903 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
 904 ~~which the department has been appointed receiver pursuant to~~
 905 ~~part II of chapter 631.~~

906 (d) Documents evidencing Proof that commitments have been
 907 secured for both construction financing and long-term financing
 908 or a documented plan acceptable to the office has been adopted
 909 by the applicant for long-term financing.

910 (e) Documents evidencing Proof that all conditions of the
 911 lender have been satisfied to activate the commitment to
 912 disburse funds other than the obtaining of the certificate of
 913 authority, the completion of construction, or the closing of the
 914 purchase of realty or buildings for the facility.

915 (f) Documents evidencing Proof that the aggregate amount of
 916 entrance fees received by or pledged to the applicant, plus
 917 anticipated proceeds from any long-term financing commitment,
 918 plus funds from all other sources in the actual possession of
 919 the applicant, equal at least 100 percent of the aggregate cost
 920 of constructing or purchasing, equipping, and furnishing the
 921 facility plus 100 percent of the anticipated startup losses of
 922 the facility.

923 (g) A complete audited financial report ~~statements~~ of the
 924 applicant, prepared by an independent certified public
 925 accountant in accordance with generally accepted accounting
 926 principles, as of the date the applicant commenced business
 927 operations or for the fiscal year that ended immediately
 928 preceding the date of application, whichever is later, and

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929 complete unaudited quarterly financial statements attested to by
930 the applicant after the date of the last audit.

931 (h) Documents evidencing ~~Proof~~ that the applicant has
932 complied with the escrow requirements of subsection (5) or
933 subsection (7) and will be able to comply with s. 651.035.

934 (i) Such other reasonable data, financial statements, and
935 pertinent information as the commission or office may require
936 with respect to the applicant or the facility, to determine the
937 financial status of the facility and the management capabilities
938 of its managers and owners.

939
940 If any material change occurs in the facts set forth in an
941 application filed with the office pursuant to this subsection,
942 an amendment setting forth such change must be filed with the
943 office within 10 business days after the applicant becomes aware
944 of such change, and a copy of the amendment must be sent by
945 registered mail to the principal office of the facility and to
946 the principal office of the controlling company.

947 (2) Within 30 days after receipt of the information
948 required under subsection (1), the office shall examine such
949 information and notify the provider in writing, specifically
950 requesting any additional information the office is permitted by
951 law to require. Within 15 days after receipt of all of the
952 requested additional information, the office shall notify the
953 provider in writing that all of the requested information has
954 been received and the application is deemed to be complete as of
955 the date of the notice. Failure to notify the applicant in
956 writing within the 15-day period constitutes acknowledgment by
957 the office that it has received all requested additional

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958 information, and the application shall be deemed complete for
959 purposes of review on the date of filing all of the required
960 additional information.

961 (4) The office shall issue a certificate of authority upon
962 determining that the applicant meets all requirements of law and
963 has submitted all of the information required by this section,
964 that all escrow requirements have been satisfied, and that the
965 fees prescribed in s. 651.015(2) have been paid.

966 (a) A ~~Notwithstanding satisfaction of the 30-percent~~
967 ~~minimum reservation requirement of paragraph (1)(c), no~~
968 ~~certificate of authority may not shall~~ be issued until
969 documentation evidencing that the project has a minimum of 50
970 percent of the units reserved for which the provider is charging
971 an entrance fee, ~~and proof~~ is provided to the office. If a
972 provider offering continuing care at-home is applying for a
973 certificate of authority ~~or approval of an expansion pursuant to~~
974 ~~s. 651.021(2)~~, the same minimum reservation requirements must be
975 met for the continuing care and continuing care at-home
976 contracts, independently of each other.

977 (b) In order for a unit to be considered reserved under
978 this section, the provider must collect a minimum deposit of the
979 lesser of \$40,000 or 10 percent of the then-current entrance fee
980 for that unit, and may assess a forfeiture penalty of 2 percent
981 of the entrance fee due to termination of the reservation
982 contract after 30 days for any reason other than the death or
983 serious illness of the resident, the failure of the provider to
984 meet its obligations under the reservation contract, or other
985 circumstances beyond the control of the resident that equitably
986 entitle the resident to a refund of the resident's deposit. The

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987 reservation contract must state the cancellation policy and the
988 terms of the continuing care or continuing care at-home contract
989 to be entered into.

990 (5) Up to 25 percent of the moneys paid for all or any part
991 of an initial entrance fee may be included or pledged for the
992 construction or purchase of the facility or as security for
993 long-term financing. As used in this section, the term "initial
994 entrance fee" means the total entrance fee charged by the
995 facility to the first occupant of a unit.

996 ~~(a)~~ A minimum of 75 percent of the moneys paid for all or
997 any part of an initial entrance fee collected for continuing
998 care or continuing care at-home must ~~shall~~ be placed in an
999 escrow account or on deposit with the department as prescribed
1000 in s. 651.033.

1001 ~~(b) For an expansion as provided in s. 651.021(2), a~~
1002 ~~minimum of 75 percent of the moneys paid for all or any part of~~
1003 ~~an initial entrance fee collected for continuing care and 50~~
1004 ~~percent of the moneys paid for all or any part of an initial fee~~
1005 ~~collected for continuing care at-home shall be placed in an~~
1006 ~~escrow account or on deposit with the department as prescribed~~
1007 ~~in s. 651.033.~~

1008 (6) The provider is entitled to secure release of the
1009 moneys held in escrow within 7 days after receipt by the office
1010 of an affidavit from the provider, along with appropriate copies
1011 to verify, and notification to the escrow agent by certified
1012 mail, that the following conditions have been satisfied:

1013 (a) A certificate of occupancy has been issued.

1014 (b) Payment in full has been received for at least 70
1015 percent of the total units of a phase or of the total of the

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1016 combined phases constructed. If a provider offering continuing
1017 care at-home is applying for a release of escrowed entrance
1018 fees, the same minimum requirement must be met for the
1019 continuing care and continuing care at-home contracts,
1020 independently of each other.

1021 ~~(e) The consultant who prepared the feasibility study~~
1022 ~~required by this section or a substitute approved by the office~~
1023 ~~certifies within 12 months before the date of filing for office~~
1024 ~~approval that there has been no material adverse change in~~
1025 ~~status with regard to the feasibility study. If a material~~
1026 ~~adverse change exists at the time of submission, sufficient~~
1027 ~~information acceptable to the office and the feasibility~~
1028 ~~consultant must be submitted which remedies the adverse~~
1029 ~~condition.~~

1030 (c)(d) Documents evidencing Proof that commitments have
1031 been secured or a documented plan adopted by the applicant has
1032 been approved by the office for long-term financing.

1033 (d)(e) Documents evidencing Proof that the provider has
1034 sufficient funds to meet the requirements of s. 651.035, which
1035 may include funds deposited in the initial entrance fee account.

1036 ~~(e)(f)~~ Documents evidencing Proof ~~as to~~ the intended
1037 application of the proceeds upon release and documentation ~~proof~~
1038 that the entrance fees when released will be applied as
1039 represented to the office.

1040 (f) If any material change occurred in the facts set forth
1041 in the application filed with the office pursuant to subsection
1042 (1), the applicant timely filed the amendment setting forth such
1043 change with the office and sent copies of the amendment to the
1044 principal office of the facility and to the principal office of

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1045 the controlling company as required under that subsection.

1046

1047 Notwithstanding chapter 120, no person, other than the provider,
1048 the escrow agent, and the office, may have a substantial
1049 interest in any office decision regarding release of escrow
1050 funds in any proceedings under chapter 120 or this chapter
1051 regarding release of escrow funds.

1052 (7) In lieu of the provider fulfilling the requirements in
1053 subsection (5) and paragraphs (6) (b) and (c) ~~(d)~~, the office may
1054 authorize the release of escrowed funds to retire all
1055 outstanding debts on the facility and equipment upon application
1056 of the provider and upon the provider's showing that the
1057 provider will grant to the residents a first mortgage on the
1058 land, buildings, and equipment that constitute the facility, and
1059 that the provider has satisfied paragraphs (6) (a) ~~, (e)~~, and (d)
1060 ~~(e)~~. Such mortgage shall secure the refund of the entrance fee
1061 in the amount required by this chapter. The granting of such
1062 mortgage is subject to the following:

1063 (a) The first mortgage is granted to an independent trust
1064 that is beneficially held by the residents. The document
1065 creating the trust must include a provision that agrees to an
1066 annual audit and will furnish to the office all information the
1067 office may reasonably require. The mortgage may secure payment
1068 on bonds issued to the residents or trustee. Such bonds are
1069 redeemable after termination of the residency contract in the
1070 amount and manner required by this chapter for the refund of an
1071 entrance fee.

1072 (b) Before granting a first mortgage to the residents, all
1073 construction must be substantially completed and substantially

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1074 all equipment must be purchased. No part of the entrance fees
1075 may be pledged as security for a construction loan or otherwise
1076 used for construction expenses before the completion of
1077 construction.

1078 (c) If the provider is leasing the land or buildings used
1079 by the facility, the leasehold interest must be for a term of at
1080 least 30 years.

1081 ~~(8) The timeframes provided under s. 651.022(5) and (6)~~
1082 ~~apply to applications submitted under s. 651.021(2).~~ The office
1083 may not issue a certificate of authority to a facility that does
1084 not have a component that is to be licensed pursuant to part II
1085 of chapter 400 or to part I of chapter 429 or that does not
1086 offer personal services or nursing services through written
1087 contractual agreement. A written contractual agreement must be
1088 disclosed in the contract for continuing care or continuing care
1089 at-home and is subject to ~~the provisions of s. 651.1151,~~
1090 relating to administrative, vendor, and management contracts.

1091 (9) The office may not approve an application that includes
1092 in the plan of financing any encumbrance of the operating
1093 reserves or renewal and replacement reserves required by this
1094 chapter.

1095 Section 9. Section 651.024, Florida Statutes, is amended to
1096 read:

1097 651.024 Acquisition.—

1098 (1) A person who seeks to assume the role of general
1099 partner of a provider or to otherwise assume ownership or
1100 possession of, or control over, 10 percent or more of a
1101 provider, a controlling company of the provider, or a provider's
1102 assets, based on the balance sheet from the most recent

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1103 ~~financial audit report filed with the office, is issued a~~
 1104 ~~certificate of authority to operate a continuing care facility~~
 1105 ~~or a provisional certificate of authority shall be subject to~~
 1106 ~~the provisions of s. 628.4615 and is not required to make~~
 1107 ~~filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.~~

1108 (2) A person who seeks to acquire and become the provider
 1109 for a facility is subject to s. 651.0245 and is not required to
 1110 make filings pursuant to ss. 628.4615, 651.022, and 651.023.

1111 (3) A person may rebut a presumption of control by filing a
 1112 disclaimer of control with the office on a form prescribed by
 1113 the commission. The disclaimer must fully disclose all material
 1114 relationships and bases for affiliation between the person and
 1115 the provider or facility, as well as the basis for disclaiming
 1116 the affiliation. In lieu of such form, a person or acquiring
 1117 party may file with the office a copy of a Schedule 13G filed
 1118 with the Securities and Exchange Commission pursuant to Rule
 1119 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
 1120 Exchange Act of 1934, as amended. After a disclaimer has been
 1121 filed, the provider or facility is relieved of any duty to
 1122 register or report under this section which may arise out of the
 1123 provider's or facility's relationship with the person, unless
 1124 the office disallows the disclaimer.

1125 (4) In addition to the provider, the facility, or the
 1126 controlling company, the office has standing to petition a
 1127 circuit court as described in s. 628.4615(9).

1128 Section 10. Section 651.0245, Florida Statutes, is created
 1129 to read:

1130 651.0245 Application for the simultaneous acquisition of a
 1131 facility and issuance of a certificate of authority.-

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1132 (1) Except with the prior written approval of the office, a
 1133 person may not, individually or in conjunction with any
 1134 affiliated person of such person, directly or indirectly acquire
 1135 a facility operating under a subsisting certificate of authority
 1136 and engage in the business of providing continuing care.

1137 (2) An applicant seeking simultaneous acquisition of a
 1138 facility and issuance of a certificate of authority must:

1139 (a) Comply with the notice requirements of s.
 1140 628.4615(2) (a); and

1141 (b) File an application in the form required by the office
 1142 and cooperate with the office's review of the application.

1143 (3) The commission shall adopt by rule application
 1144 requirements equivalent to those described in ss. 628.4615(4)
 1145 and (5), 651.022(2), and 651.023(1) (b). The office shall review
 1146 the application and issue an approval or disapproval of the
 1147 filing in accordance with ss. 628.4615(6) (a) and (c), (7)-(10),
 1148 and (14); and 651.023(1) (b).

1149 (4) In addition to the facility, the provider, or the
 1150 controlling company, the office has standing to petition a
 1151 circuit court as described in s. 628.4615(9).

1152 (5) A person may rebut a presumption of control by filing a
 1153 disclaimer of control with the office on a form prescribed by
 1154 the commission. The disclaimer must fully disclose all material
 1155 relationships and bases for affiliation between the person and
 1156 the provider or facility, as well as the basis for disclaiming
 1157 the affiliation. In lieu of such form, a person or acquiring
 1158 party may file with the office a copy of a Schedule 13G filed
 1159 with the Securities and Exchange Commission pursuant to Rule
 1160 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities

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1161 Exchange Act of 1934, as amended. After a disclaimer has been
 1162 filed, the provider or facility is relieved of any duty to
 1163 register or report under this section which may arise out of the
 1164 provider's or facility's relationship with the person, unless
 1165 the office disallows the disclaimer.

1166 (6) The commission may adopt rules as necessary to
 1167 administer this section.

1168 Section 11. Section 651.0246, Florida Statutes, is created
 1169 to read:

1170 651.0246 Expansions.-

1171 (1) (a) A provider must obtain written approval from the
 1172 office before commencing construction or marketing for an
 1173 expansion of a certificated facility equivalent to the addition
 1174 of at least 20 percent of existing units or 20 percent or more
 1175 of the number of continuing care at-home contracts. If the
 1176 provider has exceeded the current statewide median for days cash
 1177 on hand, debt service coverage ratio, and total facility
 1178 occupancy for two consecutive annual reporting periods, the
 1179 provider is automatically granted approval to expand the total
 1180 number of existing units by up to 35 percent upon submitting a
 1181 letter to the office indicating the total number of planned
 1182 units in the expansion, the proposed sources and uses of funds,
 1183 and an attestation that the provider understands and pledges to
 1184 comply with all minimum liquid reserve and escrow account
 1185 requirements. As used in this section, the term "existing units"
 1186 means the sum of the total number of independent living units
 1187 and assisted living units identified in the most recent annual
 1188 report filed with the office pursuant to s. 651.026. For
 1189 purposes of this section, the statewide median for days cash on

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1190 hand, debt service coverage ratio, and total facility occupancy
 1191 is the median calculated in the most recent annual report
 1192 submitted by the office to the Continuing Care Advisory Council
 1193 pursuant to s. 651.121(8). This section does not apply to
 1194 construction for which a certificate of need from the Agency for
 1195 Health Care Administration is required.

1196 (b) The application for the approval of an addition
 1197 consisting of 20 percent or more of existing units or continuing
 1198 care at-home contracts must be on forms adopted by the
 1199 commission and provided by the office. The application must
 1200 include the feasibility study required by this section and such
 1201 other information as reasonably requested by the office. If the
 1202 expansion is only for continuing care at-home contracts, an
 1203 actuarial study prepared by an independent actuary in accordance
 1204 with standards adopted by the American Academy of Actuaries
 1205 which presents the financial impact of the expansion may be
 1206 substituted for the feasibility study.

1207 (c) In determining whether an expansion should be approved,
 1208 the office shall consider:

1209 1. Whether the application meets all requirements of law;

1210 2. Whether the feasibility study was based on sufficient
 1211 data and reasonable assumptions; and

1212 3. Whether the applicant will be able to provide continuing
 1213 care or continuing care at-home as proposed and meet all
 1214 financial obligations related to its operations, including the
 1215 financial requirements of this chapter.

1216
 1217 If the application is denied, the office must notify the
 1218 applicant in writing, citing the specific failures to meet the

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1219 provisions of this chapter. A denial entitles the applicant to a
 1220 hearing pursuant to chapter 120.

1221 (2) A provider applying for expansion of a certificated
 1222 facility must submit all of the following:

1223 (a) A feasibility study prepared by an independent
 1224 certified public accountant. The feasibility study must include
 1225 at least the following information:

1226 1. A description of the facility and proposed expansion,
 1227 including the location, the size, the anticipated completion
 1228 date, and the proposed construction program.

1229 2. An identification and evaluation of the primary and, if
 1230 applicable, secondary market areas of the facility and the
 1231 projected unit sales per month.

1232 3. Projected revenues, including anticipated entrance fees;
 1233 monthly service fees; nursing care revenues, if applicable; and
 1234 all other sources of revenue.

1235 4. Projected expenses, including for staffing requirements
 1236 and salaries; the cost of property, plant, and equipment,
 1237 including depreciation expense; interest expense; marketing
 1238 expense; and other operating expenses.

1239 5. A projected balance sheet of the applicant.

1240 6. The expectations for the financial condition of the
 1241 project, including the projected cash flow and an estimate of
 1242 the funds anticipated to be necessary to cover startup losses.

1243 7. The inflation factor, if any, assumed in the study for
 1244 the proposed expansion and how and where it is applied.

1245 8. Project costs; the total amount of debt financing
 1246 required; marketing projections; resident rates, fees, and
 1247 charges; the competition; resident contract provisions; and

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1248 other factors that affect the feasibility of the facility.

1249 9. Appropriate population projections, including morbidity
 1250 and mortality assumptions.

1251 10. The name of the person who prepared the feasibility
 1252 study and his or her experience in preparing similar studies or
 1253 otherwise consulting in the field of continuing care.

1254 11. Financial forecasts or projections prepared in
 1255 accordance with standards adopted by the American Institute of
 1256 Certified Public Accountants or in accordance with standards for
 1257 feasibility studies for continuing care retirement communities
 1258 adopted by the Actuarial Standards Board.

1259 12. An independent evaluation and examination opinion for
 1260 the first 5 years of operations, or a comparable opinion
 1261 acceptable to the office, by the consultant who prepared the
 1262 study, of the underlying assumptions used as a basis for the
 1263 forecasts or projections in the study and that the assumptions
 1264 are reasonable and proper and the project as proposed is
 1265 feasible.

1266 13. Any other information that the provider deems relevant
 1267 and appropriate to provide to enable the office to make a more
 1268 informed determination.

1269 (b) Such other reasonable data, financial statements, and
 1270 pertinent information as the commission or office may require
 1271 with respect to the applicant or the facility to determine the
 1272 financial status of the facility and the management capabilities
 1273 of its managers and owners.

1274
 1275 If any material change occurs in the facts set forth in an
 1276 application filed with the office pursuant to this section, an

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1277 amendment setting forth such change must be filed with the
 1278 office within 10 business days after the applicant becomes aware
 1279 of such change, and a copy of the amendment must be sent by
 1280 registered mail to the principal office of the facility and to
 1281 the principal office of the controlling company.

1282 (3) A minimum of 75 percent of the moneys paid for all or
 1283 any part of an initial entrance fee or reservation deposit
 1284 collected for units in the expansion and 50 percent of the
 1285 moneys paid for all or any part of an initial fee collected for
 1286 continuing care at-home contracts in the expansion must be
 1287 placed in an escrow account or on deposit with the department as
 1288 prescribed in s. 651.033. Up to 25 percent of the moneys paid
 1289 for all or any part of an initial entrance fee or reservation
 1290 deposit may be included or pledged for the construction or
 1291 purchase of the facility or as security for long-term financing.
 1292 As used in this section, the term "initial entrance fee" means
 1293 the total entrance fee charged by the facility to the first
 1294 occupant of a unit.

1295 (4) The provider is entitled to secure release of the
 1296 moneys held in escrow within 7 days after receipt by the office
 1297 of an affidavit from the provider, along with appropriate copies
 1298 to verify, and notification to the escrow agent by certified
 1299 mail that the following conditions have been satisfied:

1300 (a) A certificate of occupancy has been issued.

1301 (b) Payment in full has been received for at least 50
 1302 percent of the total units of a phase or of the total of the
 1303 combined phases constructed. If a provider offering continuing
 1304 care at-home is applying for a release of escrowed entrance
 1305 fees, the same minimum requirement must be met for the

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1306 continuing care and continuing care at-home contracts
 1307 independently of each other.

1308 (c) Documents evidencing that commitments have been secured
 1309 or that a documented plan adopted by the applicant has been
 1310 approved by the office for long-term financing.

1311 (d) Documents evidencing that the provider has sufficient
 1312 funds to meet the requirements of s. 651.035, which may include
 1313 funds deposited in the initial entrance fee account.

1314 (e) Documents evidencing the intended application of the
 1315 proceeds upon release and documentation that the entrance fees,
 1316 when released, will be applied as represented to the office.

1317
 1318 Notwithstanding chapter 120, only the provider, the escrow
 1319 agent, and the office have a substantial interest in any office
 1320 decision regarding release of escrow funds in any proceedings
 1321 under chapter 120 or this chapter.

1322 (5) (a) Within 30 days after receipt of an application for
 1323 expansion, the office shall examine the application and shall
 1324 notify the applicant in writing, specifically requesting any
 1325 additional information that the office is authorized to require.
 1326 Within 15 days after the office receives all the requested
 1327 additional information, the office shall notify the applicant in
 1328 writing that the requested information has been received and
 1329 that the application is deemed complete as of the date of the
 1330 notice. If the office chooses not to notify the applicant within
 1331 the 15-day period, the application is deemed complete for
 1332 purposes of review on the date the applicant files the
 1333 additional requested information. If the application submitted
 1334 is determined by the office to be substantially incomplete so as

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1335 to require substantial additional information, including
 1336 biographical information, the office may return the application
 1337 to the applicant with a written notice stating that the
 1338 application as received is substantially incomplete and,
 1339 therefore, is unacceptable for filing without further action
 1340 required by the office. Any filing fee received must be refunded
 1341 to the applicant.

1342 (b) An application is deemed complete upon the office
 1343 receiving all requested information and the applicant correcting
 1344 any error or omission of which the applicant was timely notified
 1345 or when the time for such notification has expired. The office
 1346 shall notify the applicant in writing of the date on which the
 1347 application was deemed complete.

1348 (6) Within 45 days after the date on which an application
 1349 is deemed complete as provided in paragraph (5) (b), the office
 1350 shall complete its review and, based upon its review, approve an
 1351 expansion by the applicant and issue a determination that the
 1352 application meets all requirements of law, that the feasibility
 1353 study was based on sufficient data and reasonable assumptions,
 1354 and that the applicant will be able to provide continuing care
 1355 or continuing care at-home as proposed and meet all financial
 1356 and contractual obligations related to its operations, including
 1357 the financial requirements of this chapter. If the office
 1358 requests additional information and the applicant provides it
 1359 within 5 business days after notification, the period for
 1360 reviewing or approving an application may not be extended beyond
 1361 the period specified in paragraph (5) (a). If the application is
 1362 denied, the office must notify the applicant in writing, citing
 1363 the specific failures to meet the requirements of this chapter.

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1364 The denial entitles the applicant to a hearing pursuant to
 1365 chapter 120.

1366 Section 12. Paragraphs (b) and (c) of subsection (2) and
 1367 subsection (3) of section 651.026, Florida Statutes, are
 1368 amended, subsection (10) is added to that section, and paragraph
 1369 (a) of subsection (2) of that section is republished, to read:

1370 651.026 Annual reports.—

1371 (2) The annual report shall be in such form as the
 1372 commission prescribes and shall contain at least the following:

1373 (a) Any change in status with respect to the information
 1374 required to be filed under s. 651.022(2).

1375 (b) A financial report statements audited by an independent
 1376 certified public accountant which must contain, for two or more
 1377 periods if the facility has been in existence that long, all of
 1378 the following:

1379 1. An accountant's opinion and, in accordance with
 1380 generally accepted accounting principles:

- 1381 a. A balance sheet;
- 1382 b. A statement of income and expenses;
- 1383 c. A statement of equity or fund balances; and
- 1384 d. A statement of changes in cash flows.

1385 2. Notes to the financial report statements considered
 1386 customary or necessary for full disclosure or adequate
 1387 understanding of the financial report statements, financial
 1388 condition, and operation.

1389 (c) The following financial information:

- 1390 1. A detailed listing of the assets maintained in the
- 1391 liquid reserve as required under s. 651.035 and in accordance
- 1392 with part II of chapter 625;

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1393 2. A schedule giving additional information relating to
 1394 property, plant, and equipment having an original cost of at
 1395 least \$25,000, so as to show in reasonable detail with respect
 1396 to each separate facility original costs, accumulated
 1397 depreciation, net book value, appraised value or insurable value
 1398 and date thereof, insurance coverage, encumbrances, and net
 1399 equity of appraised or insured value over encumbrances. Any
 1400 property not used in continuing care must be shown separately
 1401 from property used in continuing care;

1402 3. The level of participation in Medicare or Medicaid
 1403 programs, or both;

1404 4. A statement of all fees required of residents,
 1405 including, but not limited to, a statement of the entrance fee
 1406 charged, the monthly service charges, the proposed application
 1407 of the proceeds of the entrance fee by the provider, and the
 1408 plan by which the amount of the entrance fee is determined if
 1409 the entrance fee is not the same in all cases; ~~and~~

1410 5. Any change or increase in fees if the provider changes
 1411 the scope of, or the rates for, care or services, regardless of
 1412 whether the change involves the basic rate or only those
 1413 services available at additional costs to the resident; ~~-~~

1414 6. If the provider has more than one certificated facility,
 1415 or has operations that are not licensed under this chapter, it
 1416 shall submit a balance sheet, statement of income and expenses,
 1417 statement of equity or fund balances, and statement of cash
 1418 flows for each facility licensed under this chapter as
 1419 supplemental information to the audited financial report
 1420 ~~statements~~ required under paragraph (b); ~~and-~~

1421 7. The management's calculation of the provider's debt

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1422 service coverage ratio, occupancy, and days cash on hand for the
 1423 current reporting period.

1424 (3) The commission shall adopt by rule additional
 1425 ~~meaningful~~ measures of assessing the financial viability of a
 1426 provider. ~~The rule may include the following factors:~~

1427 ~~(a) Debt service coverage ratios.~~

1428 ~~(b) Current ratios.~~

1429 ~~(c) Adjusted current ratios.~~

1430 ~~(d) Cash flows.~~

1431 ~~(e) Occupancy rates.~~

1432 ~~(f) Other measures, ratios, or trends.~~

1433 ~~(g) Other factors as may be appropriate.~~

1434 (10) By August 1 annually, the office shall publish an
 1435 industry benchmarking report for the preceding calendar year
 1436 which contains all of the following:

1437 (a) The median days cash on hand for all providers.

1438 (b) The median debt service coverage ratio for all
 1439 providers.

1440 (c) The median occupancy rate for all providers by setting,
 1441 including independent living, assisted living, skilled nursing,
 1442 and the entire facility.

1443 Section 13. Section 651.0261, Florida Statutes, is amended
 1444 to read:

1445 651.0261 Quarterly and monthly statements.—

1446 (1) Within 45 days after the end of each fiscal quarter,
 1447 each provider shall file a quarterly unaudited financial
 1448 statement of the provider or of the facility in the form
 1449 prescribed by commission rule and days cash on hand, occupancy,
 1450 debt service coverage ratio, and a detailed listing of the

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1451 assets maintained in the liquid reserve as required under s.
 1452 651.035. This requirement may be waived by the office upon
 1453 written request from a provider that is accredited without
 1454 conditions or stipulations or that has obtained an investment
 1455 grade credit rating from a United States credit rating agency as
 1456 authorized under s. 651.028. The last quarterly statement for a
 1457 fiscal year is not required if a provider does not have pending
 1458 a regulatory action level event or a corrective action plan. The
 1459 office may not waive the quarterly reporting requirement for a
 1460 period of 12 months for any provider that is impaired, or does
 1461 not comply with a requirement for debt service coverage ratio,
 1462 days cash on hand, or average facility occupancy under s.
 1463 651.011(25).

1464 (2) If the office finds, pursuant to rules of the
 1465 commission, that such information is needed to properly monitor
 1466 the financial condition of a provider or facility or is
 1467 otherwise needed to protect the public interest, the office may
 1468 require the provider to file:

1469 (a) Within 25 days after the end of each month, a monthly
 1470 unaudited financial statement of the provider or of the facility
 1471 in the form prescribed by the commission by rule and a detailed
 1472 listing of the assets maintained in the liquid reserve as
 1473 required under s. 651.035, within 45 days after the end of each
 1474 fiscal quarter, a quarterly unaudited financial statement of the
 1475 provider or of the facility in the form prescribed by the
 1476 commission by rule. The commission may by rule require all or
 1477 part of the statements or filings required under this section to
 1478 be submitted by electronic means in a computer-readable form
 1479 compatible with the electronic data format specified by the

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1480 ~~commission.~~

1481 (b) Such other data, financial statements, and pertinent
 1482 information as the commission or office may reasonably require
 1483 with respect to the provider or the facility, its directors or
 1484 trustees, or, with respect to any parent, subsidiary, or
 1485 affiliate, if the provider or facility relies on a contractual
 1486 or financial relationship with such parent, subsidiary, or
 1487 affiliate in order to meet the financial requirements of this
 1488 chapter, to determine the financial status of the provider or of
 1489 the facility and the management capabilities of its managers and
 1490 owners.

1491 (3) A filing under subsection (2) may be required if any of
 1492 the following applies:

1493 (a) The provider is:

1494 1. Subject to administrative supervision proceedings;
 1495 2. Subject to a corrective action plan resulting from a
 1496 regulatory action level event for up to 2 years after the
 1497 factors that caused the regulatory action level event have been
 1498 corrected; or

1499 3. Subject to delinquency or receivership proceedings or
 1500 has filed for bankruptcy.

1501 (b) The provider or facility displays a declining financial
 1502 position.

1503 (c) A change of ownership of the provider or facility has
 1504 occurred within the previous 2 years.

1505 (d) The facility is found to be impaired.

1506 (4) The commission may by rule require all or part of the
 1507 statements or filings required under this section to be
 1508 submitted by electronic means in a computer-readable format

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1509 compatible with an electronic data format specified by the
 1510 commission.

1511 Section 14. Section 651.028, Florida Statutes, is amended
 1512 to read:

1513 651.028 Accredited or certain credit-rated facilities.—If a
 1514 provider or obligated group is accredited without stipulations
 1515 or conditions by a process found by the office to be acceptable
 1516 and substantially equivalent to the provisions of this chapter
 1517 or has obtained an investment grade credit rating from a
 1518 nationally recognized credit rating agency, as applicable, from
 1519 Moody's Investors Service, Standard & Poor's, or Fitch Ratings,
 1520 the office may, pursuant to rule of the commission, waive the
 1521 quarterly filing any requirements under s. 651.0261 of this
 1522 chapter with respect to the provider if the office finds that
 1523 such waivers are not inconsistent with the security protections
 1524 intended by this chapter. A provider or obligated group that is
 1525 accredited without stipulations or conditions or that has
 1526 obtained such an investment grade credit rating shall provide
 1527 documentation substantiating such accreditation or investment
 1528 grade rating in its request for the waiver. If the office grants
 1529 a waiver to the provider or obligated group, the provider or
 1530 obligated group must notify the office within 10 business days
 1531 after any changes in the accreditation or investment grade
 1532 rating.

1533 Section 15. Subsections (1), (2), (3), and (5) of section
 1534 651.033, Florida Statutes, are amended, and subsection (6) is
 1535 added to that section, to read:

1536 651.033 Escrow accounts.—

1537 (1) When funds are required to be deposited in an escrow

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1538 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
 1539 651.0246, s. 651.035, or s. 651.055:

1540 (a) The escrow account ~~must shall~~ be established in a
 1541 Florida bank, Florida savings and loan association, ~~or~~ Florida
 1542 trust company, or a national bank that is chartered and
 1543 supervised by the Office of the Comptroller of the Currency
 1544 within the United States Department of the Treasury and that has
 1545 either a branch or a license to operate in this state, which is
 1546 acceptable to the office, or such funds must be deposited ~~or~~
 1547 deposit with the department, and the funds deposited therein
 1548 shall be kept and maintained in an account separate and apart
 1549 from the provider's business accounts.

1550 (b) An escrow agreement shall be entered into between the
 1551 bank, savings and loan association, or trust company and the
 1552 provider of the facility; the agreement shall state that its
 1553 purpose is to protect the resident or the prospective resident;
 1554 and, upon presentation of evidence of compliance with applicable
 1555 portions of this chapter, or upon order of a court of competent
 1556 jurisdiction, the escrow agent shall release and pay over the
 1557 funds, or portions thereof, together with any interest accrued
 1558 thereon or earned from investment of the funds, to the provider
 1559 or resident as directed.

1560 (c) Any agreement establishing an escrow account required
 1561 ~~under the provisions of this chapter is shall be~~ subject to
 1562 approval by the office. The agreement ~~must shall~~ be in writing
 1563 and ~~shall~~ contain, in addition to any other provisions required
 1564 by law, a provision whereby the escrow agent agrees to abide by
 1565 the duties imposed by paragraphs (b) and (e), (3) (a), (3) (b),
 1566 and (5) (a) and subsection (6) under this section.

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1567 (d) All funds deposited in an escrow account, if invested,
 1568 shall be invested as set forth in part II of chapter 625;
 1569 however, such investment may not diminish the funds held in
 1570 escrow below the amount required by this chapter. Funds
 1571 deposited in an escrow account are not subject to charges by the
 1572 escrow agent except escrow agent fees associated with
 1573 administering the accounts, or subject to any liens, judgments,
 1574 garnishments, creditor's claims, or other encumbrances against
 1575 the provider or facility except as provided in s. 651.035(1).

1576 (e) At the request of either the provider or the office,
 1577 the escrow agent shall issue a statement indicating the status
 1578 of the escrow account.

1579 (2) Notwithstanding s. 651.035(7), in addition, the escrow
 1580 agreement shall provide that the escrow agent or another person
 1581 designated to act in the escrow agent's place and the provider,
 1582 except as otherwise provided in s. 651.035, shall notify the
 1583 office in writing at least 10 days before the withdrawal of any
 1584 portion of any funds required to be escrowed under the
 1585 provisions of s. 651.035. However, in the event of an emergency
 1586 and upon petition by the provider, the office may waive the 10-
 1587 day notification period and allow a withdrawal of up to 10
 1588 percent of the required minimum liquid reserve. The office shall
 1589 have 3 working days to deny the petition for the emergency 10-
 1590 percent withdrawal. If the office fails to deny the petition
 1591 within 3 working days, the petition is shall be deemed to have
 1592 been granted by the office. For purposes the purpose of this
 1593 section, the term "working day" means each day that is not a
 1594 Saturday, Sunday, or legal holiday as defined by Florida law.
 1595 Also, for purposes the purpose of this section, the day the

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1596 petition is received by the office ~~is shall~~ not be counted as
 1597 one of the 3 days.

1598 (3) ~~In addition,~~ When entrance fees are required to be
 1599 deposited in an escrow account pursuant to s. 651.0215, s.
 1600 651.022, s. 651.023, s. 651.0246, or s. 651.055:

1601 (a) The provider shall deliver to the resident a written
 1602 receipt. The receipt must show the payor's name and address, the
 1603 date, the price of the care contract, and the amount of money
 1604 paid. A copy of each receipt, together with the funds, must
 1605 ~~shall~~ be deposited with the escrow agent or as provided in
 1606 paragraph (c). The escrow agent must ~~shall~~ release such funds to
 1607 the provider 7 days after the date of receipt of the funds by
 1608 the escrow agent if the provider, operating under a certificate
 1609 of authority issued by the office, has met the requirements of
 1610 s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the
 1611 resident rescinds the contract within the 7-day period, the
 1612 escrow agent must ~~shall~~ release the escrowed fees to the
 1613 resident.

1614 (b) At the request of an individual resident of a facility,
 1615 the escrow agent shall issue a statement indicating the status
 1616 of the resident's portion of the escrow account.

1617 (c) At the request of an individual resident of a facility,
 1618 the provider may hold the check for the 7-day period and may
 1619 ~~shall~~ not deposit it during this time period. If the resident
 1620 rescinds the contract within the 7-day period, the check must
 1621 ~~shall~~ be immediately returned to the resident. Upon the
 1622 expiration of the 7 days, the provider shall deposit the check.

1623 (d) A provider may assess a nonrefundable fee, which is
 1624 separate from the entrance fee, for processing a prospective

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1625 resident's application for continuing care or continuing care
1626 at-home.

1627 (5) When funds are required to be deposited in an escrow
1628 account pursuant to s. 651.0215, s. 651.022, s. 651.023, s.
1629 651.0246, or s. 651.035, the following ~~shall~~ apply:

1630 (a) The escrow agreement ~~must shall~~ require that the escrow
1631 agent furnish the provider with a quarterly statement indicating
1632 the amount of any disbursements from or deposits to the escrow
1633 account and the condition of the account during the period
1634 covered by the statement. The agreement ~~must shall~~ require that
1635 the statement be furnished to the provider by the escrow agent
1636 on or before the 10th day of the month following the end of the
1637 quarter for which the statement is due. If the escrow agent does
1638 not provide the quarterly statement to the provider on or before
1639 the 10th day of the month following the month for which the
1640 statement is due, the office may, in its discretion, levy
1641 against the escrow agent a fine not to exceed \$25 a day for each
1642 day of noncompliance with the provisions of this subsection.

1643 (b) If the escrow agent does not provide the quarterly
1644 statement to the provider on or before the 10th day of the month
1645 following the quarter for which the statement is due, the
1646 provider shall, on or before the 15th day of the month following
1647 the quarter for which the statement is due, send a written
1648 request for the statement to the escrow agent by certified mail
1649 return receipt requested.

1650 (c) On or before the 20th day of the month following the
1651 quarter for which the statement is due, the provider shall file
1652 with the office a copy of the escrow agent's statement or, if
1653 the provider has not received the escrow agent's statement, a

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1654 copy of the written request to the escrow agent for the
1655 statement.

1656 (d) The office may, in its discretion, in addition to any
1657 other penalty that may be provided for under this chapter, levy
1658 a fine against the provider not to exceed \$25 a day for each day
1659 the provider fails to comply with the provisions of this
1660 subsection.

1661 (e) Funds held on deposit with the department are exempt
1662 from the reporting requirements of this subsection.

1663 (6) Except as described in paragraph (3)(a), the escrow
1664 agent may not release or otherwise allow the transfer of funds
1665 without the written approval of the office, unless the
1666 withdrawal is from funds in excess of the amounts required by
1667 ss. 651.0215, 651.022, 651.023, 651.0246, 651.035, and 651.055.

1668 Section 16. Section 651.034, Florida Statutes, is created
1669 to read:

1670 651.034 Financial and operating requirements for
1671 providers.-

1672 (1)(a) If a regulatory action level event occurs, the
1673 office must:

1674 1. Require the provider to prepare and submit a corrective
1675 action plan or, if applicable, a revised corrective action plan;

1676 2. Perform an examination pursuant to s. 651.105 or an
1677 analysis, as the office considers necessary, of the assets,
1678 liabilities, and operations of the provider, including a review
1679 of the corrective action plan or the revised corrective action
1680 plan; and

1681 3. After the examination or analysis, issue a corrective
1682 order, if necessary, specifying any corrective actions that the

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1683 office determines are required.

1684 (b) In determining corrective actions, the office shall
 1685 consider any factor relevant to the provider based upon the
 1686 office's examination or analysis of the assets, liabilities, and
 1687 operations of the provider. The provider must submit the
 1688 corrective action plan or the revised corrective action plan
 1689 within 30 days after the occurrence of the regulatory action
 1690 level event. The office shall review and approve or disapprove
 1691 the corrective action plan within 45 business days.

1692 (c) The office may use members of the Continuing Care
 1693 Advisory Council, individually or as a group, or may retain
 1694 actuaries, investment experts, and other consultants to review a
 1695 provider's corrective action plan or revised corrective action
 1696 plan, examine or analyze the assets, liabilities, and operations
 1697 of a provider, and formulate the corrective order with respect
 1698 to the provider. The costs and expenses relating to consultants
 1699 must be borne by the affected provider.

1700 (2) If an impairment occurs and except when s.
 1701 651.114(11) (a) applies, the office must take action necessary to
 1702 place the provider under regulatory control, including any
 1703 remedy available under part I of chapter 631. An impairment is
 1704 sufficient grounds for the department to be appointed as
 1705 receiver as provided in chapter 631. Except when s.
 1706 651.114(11) (a) is applicable, the department may appoint a
 1707 receiver. If s. 651.114(11) (a) applies, the provider must make
 1708 available to the office copies of any corrective action plan
 1709 approved by the third-party lender or trustee to cure the
 1710 impairment and any related required report. Notwithstanding s.
 1711 631.011, impairment of a provider, for purposes of s. 631.051,

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1712 is defined according to the term "impaired" under s. 651.011.

1713 The office may forego taking action for up to 180 days after the
 1714 impairment if the office finds there is a reasonable expectation
 1715 that the impairment may be eliminated within the 180-day period.

1716 (3) There is no liability on the part of, and a cause of
 1717 action may not arise against, the commission, department, or
 1718 office, or their employees or agents, for any action they take
 1719 in the performance of their powers and duties under this
 1720 section.

1721 (4) The office shall transmit any notice that may result in
 1722 regulatory action by registered mail, certified mail, or any
 1723 other method of transmission which includes documentation of
 1724 receipt by the provider. Notice is effective when the provider
 1725 receives it.

1726 (5) This section is supplemental to the other laws of this
 1727 state and does not preclude or limit any power or duty of the
 1728 department or office under those laws or under the rules adopted
 1729 pursuant to those laws.

1730 (6) The office may exempt a provider from subsection (1) or
 1731 subsection (2) until stabilized occupancy is reached or until
 1732 the time projected to achieve stabilized occupancy as reported
 1733 in the last feasibility study required by the office as part of
 1734 an application filing under s. 651.0215, s. 651.023, s. 651.024,
 1735 or s. 651.0246 has elapsed, but for no longer than 5 years after
 1736 the date of issuance of the certificate of occupancy.

1737 (7) The commission may adopt rules to administer this
 1738 section, including, but not limited to, rules regarding
 1739 corrective action plans, revised corrective action plans,
 1740 corrective orders, and procedures to be followed in the event of

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1741 a regulatory action level event or an impairment.

1742 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1743 of section 651.035, Florida Statutes, are amended, and
1744 subsections (7) through (11) are added to that section, to read:

1745 651.035 Minimum liquid reserve requirements.—

1746 (1) A provider shall maintain in escrow a minimum liquid
1747 reserve consisting of the following reserves, as applicable:

1748 (a) Each provider shall maintain in escrow as a debt
1749 service reserve the aggregate amount of all principal and
1750 interest payments due during the fiscal year on any mortgage
1751 loan or other long-term financing of the facility, including
1752 property taxes as recorded in the audited financial report
1753 statements required under s. 651.026. The amount must include
1754 any leasehold payments and all costs related to such payments.
1755 If principal payments are not due during the fiscal year, the
1756 provider must ~~shall~~ maintain in escrow as a minimum liquid
1757 reserve an amount equal to interest payments due during the next
1758 12 months on any mortgage loan or other long-term financing of
1759 the facility, including property taxes. If a provider does not
1760 have a mortgage loan or other financing on the facility, the
1761 provider must deposit monthly in escrow as a minimum liquid
1762 reserve an amount equal to one-twelfth of the annual property
1763 tax liability as indicated in the most recent tax notice
1764 provided pursuant to s. 197.322(3), and must annually pay
1765 property taxes out of such escrow.

1766 (b) A provider that has outstanding indebtedness that
1767 requires a debt service reserve to be held in escrow pursuant to
1768 a trust indenture or mortgage lien on the facility and for which
1769 the debt service reserve may only be used to pay principal and

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1770 interest payments on the debt that the debtor is obligated to
1771 pay, and which may include property taxes and insurance, may
1772 include such debt service reserve in computing the minimum
1773 liquid reserve needed to satisfy this subsection if the provider
1774 furnishes to the office a copy of the agreement under which such
1775 debt service is held, together with a statement of the amount
1776 being held in escrow for the debt service reserve, certified by
1777 the lender or trustee and the provider to be correct. The
1778 trustee shall provide the office with any information concerning
1779 the debt service reserve account upon request of the provider or
1780 the office. Any such separate debt service reserves are not
1781 subject to the transfer provisions set forth in subsection (8).

1782 (c) Each provider shall maintain in escrow an operating
1783 reserve equal to 30 percent of the total operating expenses
1784 projected in the feasibility study required by s. 651.023 for
1785 the first 12 months of operation. Thereafter, each provider
1786 shall maintain in escrow an operating reserve equal to 15
1787 percent of the total operating expenses in the annual report
1788 filed pursuant to s. 651.026. If a provider has been in
1789 operation for more than 12 months, the total annual operating
1790 expenses must ~~shall~~ be determined by averaging the total annual
1791 operating expenses reported to the office by the number of
1792 annual reports filed with the office within the preceding 3-year
1793 period subject to adjustment if there is a change in the number
1794 of facilities owned. For purposes of this subsection, total
1795 annual operating expenses include all expenses of the facility
1796 except+ depreciation and amortization; interest and property
1797 taxes included in paragraph (a); extraordinary expenses that are
1798 adequately explained and documented in accordance with generally

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1799 accepted accounting principles; liability insurance premiums in
 1800 excess of those paid in calendar year 1999; and changes in the
 1801 obligation to provide future services to current residents. For
 1802 providers initially licensed during or after calendar year 1999,
 1803 liability insurance ~~must shall~~ be included in the total
 1804 operating expenses in an amount not to exceed the premium paid
 1805 during the first 12 months of facility operation. ~~Beginning~~
 1806 ~~January 1, 1993,~~ The operating reserves required under this
 1807 subsection ~~must shall~~ be in an unencumbered account held in
 1808 escrow for the benefit of the residents. Such funds may not be
 1809 encumbered or subject to any liens or charges by the escrow
 1810 agent or judgments, garnishments, or creditors' claims against
 1811 the provider or facility. However, if a facility had a lien,
 1812 mortgage, trust indenture, or similar debt instrument in place
 1813 before January 1, 1993, which encumbered all or any part of the
 1814 reserves required by this subsection and such funds were used to
 1815 meet the requirements of this subsection, then such arrangement
 1816 may be continued, unless a refinancing or acquisition has
 1817 occurred, and the provider ~~is shall be~~ in compliance with this
 1818 subsection.

1819 (7) (a) A provider may withdraw funds held in escrow without
 1820 the approval of the office if the amount held in escrow exceeds
 1821 the requirements of this section and if the withdrawal will not
 1822 affect compliance with this section.

1823 (b)1. For all other proposed withdrawals, in order to
 1824 receive the consent of the office, the provider must file
 1825 documentation showing why the withdrawal is necessary for the
 1826 continued operation of the facility and such additional
 1827 information as the office reasonably requires.

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1828 2. The office shall notify the provider when the filing is
 1829 deemed complete. If the provider has complied with all prior
 1830 requests for information, the filing is deemed complete after 30
 1831 days without communication from the office.

1832 3. Within 30 days after the date a file is deemed complete,
 1833 the office shall provide the provider with written notice of its
 1834 approval or disapproval of the request. The office may
 1835 disapprove any request to withdraw such funds if it determines
 1836 that the withdrawal is not in the best interest of the
 1837 residents.

1838 (8) The office may order the immediate transfer of up to
 1839 100 percent of the funds held in the minimum liquid reserve to
 1840 the custody of the department pursuant to part III of chapter
 1841 625 if the office finds that the provider is impaired or
 1842 insolvent. The office may order such a transfer regardless of
 1843 whether the office has suspended or revoked, or intends to
 1844 suspend or revoke, the certificate of authority of the provider.

1845 (9) Each facility shall file with the office annually,
 1846 together with the annual report required by s. 651.026, a
 1847 calculation of its minimum liquid reserve determined in
 1848 accordance with this section on a form prescribed by the
 1849 commission.

1850 (10) Any increase in the minimum liquid reserve must be
 1851 funded not later than 61 days after the minimum liquid reserve
 1852 calculation is due to be filed as provided in s. 651.026.

1853 (11) Notwithstanding subsection (6), if the market value of
 1854 the minimum liquid reserve is less than the required minimum
 1855 amount at the end of any fiscal quarter, the provider must fund
 1856 the shortfall within 10 business days.

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1857 Section 18. Effective July 1, 2019, section 651.043,
 1858 Florida Statutes, is created to read:
 1859 651.043 Approval of change in management.—

1860 (1) A contract with a management company entered into after
 1861 July 1, 2019, must be in writing and include a provision that
 1862 the contract will be canceled upon issuance of an order by the
 1863 office pursuant to this section and without the application of a
 1864 cancellation fee or penalty. If a provider contracts with a
 1865 management company, a separate written contract is not required
 1866 for the individual manager employed by the management company to
 1867 oversee a facility. If a management company voluntarily executes
 1868 a contract with a manager or contractor, the contract is not
 1869 required to be submitted to the office unless requested by the
 1870 office.

1871 (2) A provider shall notify the office, in writing or
 1872 electronically, of any change in management within 10 business
 1873 days. For each new management company or manager not employed by
 1874 a management company, the provider shall submit to the office
 1875 the information required by s. 651.022(2) and a copy of the
 1876 written management contract, if applicable.

1877 (3) For a provider that is found to be impaired or that has
 1878 a regulatory action level event pending, the office may
 1879 disapprove new management and order the provider to remove the
 1880 new management after reviewing the information required under
 1881 subsection (2).

1882 (4) For a provider other than that specified in subsection
 1883 (3), the office may disapprove new management and order the
 1884 provider to remove the new management after receiving the
 1885 required information under subsection (2), if the office:

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1886 (a) Finds that the new management is incompetent or
 1887 untrustworthy;

1888 (b) Finds that the new management is so lacking in
 1889 managerial experience as to make the proposed operation
 1890 hazardous to the residents or potential residents;

1891 (c) Finds that the new management is so lacking in
 1892 experience, ability, and standing as to jeopardize the
 1893 reasonable promise of successful operation; or

1894 (d) Has good reason to believe that the new management is
 1895 affiliated directly or indirectly through ownership, control, or
 1896 business relations with any person or persons whose business
 1897 operations are or have been marked by manipulation of assets or
 1898 accounts or by bad faith, to the detriment of residents,
 1899 stockholders, investors, creditors, or the public.

1900
 1901 The office shall complete its review as required under
 1902 subsections (3) and (4) and, if applicable, issue notice of
 1903 disapproval of the new management within 30 business days after
 1904 the filing is deemed complete. A filing is deemed complete upon
 1905 the office's receipt of all requested information and the
 1906 provider's correction of any error or omission for which the
 1907 provider was timely notified. If the office does not issue
 1908 notice of disapproval of the new management within 15 business
 1909 days after the filing is deemed complete, the new management is
 1910 deemed approved.

1911 (5) Management disapproved by the office must be removed
 1912 within 30 days after receipt by the provider of notice of such
 1913 disapproval.

1914 (6) The office may revoke, suspend, or take other

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1915 administrative action against the certificate of authority of
 1916 the provider if the provider:

1917 (a) Fails to timely remove management disapproved by the
 1918 office;

1919 (b) Fails to timely notify the office of a change in
 1920 management;

1921 (c) Appoints new management without a written contract when
 1922 a written contract is required under this section; or

1923 (d) Repeatedly appoints management that was previously
 1924 disapproved by the office or that is not approvable under
 1925 subsection (4).

1926 (7) The provider shall remove any management immediately
 1927 upon discovery of either of the following conditions, if the
 1928 conditions were not disclosed in the notice to the office
 1929 required under subsection (2):

1930 (a) That a manager has been found guilty of, or has pled
 1931 guilty or no contest to, a felony charge, or has been held
 1932 liable or has been enjoined in a civil action by final judgment,
 1933 if the felony or civil action involved fraud, embezzlement,
 1934 fraudulent conversion, or misappropriation of property.

1935 (b) That a manager is now, or was in the past, affiliated,
 1936 directly or indirectly, through ownership interest of 10 percent
 1937 or more in, or control of, any business, corporation, or other
 1938 entity that has been found guilty of or has pled guilty or no
 1939 contest to a felony charge, or has been held liable or has been
 1940 enjoined in a civil action by final judgment, if the felony or
 1941 civil action involved fraud, embezzlement, fraudulent
 1942 conversion, or misappropriation of property.

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1944 The failure to remove such management is grounds for revocation
 1945 or suspension of the provider's certificate of authority.

1946 Section 19. Section 651.051, Florida Statutes, is amended
 1947 to read:

1948 651.051 Maintenance of assets and records in state.—~~All~~
 1949 records and assets of a provider must be maintained or readily
 1950 accessible in this state or, if the provider's corporate office
 1951 is located in another state, such records must be electronically
 1952 stored in a manner that will ensure that the records are readily
 1953 accessible to the office. No records or assets may be removed
 1954 from this state by a provider unless the office consents to such
 1955 removal in writing before such removal. Such consent ~~must~~ shall
 1956 be based upon the provider's submitting satisfactory evidence
 1957 that the removal will facilitate and make more economical the
 1958 operations of the provider and will not diminish the service or
 1959 protection thereafter to be given the provider's residents in
 1960 this state. ~~Before~~ Prior to such removal, the provider shall
 1961 give notice to the president or chair of the facility's
 1962 residents' council. If such removal is part of a cash management
 1963 system which has been approved by the office, disclosure of the
 1964 system ~~must~~ shall meet the notification requirements. The
 1965 electronic storage of records on a web-based, secured storage
 1966 platform by contract with a third party is acceptable if the
 1967 records are readily accessible to the office.

1968 Section 20. Subsection (3) of section 651.055, Florida
 1969 Statutes, is amended to read:

1970 651.055 Continuing care contracts; right to rescind.—

1971 (3) The contract must include or be accompanied by a
 1972 statement, printed in boldfaced type, which reads: "This

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1973 facility and all other continuing care facilities (also known as
 1974 life plan communities) in the State of Florida are regulated by
 1975 chapter 651, Florida Statutes. A copy of the law is on file in
 1976 this facility. The law gives you or your legal representative
 1977 the right to inspect our most recent financial statement and
 1978 inspection report before signing the contract.”

1979 Section 21. Subsection (2) of section 651.057, Florida
 1980 Statutes, is amended to read:

1981 651.057 Continuing care at-home contracts.—

1982 (2) A provider that holds a certificate of authority and
 1983 wishes to offer continuing care at-home must also:

1984 (a) Submit a business plan to the office with the following
 1985 information:

1986 1. A description of the continuing care at-home services
 1987 that will be provided, the market to be served, and the fees to
 1988 be charged;

1989 2. A copy of the proposed continuing care at-home contract;

1990 3. An actuarial study prepared by an independent actuary in
 1991 accordance with the standards adopted by the American Academy of
 1992 Actuaries which presents the impact of providing continuing care
 1993 at-home on the overall operation of the facility; and

1994 4. A ~~market~~ feasibility study that meets the requirements
 1995 of s. 651.022(3) and documents that there is sufficient interest
 1996 in continuing care at-home contracts to support such a program;

1997 (b) Demonstrate to the office that the proposal to offer
 1998 continuing care at-home contracts to individuals who do not
 1999 immediately move into the facility will not place the provider
 2000 in an unsound financial condition;

2001 (c) Comply with the requirements of s. 651.0246(1) ~~or~~.

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2002 ~~651.021(2)~~, except that an actuarial study may be substituted
 2003 for the feasibility study; and

2004 (d) Comply with the requirements of this chapter.

2005 Section 22. Subsection (1) of section 651.071, Florida
 2006 Statutes, is amended to read:

2007 651.071 Contracts as preferred claims on liquidation or
 2008 receivership.—

2009 (1) In the event of receivership or liquidation proceedings
 2010 against a provider, all continuing care and continuing care at-
 2011 home contracts executed by a provider are ~~shall be~~ deemed
 2012 preferred claims or policyholder loss ~~preferred~~ claims pursuant
 2013 to s. 631.271(1)(b) against all assets owned by the provider;
 2014 however, such claims are subordinate to any secured claim.

2015 Section 23. Subsection (2) and present paragraph (g) of
 2016 subsection (3) of section 651.091, Florida Statutes, are
 2017 amended, and a new paragraph (i) and paragraphs (j), (k), and
 2018 (l) are added to that subsection, and paragraph (d) of
 2019 subsection (3) and subsection (4) of that section are
 2020 republished, to read:

2021 651.091 Availability, distribution, and posting of reports
 2022 and records; requirement of full disclosure.—

2023 (2) Every continuing care facility shall:

2024 (a) Display the certificate of authority in a conspicuous
 2025 place inside the facility.

2026 (b) Post in a prominent position in the facility which is
 2027 accessible to all residents and the general public a concise
 2028 summary of the last examination report issued by the office,
 2029 with references to the page numbers of the full report noting
 2030 any deficiencies found by the office, and the actions taken by

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2031 the provider to rectify such deficiencies, indicating in such
2032 summary where the full report may be inspected in the facility.

2033 (c) Post in a prominent position in the facility,
2034 accessible to all residents and the general public, a notice
2035 containing the contact information for the office and the
2036 Division of Consumer Services of the department and stating that
2037 the division or office may be contacted for the submission of
2038 inquiries and complaints with respect to potential violations of
2039 this chapter committed by a provider. Such contact information
2040 must include the division's website and the toll-free consumer
2041 helpline and the office's website and telephone number.

2042 (d) Provide notice to the president or chair of the
2043 residents' council within 10 business days after issuance of a
2044 final examination report or the initiation of any legal or
2045 administrative proceeding by the office or the department and
2046 include a copy of such document.

2047 (e)-(e) Post in a prominent position in the facility which
2048 is accessible to all residents and the general public a summary
2049 of the latest annual statement, indicating in the summary where
2050 the full annual statement may be inspected in the facility. A
2051 listing of any proposed changes in policies, programs, and
2052 services must also be posted.

2053 (f)-(d) Distribute a copy of the full annual statement and a
2054 copy of the most recent third-party ~~third party~~ financial audit
2055 filed with the annual report to the president or chair of the
2056 residents' council within 30 days after filing the annual report
2057 with the office, and designate a staff person to provide
2058 explanation thereof.

2059 (g)-(e) Deliver the information described in s. 651.085(4)

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2060 in writing to the president or chair of the residents' council
2061 and make supporting documentation available upon request ~~Notify~~
2062 ~~the residents' council of any plans filed with the office to~~
2063 ~~obtain new financing, additional financing, or refinancing for~~
2064 ~~the facility and of any applications to the office for any~~
2065 ~~expansion of the facility.~~

2066 (h)-(f) Deliver to the president or chair of the residents'
2067 council a summary of entrance fees collected and refunds made
2068 during the time period covered in the annual report and the
2069 refund balances due at the end of the report period.

2070 (i)-(g) Deliver to the president or chair of the residents'
2071 council a copy of each quarterly statement within 30 days after
2072 the quarterly statement is filed with the office if the facility
2073 is required to file quarterly.

2074 (j)-(h) Upon request, deliver to the president or chair of
2075 the residents' council a copy of any newly approved continuing
2076 care or continuing care at-home contract within 30 days after
2077 approval by the office.

2078 (k) Provide to the president or chair of the residents'
2079 council a copy of any notice filed with the office relating to
2080 any change in ownership within 10 business days after such
2081 filing by the provider.

2082 (l) Make the information available to prospective residents
2083 pursuant to paragraph (3)(d) available to current residents and
2084 provide notice of changes to that information to the president
2085 or chair of the residents' council within 3 business days.

2086 (3) Before entering into a contract to furnish continuing
2087 care or continuing care at-home, the provider undertaking to
2088 furnish the care, or the agent of the provider, shall make full

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2089 disclosure, and provide copies of the disclosure documents to
 2090 the prospective resident or his or her legal representative, of
 2091 the following information:

2092 (d) In keeping with the intent of this subsection relating
 2093 to disclosure, the provider shall make available for review
 2094 master plans approved by the provider's governing board and any
 2095 plans for expansion or phased development, to the extent that
 2096 the availability of such plans does not put at risk real estate,
 2097 financing, acquisition, negotiations, or other implementation of
 2098 operational plans and thus jeopardize the success of
 2099 negotiations, operations, and development.

2100 ~~(g) The amount and location of any reserve funds required~~
 2101 ~~by this chapter, and the name of the person or entity having a~~
 2102 ~~claim to such funds in the event of a bankruptcy, foreclosure,~~
 2103 ~~or rehabilitation proceeding.~~

2104 (i) Notice of the issuance of a final examination report or
 2105 the initiation of any legal or administrative proceeding by the
 2106 office or the department, including where the report or filing
 2107 may be inspected in the facility, and that, upon request, an
 2108 electronic copy or specific website address will be provided
 2109 from which the document can be downloaded at no cost.

2110 (j) Notice that the entrance fee is the property of the
 2111 provider after the expiration of the 7-day escrow requirement
 2112 under s. 651.055(2).

2113 (k) A statement that distribution of assets or income may
 2114 occur or a statement that such distributions will not occur.

2115 (l) Notice of any holding company system or obligated group
 2116 of which the provider is a member.

2117 (4) A true and complete copy of the full disclosure

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2118 document to be used must be filed with the office before use. A
 2119 resident or prospective resident or his or her legal
 2120 representative may inspect the full reports referred to in
 2121 paragraph (2)(b); the charter or other agreement or instrument
 2122 required to be filed with the office pursuant to s. 651.022(2),
 2123 together with all amendments thereto; and the bylaws of the
 2124 corporation or association, if any. Upon request, copies of the
 2125 reports and information shall be provided to the individual
 2126 requesting them if the individual agrees to pay a reasonable
 2127 charge to cover copying costs.

2128 Section 24. Subsection (4) of section 651.095, Florida
 2129 Statutes, is amended to read:

2130 651.095 Advertisements; requirements; penalties.—

2131 (4) It is unlawful for any person, other than a provider
 2132 licensed pursuant to this chapter, to advertise or market to the
 2133 general public any product similar to continuing care through
 2134 the use of such terms as "life care," "life plan," "life plan
 2135 at-home," "continuing care," or "guaranteed care for life," or
 2136 similar terms, words, or phrases.

2137 Section 25. Section 651.105, Florida Statutes, is amended
 2138 to read:

2139 651.105 Examination ~~and inspections.~~—

2140 (1) The office may at any time, and shall at least once
 2141 every 3 years, examine the business of any applicant for a
 2142 certificate of authority and any provider engaged in the
 2143 execution of care contracts or engaged in the performance of
 2144 obligations under such contracts, in the same manner as is
 2145 provided for the examination of insurance companies pursuant to
 2146 ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described

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2147 ~~defined~~ in s. 651.028, such examinations ~~must shall~~ take place
 2148 at least once every 5 years. Such examinations ~~must shall~~ be
 2149 made by a representative or examiner designated by the office
 2150 whose compensation will be fixed by the office pursuant to s.
 2151 624.320. Routine examinations may be made by having the
 2152 necessary documents submitted to the office; and, for this
 2153 purpose, financial documents and records conforming to commonly
 2154 accepted accounting principles and practices, as required under
 2155 s. 651.026, are deemed adequate. The final written report of
 2156 each examination must be filed with the office and, when so
 2157 filed, constitutes a public record. Any provider being examined
 2158 shall, upon request, give reasonable and timely access to all of
 2159 its records. The representative or examiner designated by the
 2160 office may at any time examine the records and affairs and
 2161 inspect the physical property of any provider, whether in
 2162 connection with a formal examination or not.

2163 (2) Any duly authorized officer, employee, or agent of the
 2164 office may, upon presentation of proper identification, have
 2165 access to, and inspect, any records, with or without advance
 2166 notice, to secure compliance with, or to prevent a violation of,
 2167 any provision of this chapter.

2168 (3) Reports of the results of such financial examinations
 2169 must be kept on file by the office. Any investigatory records,
 2170 reports, or documents held by the office are confidential and
 2171 exempt from the provisions of s. 119.07(1), until the
 2172 investigation is completed or ceases to be active. For the
 2173 purpose of this section, an investigation is active while it is
 2174 being conducted by the office with a reasonable, good faith
 2175 belief that it could lead to the filing of administrative,

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2176 civil, or criminal proceedings. An investigation does not cease
 2177 to be active if the office is proceeding with reasonable
 2178 dispatch and has a good faith belief that action could be
 2179 initiated by the office or other administrative or law
 2180 enforcement agency.

2181 (4) The office shall notify the provider and the executive
 2182 officer of the governing body of the provider in writing of all
 2183 deficiencies in its compliance with the provisions of this
 2184 chapter and the rules adopted pursuant to this chapter and shall
 2185 set a reasonable length of time for compliance by the provider.
 2186 In addition, the office shall require corrective action or
 2187 request a corrective action plan from the provider which plan
 2188 demonstrates a good faith attempt to remedy the deficiencies by
 2189 a specified date. If the provider fails to comply within the
 2190 established length of time, the office may initiate action
 2191 against the provider in accordance with the provisions of this
 2192 chapter.

2193 (5) A provider shall respond to written correspondence from
 2194 the office and provide data, financial statements, and pertinent
 2195 information as requested by the office or by the office's
 2196 investigators, examiners, or inspectors. The office has standing
 2197 to petition a circuit court for mandatory injunctive relief to
 2198 compel access to and require the provider to produce the
 2199 documents, data, records, and other information requested by the
 2200 office or its investigators, examiners, or inspectors. The
 2201 office may petition the circuit court in the county in which the
 2202 facility is situated or the Circuit Court of Leon County to
 2203 enforce this section ~~At the time of the routine examination, the~~
 2204 ~~office shall determine if all disclosures required under this~~

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2205 ~~chapter have been made to the president or chair of the~~
 2206 ~~residents' council and the executive officer of the governing~~
 2207 ~~body of the provider.~~

2208 (6) A representative of the provider must give a copy of
 2209 the final examination report and corrective action plan, if one
 2210 is required by the office, to the executive officer of the
 2211 governing body of the provider within 60 days after issuance of
 2212 the report.

2213 (7) Unless a provider or facility is impaired or subject to
 2214 a regulatory action level event, any parent, subsidiary, or
 2215 affiliate is not subject to examination by the office as part of
 2216 a routine examination. However, if a provider or facility relies
 2217 on a contractual or financial relationship with a parent, a
 2218 subsidiary, or an affiliate in order to meet the financial
 2219 requirements of this chapter, the office may examine any parent,
 2220 subsidiary, or affiliate that has a contractual or financial
 2221 relationship with the provider or facility to the extent
 2222 necessary to ascertain the financial condition of the provider.

2223 Section 26. Section 651.106, Florida Statutes, is amended
 2224 to read:

2225 651.106 Grounds for discretionary refusal, suspension, or
 2226 revocation of certificate of authority.—The office may deny an
 2227 application or, suspend, or revoke the provisional certificate
 2228 of authority or the certificate of authority of any applicant or
 2229 provider if it finds that any one or more of the following
 2230 grounds applicable to the applicant or provider exist:

2231 (1) Failure by the provider to continue to meet the
 2232 requirements for the authority originally granted.

2233 (2) Failure by the provider to meet one or more of the

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2234 qualifications for the authority specified by this chapter.

2235 (3) Material misstatement, misrepresentation, or fraud in
 2236 obtaining the authority, or in attempting to obtain the same.

2237 (4) Demonstrated lack of fitness or trustworthiness.

2238 (5) Fraudulent or dishonest practices of management in the
 2239 conduct of business.

2240 (6) Misappropriation, conversion, or withholding of moneys.

2241 (7) Failure to comply with, or violation of, any proper
 2242 order or rule of the office or commission or violation of any
 2243 provision of this chapter.

2244 (8) The insolvent or impaired condition of the provider or
 2245 the provider's being in such condition or using such methods and
 2246 practices in the conduct of its business as to render its
 2247 further transactions in this state hazardous or injurious to the
 2248 public.

2249 (9) Refusal by the provider to be examined or to produce
 2250 its accounts, records, and files for examination, or refusal by
 2251 any of its officers to give information with respect to its
 2252 affairs or to perform any other legal obligation under this
 2253 chapter when required by the office.

2254 (10) Failure by the provider to comply with the
 2255 requirements of s. 651.026 or s. 651.033.

2256 (11) Failure by the provider to maintain escrow accounts or
 2257 funds as required by this chapter.

2258 (12) Failure by the provider to meet the requirements of
 2259 this chapter for disclosure of information to residents
 2260 concerning the facility, its ownership, its management, its
 2261 development, or its financial condition or failure to honor its
 2262 continuing care or continuing care at-home contracts.

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2263 (13) Any cause for which issuance of the license could have
2264 been refused had it then existed and been known to the office.

2265 (14) Having been found guilty of, or having pleaded guilty
2266 or nolo contendere to, a felony in this state or any other
2267 state, without regard to whether a judgment or conviction has
2268 been entered by the court having jurisdiction of such cases.

2269 (15) In the conduct of business under the license, engaging
2270 in unfair methods of competition or in unfair or deceptive acts
2271 or practices prohibited under part IX of chapter 626.

2272 (16) A pattern of bankrupt enterprises.

2273 (17) The ownership, control, or management of the
2274 organization includes any person:

2275 (a) Who is not reputable and of responsible character;

2276 (b) Who is so lacking in management expertise as to make
2277 the operation of the provider hazardous to potential and
2278 existing residents;

2279 (c) Who is so lacking in management experience, ability,
2280 and standing as to jeopardize the reasonable promise of
2281 successful operation;

2282 (d) Who is affiliated, directly or indirectly, through
2283 ownership or control, with any person or persons whose business
2284 operations are or have been marked by business practices or
2285 conduct that is detrimental to the public, contract holders,
2286 investors, or creditors by manipulation of assets, finances, or
2287 accounts or by bad faith; or

2288 (e) Whose business operations are or have been marked by
2289 business practices or conduct that is detrimental to the public,
2290 contract holders, investors, or creditors by manipulation of
2291 assets, finances, or accounts or by bad faith.

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2292 (18) The provider has not filed a notice of change in
2293 management, fails to remove a disapproved manager, or persists
2294 in appointing disapproved managers.
2295

2296 Revocation of a certificate of authority under this section does
2297 not relieve a provider from the provider's obligation to
2298 residents under the terms and conditions of any continuing care
2299 or continuing care at-home contract between the provider and
2300 residents or the provisions of this chapter. The provider shall
2301 continue to file its annual statement and pay license fees to
2302 the office as required under this chapter as if the certificate
2303 of authority had continued in full force, but the provider shall
2304 not issue any new contracts. The office may seek an action in
2305 the Circuit Court of Leon County to enforce the office's order
2306 and the provisions of this section.

2307 Section 27. Section 651.1065, Florida Statutes, is created
2308 to read:

2309 651.1065 Soliciting or accepting new continuing care
2310 contracts by impaired or insolvent facilities or providers.-

2311 (1) Regardless of whether delinquency proceedings as to a
2312 continuing care facility have been or are to be initiated, a
2313 proprietor, a general partner, a member, an officer, a director,
2314 a trustee, or a manager of a continuing care facility may not
2315 actively solicit, approve the solicitation or acceptance of, or
2316 accept new continuing care contracts in this state after the
2317 proprietor, general partner, member, officer, director, trustee,
2318 or manager knew, or reasonably should have known, that the
2319 continuing care facility was impaired or insolvent except with
2320 the written permission of the office. If the facility has

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2321 declared bankruptcy, the bankruptcy court or trustee appointed
 2322 by the court has jurisdiction over such matters. The office must
 2323 approve or disapprove the continued marketing of new contracts
 2324 within 15 days after receiving a request from a provider.

2325 (2) A proprietor, a general partner, a member, an officer,
 2326 a director, a trustee, or a manager who violates this section
 2327 commits a felony of the third degree, punishable as provided in
 2328 s. 775.082, s. 775.083, or s. 775.084.

2329 Section 28. Subsections (1) and (3) of section 651.111,
 2330 Florida Statutes, are amended to read:

2331 651.111 Requests for inspections.—

2332 (1) Any interested party may request an inspection of the
 2333 records and related financial affairs of a provider providing
 2334 care in accordance with ~~the provisions of~~ this chapter by
 2335 transmitting to the office notice of an alleged violation of
 2336 applicable requirements prescribed by statute or by rule,
 2337 specifying to a reasonable extent the details of the alleged
 2338 violation, which notice must ~~shall~~ be signed by the complainant.
 2339 As used in this section, the term "inspection" means an inquiry
 2340 into a provider's compliance with this chapter.

2341 (3) Upon receipt of a complaint, the office shall make a
 2342 preliminary review to determine if the complaint alleges a
 2343 violation of this chapter and, unless the office determines
 2344 that the complaint does not allege a violation of this chapter
 2345 or is without any reasonable basis, the office shall make an
 2346 inspection. The office shall provide the complainant with a
 2347 written acknowledgment of the complaint within 15 days after
 2348 receipt by the office. The complainant shall be advised, within
 2349 30 days after the receipt of the complaint by the office, of the

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2350 office's determination that the complaint does not allege a
 2351 violation of this chapter, that the complaint is without any
 2352 reasonable basis, or that the office will make an inspection.
 2353 The notice must include an estimated timeframe for completing
 2354 the inspection and a contact number. If the inspection is not
 2355 completed within the estimated timeframe, the office must
 2356 provide the complainant with a revised timeframe. Within 15 days
 2357 after completing an inspection, the office shall provide the
 2358 complainant and the provider a written statement specifying any
 2359 violations of this chapter and any actions taken or that no such
 2360 violation was found ~~proposed course of action of the office.~~

2361 Section 29. Section 651.114, Florida Statutes, is amended
 2362 to read:

2363 651.114 Delinquency proceedings; remedial rights.—

2364 (1) Upon determination by the office that a provider is not
 2365 in compliance with this chapter, the office may notify the chair
 2366 of the Continuing Care Advisory Council, who may assist the
 2367 office in formulating a corrective action plan.

2368 (2) Within 30 days after a request by either the advisory
 2369 council or the office, a provider shall make a plan for
 2370 obtaining compliance or solvency available to the advisory
 2371 council and the office, within 30 days after being requested to
 2372 do so by the council, a plan for obtaining compliance or
 2373 solvency.

2374 (3) Within 30 days after receipt of a plan for obtaining
 2375 compliance or solvency, the office or, at the request of the
 2376 office, notification, the advisory council shall:

2377 (a) Consider and evaluate the plan submitted by the
 2378 provider.

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- 2379 (b) Discuss the problem and solutions with the provider.
 2380 (c) Conduct such other business as is necessary.
 2381 (d) Report its findings and recommendations to the office,
 2382 which may require additional modification of the plan.

2383

2384 This subsection may not be construed to delay or prevent the
 2385 office from taking any regulatory measures it deems necessary
 2386 regarding the provider that submitted the plan.

2387 (4) If the financial condition of a continuing care
 2388 facility or provider is impaired or is such that if not modified
 2389 or corrected, its continued operation would result in
 2390 insolvency, the office may direct the provider to formulate and
 2391 file with the office a corrective action plan. If the provider
 2392 fails to submit a plan within 30 days after the office's
 2393 directive or submits a plan that is insufficient to correct the
 2394 condition, the office may specify a plan and direct the provider
 2395 to implement the plan. Before specifying a plan, the office may
 2396 seek a recommended plan from the advisory council.

2397 (5)(4) After receiving approval of a plan by the office,
 2398 the provider shall submit a progress report monthly to the
 2399 advisory council or the office, or both, in a manner prescribed
 2400 by the office. After 3 months, or at any earlier time deemed
 2401 necessary, the council shall evaluate the progress by the
 2402 provider and shall advise the office of its findings.

2403 (6)(5) If Should the office finds find that sufficient
 2404 grounds exist for rehabilitation, liquidation, conservation,
 2405 reorganization, seizure, or summary proceedings of an insurer as
 2406 set forth in ss. 631.051, 631.061, and 631.071, the department
 2407 office may petition for an appropriate court order or may pursue

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2408 such other relief as is afforded in part I of chapter 631.
 2409 Before invoking its powers under part I of chapter 631, the
 2410 department office shall notify the chair of the advisory
 2411 council.

2412 (7) Notwithstanding s. 631.011, impairment of a provider,
 2413 for purposes of s. 631.051, has the same meaning as the term
 2414 "impaired" in s. 651.011.

2415 (8)(6) In the event an order of conservation,
 2416 rehabilitation, liquidation, or conservation, reorganization,
 2417 seizure, or summary proceeding has been entered against a
 2418 provider, the department and office are vested with all of the
 2419 powers and duties they have under the provisions of part I of
 2420 chapter 631 in regard to delinquency proceedings of insurance
 2421 companies. A provider shall give written notice of the
 2422 proceeding to its residents within 3 business days after the
 2423 initiation of a delinquency proceeding under chapter 631 and
 2424 shall include a notice of the delinquency proceeding in any
 2425 written materials provided to prospective residents

2426 (7) If the financial condition of the continuing care
 2427 facility or provider is such that, if not modified or corrected,
 2428 its continued operation would result in insolvency, the office
 2429 may direct the provider to formulate and file with the office a
 2430 corrective action plan. If the provider fails to submit a plan
 2431 within 30 days after the office's directive or submits a plan
 2432 that is insufficient to correct the condition, the office may
 2433 specify a plan and direct the provider to implement the plan.

2434 (9) A provider subject to an order to show cause entered
 2435 pursuant to chapter 631 must file its written response to the
 2436 order, together with any defenses it may have to the

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2437 department's allegations, not later than 20 days after service
 2438 of the order to show cause, but not less than 15 days before the
 2439 date of the hearing set by the order to show cause.

2440 (10) A hearing held pursuant to chapter 631 to determine
 2441 whether cause exists for the department to be appointed receiver
 2442 must be commenced within 60 days after an order directing a
 2443 provider to show cause.

2444 (11) (a) ~~(8) (a)~~ The rights of the office described in this
 2445 section are subordinate to the rights of a trustee or lender
 2446 pursuant to the terms of a resolution, ordinance, loan
 2447 agreement, indenture of trust, mortgage, lease, security
 2448 agreement, or other instrument creating or securing bonds or
 2449 notes issued to finance a facility, and the office, subject to
 2450 ~~the provisions of paragraph (c),~~ may shall not exercise its
 2451 remedial rights provided under this section and ss. 651.018,
 2452 651.106, 651.108, and 651.116 with respect to a facility that is
 2453 subject to a lien, mortgage, lease, or other encumbrance or
 2454 trust indenture securing bonds or notes issued in connection
 2455 with the financing of the facility, if the trustee or lender, by
 2456 inclusion or by amendment to the loan documents or by a separate
 2457 contract with the office, agrees that the rights of residents
 2458 under a continuing care or continuing care at-home contract will
 2459 be honored and will not be disturbed by a foreclosure or
 2460 conveyance in lieu thereof as long as the resident:

- 2461 1. Is current in the payment of all monetary obligations
 2462 required by the contract;
- 2463 2. Is in compliance and continues to comply with all
 2464 provisions of the contract; and
- 2465 3. Has asserted no claim inconsistent with the rights of

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2466 the trustee or lender.

2467 (b) This subsection does not require a trustee or lender
 2468 to:

- 2469 1. Continue to engage in the marketing or resale of new
 2470 continuing care or continuing care at-home contracts;
 - 2471 2. Pay any rebate of entrance fees as may be required by a
 2472 resident's continuing care or continuing care at-home contract
 2473 as of the date of acquisition of the facility by the trustee or
 2474 lender and until expiration of the period described in paragraph
 2475 (d);
 - 2476 3. Be responsible for any act or omission of any owner or
 2477 operator of the facility arising before the acquisition of the
 2478 facility by the trustee or lender; or
 - 2479 4. Provide services to the residents to the extent that the
 2480 trustee or lender would be required to advance or expend funds
 2481 that have not been designated or set aside for such purposes.
- 2482 (c) ~~If should~~ the office determines ~~determine~~, at any time
 2483 during the suspension of its remedial rights as provided in
 2484 paragraph (a), that:
- 2485 1. The trustee or lender is not in compliance with
 2486 paragraph (a); ~~or that~~
 - 2487 2. A lender or trustee has assigned or has agreed to assign
 2488 all or a portion of a delinquent or defaulted loan to a third
 2489 party without the office's written consent; ~~or~~
 - 2490 3. The provider engaged in the misappropriation,
 2491 conversion, or illegal commitment or withdrawal of minimum
 2492 liquid reserve or escrowed funds required under this chapter;
 - 2493 4. The provider refused to be examined by the office
 2494 pursuant to s. 651.105(1); or

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2495 5. The provider refused to produce any relevant accounts,
 2496 records, and files requested as part of an examination,
 2497
 2498 the office shall notify the trustee or lender in writing of its
 2499 determination, setting forth the reasons giving rise to the
 2500 determination and specifying those remedial rights afforded to
 2501 the office which the office shall then reinstate.
 2502 (d) Upon acquisition of a facility by a trustee or lender
 2503 and evidence satisfactory to the office that the requirements of
 2504 paragraph (a) have been met, the office shall issue a 90-day
 2505 temporary certificate of authority granting the trustee or
 2506 lender the authority to engage in the business of providing
 2507 continuing care or continuing care at-home and to issue
 2508 continuing care or continuing care at-home contracts subject to
 2509 the office's right to immediately suspend or revoke the
 2510 temporary certificate of authority if the office determines that
 2511 any of the grounds described in s. 651.106 apply to the trustee
 2512 or lender or that the terms of the contract used as the basis
 2513 for the issuance of the temporary certificate of authority by
 2514 the office have not been or are not being met by the trustee or
 2515 lender since the date of acquisition.
 2516 Section 30. Section 651.1141, Florida Statutes, is created
 2517 to read:
 2518 651.1141 Immediate final orders.-
 2519 (1) The Legislature finds that the following actions
 2520 constitute an imminent and immediate threat to the public
 2521 health, safety, and welfare of the residents of this state:
 2522 (a) The installation of a general partner of a provider or
 2523 assumption of ownership or possession or control of 10 percent

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2524 or more of a provider's assets in violation of s. 651.024 or s.
 2525 651.0245;
 2526 (b) The removal or commitment of 10 percent or more of the
 2527 required minimum liquid reserve funds in violation of s.
 2528 651.035; or
 2529 (c) The assumption of control over a facility's operations
 2530 in violation of s. 651.043.
 2531 (2) If it finds that a person or entity is engaging or has
 2532 engaged in one or more of the above activities, the office may,
 2533 pursuant to s. 120.569, issue an immediate final order:
 2534 (a) Directing that such person or entity cease and desist
 2535 that activity; or
 2536 (b) Suspending the certificate of authority of the
 2537 facility.
 2538 Section 31. Subsection (1) of section 651.121, Florida
 2539 Statutes, is amended to read:
 2540 651.121 Continuing Care Advisory Council.-
 2541 (1) The Continuing Care Advisory Council to the office is
 2542 created consisting of 10 members ~~who are residents of this state~~
 2543 appointed by the Governor and geographically representative of
 2544 this state. Three members shall be representatives
 2545 ~~administrators~~ of facilities that hold valid certificates of
 2546 authority under this chapter and ~~shall~~ have been actively
 2547 engaged in the offering of continuing care contracts in this
 2548 state for 5 years before appointment. The remaining members
 2549 include:
 2550 (a) A representative of the business community whose
 2551 expertise is in the area of management.
 2552 (b) A representative of the financial community who is not

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

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2553 a facility owner or administrator.

2554 (c) A certified public accountant.

2555 ~~(d) An attorney.~~

2556 (d)(e) Four ~~Three~~ residents who hold continuing care or
2557 continuing care at-home contracts with a facility certified in
2558 this state.

2559 Section 32. Subsections (1) and (4) of section 651.125,
2560 Florida Statutes, are amended to read:

2561 651.125 Criminal penalties; injunctive relief.—

2562 (1) Any person who maintains, enters into, or, as manager
2563 or officer or in any other administrative capacity, assists in
2564 entering into, maintaining, or performing any continuing care or
2565 continuing care at-home contract subject to this chapter without
2566 ~~doing so in pursuance of a valid~~ provisional certificate of
2567 authority or certificate of authority or renewal thereof, as
2568 contemplated by or provided in this chapter, or who otherwise
2569 violates any provision of this chapter or rule adopted in
2570 pursuance of this chapter, commits a felony of the third degree,
2571 punishable as provided in s. 775.082 or s. 775.083. Each
2572 violation of this chapter constitutes a separate offense.

2573 (4) Any action brought by the office against a provider
2574 shall not abate by reason of a sale or other transfer of
2575 ownership of the facility used to provide care, which provider
2576 is a party to the action, except with the express written
2577 consent of the ~~director of the~~ office.

2578 Section 33. Except as otherwise expressly provided in this
2579 act and except for this section, which shall take effect July 1,
2580 2019, this act shall take effect January 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1070

Bill Number (if applicable)

Topic Continuing Care Retirement Communities

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address 200 E. Gaines St.

Street

Phone (850) 413-5805

Tallahassee

FL

32303

City

State

Zip

Email Caitlin.murray@flor.com

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing Office of Insurance

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1070

Bill Number (if applicable)

Topic Continuing Cave Reform

Amendment Barcode (if applicable)

Name Charlotte Cummings

Job Title Resident - Westminster Oaks

Address 3990 Meandering Lane

Phone 850/727-4233

Tallahassee FL 32308
City State Zip

Email cacummings@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Life Cave Residents Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1070

Bill Number (if applicable)

Topic Continuing Cave Reform

Amendment Barcode (if applicable)

Name Bennett Napier

Job Title Executive Director

Address 325 John Knox Road C103

Phone 850-906-9314

Street

Tallahassee FL 32303

City

State

Zip

Email bennett@executiveoffice.org

Speaking: For Against Information

(Technical)
Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Life Cave Residents Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19 Meeting Date

1070 Bill Number (if applicable)

Topic Continuing Care Contracts

Amendment Barcode (if applicable)

Name Karl Rasmussen

Job Title Consultant

Address 300 S Duval St Suite 400 Street

Phone (850) 425-4000

Tallahassee FL 32302 City State Zip

Email karl@mccuanlawfirm.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Argentinum

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19
Meeting Date

SA 1070
Bill Number (if applicable)

Topic CCRC CONTRACTS

Amendment Barcode (if applicable)

Name STEVE BANNER

Job Title PRESIDENT/CEO

Address 1812 PIBBINS ROAD

Phone 850 671 3700

Street

TAMPAHASSEE

FL

State

32308

Zip

Email sbanner@leadingageflorida.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing LEADING AGE FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: CS/SB 1070
FINAL ACTION: Favorable
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1102

INTRODUCER: Senator Harrell

SUBJECT: Defendants With Mental Illness

DATE: March 26, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1102 creates a framework for mental health diversion programs as an alternative to criminal prosecution for individuals charged with misdemeanor offenses who appear to meet the criteria for involuntary examination under the Baker Act. The bill requires county jails to screen misdemeanor offenders for mental health disorders within 24 hours of booking, and requires a mental health professional under the Baker Act (a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage/family therapist, or clinical social worker) to perform an evaluation if the screening indicates the presence of mental illness.

The bill requires a jail to transport defendants who are deemed to meet Baker Act evaluation criteria to a receiving facility. The bill requires the state attorney to consider dismissal of criminal charges against defendants who voluntarily agree to the terms of, and successfully complete, an outpatient treatment plan recommended by the facility.

The bill will likely have a fiscal impact on Baker Act receiving facilities, courts, local law enforcement, and county jails. The bill is effective July 1, 2019.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹ The Act authorized treatment programs for mental, emotional, and behavioral disorders. The Baker Act required programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated

¹ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Mental illness creates enormous social and economic costs.² Unemployment rates for persons having mental disorders are high relative to the overall population.³ Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Approximately 33 percent of the nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are untreated.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future recidivism.⁷

Transportation to a Facility

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.⁸

Involuntary Admission to a Facility

Time Limits

A critical 72-hour period applies under the Baker Act; it provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.⁹ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.¹⁰

² MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact*, <http://www.mentalmenace.com/economicimpact.php> (last visited March 21, 2019).

³ MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts*, <http://www.mentalmenace.com/impactsfacts.php> (last visited March 21, 2019).

⁴ *Id.*

⁵ Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?*, <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/> (last visited March 21, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ Section 394.462(1)(f) and (g), F.S.

⁹ Section 394.463(2)(f), F.S.

¹⁰ Section 394.463(2)(i)4., F.S.

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.¹¹ The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.¹²

Crisis Stabilization Units

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to individuals on a voluntary or involuntary basis. Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by DCF as a “receiving facility” as defined in Part I of ch. 394, F.S.¹³

Receiving facilities, often referred to as Baker Act Receiving Facilities, are public or private facilities designated by DCF for the purposes of receiving and examining individuals on an involuntary basis under emergency conditions and to provide short-term treatment. Receiving facilities that have a contract with one of the managing entities to provide mental health services to all persons regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.¹⁴

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services.¹⁵ CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.¹⁶ Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

¹¹ Sections 394.4655(6) and 394.467(6), F.S.

¹² Section 394.467(1), F.S.

¹³ Section 394.455(26), F.S.

¹⁴ Section 394.455(25), F.S.

¹⁵ Section 394.875, F.S.

¹⁶ Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, Crisis Stabilization Units, (Interim Report 2012-109) (September 2011).

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report to DCF on an annual basis the following data, unless the data is currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnosis.
4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

The DCF must issue an annual report based on the data required including individual facility data and statewide totals. The report is submitted to the Governor and the Legislature.

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.¹⁷

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.¹⁸

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The court may not appoint the public defender to represent an indigent offender released to the pretrial intervention program unless the offender's release is revoked and the offender is subject to imprisonment if convicted.¹⁹ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.²⁰

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.²¹

¹⁷ Section 948.08(1), F.S.

¹⁸ Section 948.08 (2), F.S.

¹⁹ Section 948.08(3) and (4), F.S.

²⁰ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

²¹ Section 948.08(1), F.S.

Reentry Programs for Nonviolent Offenders

Inmates who enter prison often have shortcomings in one or more areas of education, employment skills, substance abuse-free living, and mental health that contributed to their current situation. Unless addressed, these deficiencies are likely to contribute to re-offending and a return to prison. In the past decade the executive and legislative branches of state government have acknowledged the importance of reentry services and post-release planning and transition, and the Department of Corrections (DOC) revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates.²²

Mental Health Courts

Mental health courts are a type of problem-solving court that combines judicial supervision with community mental health treatment and other support services in order to reduce criminal activity and improve the quality of life of participants. Mental health court programs are not established or defined in Florida Statutes. A key objective of mental health courts is to prevent the jailing of offenders with mental illness by diverting them to appropriate community services or to significantly reduce time spent incarcerated. As of March 2019, Florida has 25 mental health courts operating in 16 jurisdictions.²³

III. Effect of Proposed Changes:

Section 1 amends s. 916.105, F.S., expressing legislative intent that a defendant who is charged with a misdemeanor and has a mental illness, intellectual disability, or autism should be evaluated and provided services in a community setting. The bill adds legislative intent that law enforcement agencies provide law enforcement officers with crisis intervention team training, and that in all instances in which a person meeting the criteria for involuntary placement under the Baker Act commits a nonviolent misdemeanor, that person be civilly committed under the Baker Act in lieu of, rather than in addition to, criminal prosecution.

Section 2 amends s. 916.106, F.S., revises the definition of “defendant” to include an adult, or juvenile who is prosecuted as an adult, who has been arraigned or charged with a misdemeanor offense.

Section 3 creates s. 916.135, F.S., relating to mental health screening of defendants who commit misdemeanors and mental health diversion programs. The bill requires all defendants arrested for misdemeanor crimes to be screened for mental health disorders by jail staff within 24 hours of being booked into jail; if the screening results in an indication of mental illness, an authorized professional under the Baker Act must evaluate the defendant to determine their suitability for involuntary examination. The bill requires that if the individual appears to meet the criteria for involuntary examination, the authorized professional must issue a certificate to this effect and state the observations upon which their conclusion is based.

²² Department of Corrections, *2012 Florida Prison Recidivism Study – Releases from 2004 to 2012*, p. 9, <http://www.dc.state.fl.us/pub/recidivism/2012/ratesovertime.html> (last visited March 21, 2019).

²³ Florida Courts, *Mental Health Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Mental-Health-Courts> (last visited March 21, 2019).

Upon the issuance of a professional certificate, the bill requires the jail to immediately forward a copy of the certificate to the assigned misdemeanor judge or a designated mental health judge if available, and the judge must sign a transport order requiring the sheriff or jail to transport the defendant to a Baker Act receiving facility within 48 hours. The bill also requires the jail to forward a copy to the state attorney and public defender or private counsel. The bill requires the transport order to specify that the receiving facility may only release the defendant back to jail custody and must reset the misdemeanor case for return to court within 14 days. The bill requires the defendant to undergo an assessment and evaluation to determine if they meet the criteria for involuntary placement upon their arrival at the receiving facility. If the defendant meets the criteria for involuntary inpatient placement under the Baker Act and chooses to accept the terms of a treatment plan on a voluntary basis, the defendant, upon discharge from the designated receiving facility, must be returned to court before the assigned judge for issuance of an order releasing the defendant on his or her own recognizance, on the condition that the defendant comply with all aspects of the treatment plan.

The bill provides that as a condition of participating in a mental health diversion program, the defendant must authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care and to appear for all court appearances, and the defendant must be advised that failure to comply fully with any aspect of the treatment plan or release order may cause the court to issue a warrant for the defendant's arrest and return to jail. The bill provides that the defendant's successful completion of the treatment plan may also be a requirement of a diversion contract that the state attorney may offer and the defendant may accept in resolution of a misdemeanor charge. If the defendant does not meet the criteria for involuntary inpatient placement under the Baker Act and the defendant does not choose to accept the terms of an outpatient treatment plan on a voluntary basis, the bill requires the receiving facility to evaluate the defendant to determine if they meet the criteria to file a petition for involuntary outpatient placement under the Baker Act. If this is case, the bill requires that the facility file a petition with the court for involuntary outpatient services, along with a written proposed treatment plan.

The bill requires the assigned judge to promptly review the defendant's case and charges with the assigned assistant state attorney and assistant public defender or private counsel. The bill requires the parties to consider diverting the defendant's case to a mental health diversion program on the condition that the defendant comply with the involuntary outpatient placement treatment plan. The bill specifies that if the defendant is assigned an assistant public defender or regional counsel, or if private counsel is retained, a guardian does not need to be appointed.

The bill provides that if the defendant does not meet the Baker Act criteria but has a qualifying mental health diagnosis and chooses to voluntarily participate in a mental health diversion program, the defendant must be returned to court. Qualifying mental health diagnoses include schizophrenia spectrum and other psychotic disorders, bipolar disorder, major depressive disorder, post-traumatic stress disorder, or other disorders diagnosed by a qualified professional, that result in serious functional impairment that substantially interferes with or limits one or more major life activities.

The bill further provides that if the defendant is admitted to a receiving facility and does not meet the criteria for involuntary inpatient outpatient placement under the Baker Act and the defendant does not choose to accept the terms of a treatment plan on a voluntary basis, or if the state attorney declines to offer a mental health diversion contract to the defendant, the defendant must be returned to the custody of the jail where his or her case must proceed under the applicable rules of criminal procedure.

The bill requires that if, at any stage of a criminal case, a party or the court raises a concern regarding a defendant's competency to proceed due to a mental illness and the defendant is in jail custody, the judge must order the jail medical staff to assess the defendant for issuance of a professional certificate under the Baker Act. If a professional certificate is issued, speedy trial must immediately be tolled and the parties must follow the procedures in the bill as previously outlined.

If the jail medical staff finds that the defendant does not meet the criteria for issuance of a professional certificate or if the defendant is not in jail custody, the assigned judge on the misdemeanor case must hold an evidentiary hearing to determine whether clear and convincing evidence exists to conclude that the defendant meets any of the following criteria:

- The defendant is manifestly incapable of surviving alone or without the help of willing and responsible family or friends, including available alternative services, and without treatment the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being;
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; or
- There is a substantial likelihood that a mental illness played a central role in the behavior leading to the current arrest, or there is a substantial likelihood that a mental illness will lead to repeated arrests for criminal behavior if the defendant does not receive treatment.

If the assigned judge concludes that any of the criteria in paragraph (a) is met, the bill requires the judge to enter an order tolling speedy trial in the misdemeanor case and enter an ex parte order stating that the person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The bill requires the defendant to appear within 48 hours at the nearest mental health treatment center to submit to a full mental health assessment. If the defendant is in jail custody, the assigned judge must execute an order directing the sheriff or jail authorities to transport the defendant for purposes of completing the assessment. The bill requires the results of the assessment be sent to the assigned judge, who must provide the results to the state attorney and the public defender or private counsel and enter an order amending the conditions of the defendant's pretrial release to compel the defendant to comply with all recommendations for treatment from the assessment. The bill requires that the defendant be advised that failure to comply with the order may result in the issuance of a warrant revoking the defendant's pretrial release and directing the sheriff to arrest and return the defendant to the jail.

Finally, the bill provides that once the defendant successfully completes of all recommendations from the mental health assessment, the state attorney shall consider dismissal of the charges. If

dismissal is deemed inappropriate by the state attorney, the parties must consider referral of the defendant's case to mental health court or another available mental health diversion program. Alternatively, the bill allows the defendant to utilize the Rules of Criminal Procedure to contest the misdemeanor charges.

Section 4 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the bill requires cities and counties to have jail staff screen defendants charged with misdemeanor offenses for mental health disorders within 24 hours of booking, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact." The fiscal impact of this bill is indeterminate because the amount of additional staff required at jails throughout the state to conduct mandatory mental health screenings under the bill is unclear. If the costs exceeds the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**State Government**

The bill will increase the demand on Baker Act receiving facilities serving defendants charged with misdemeanors who meet the criteria for involuntary examination.

Local Government

The bill will have a fiscal impact on jails in additional staff needed to screen misdemeanor offenders. The bill may also have a fiscal impact on courts if additional staff are needed to process the new Baker Act cases resulting from the bill. Finally, the bill may have a fiscal impact on sheriff's offices and local law enforcement resulting from the need to transport defendants to receiving facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may cause some defendants to be kept in jail for a longer period of time than under current law if they are transported to a receiving facility and subsequently returned to jail if they do not meet the criteria for involuntary admission under the Baker Act.

VIII. Statutes Affected:

This bill substantially amends sections 916.105 and 916.106 of the Florida Statutes. This bill creates section 916.135 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Harrell

25-00346B-19

20191102__

1 A bill to be entitled
 2 An act relating to defendants with mental illness;
 3 amending s. 916.105, F.S.; revising legislative
 4 intent; amending s. 916.106, F.S.; redefining the term
 5 "defendant"; creating s. 916.135, F.S.; requiring a
 6 jail's staff to screen each defendant booked into a
 7 jail on misdemeanor charges using a certain instrument
 8 to determine if there is an indication of a mental
 9 health disorder; requiring an authorized professional
 10 completing a certain evaluation to issue a
 11 professional certificate if an evaluation of the
 12 defendant demonstrates that the defendant appears to
 13 meet the criteria for involuntary examination under
 14 the Baker Act; requiring the jail, upon issuance of
 15 the professional certificate, to immediately send a
 16 copy of the certificate to the appropriate judge,
 17 state attorney, and public defender or private
 18 counsel; requiring the judge to sign a transport
 19 order; providing requirements for such transport
 20 order; requiring that the defendant, once at a
 21 designated receiving facility, be assessed and
 22 evaluated to determine whether he or she meets the
 23 criteria to file a petition for involuntary inpatient
 24 placement; providing procedures and requirements
 25 depending on the evaluation outcome and decisions of
 26 the defendant; providing for the return of the
 27 defendant to the custody of the jail under certain
 28 circumstances; requiring a judge to refer a defendant
 29 charged with a misdemeanor crime for certain

Page 1 of 9

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

25-00346B-19

20191102__

30 assessment if a party or the court raises a concern
 31 regarding the defendant's competency to proceed due to
 32 a mental illness; requiring the tolling of speedy
 33 trial and the following of certain provisions if a
 34 professional certificate is issued; requiring a judge
 35 to hold an evidentiary hearing to make a certain
 36 determination by clear and convincing evidence;
 37 requiring a judge to enter certain orders to require
 38 the defendant to complete a mental health assessment
 39 under certain circumstances; providing for certain
 40 considerations upon a defendant's successful
 41 completion of all recommendations from a mental health
 42 assessment; providing an effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:

45
 46 Section 1. Present subsection (4) of section 916.105,
 47 Florida Statutes, is redesignated as subsection (5), and a new
 48 subsection (4) and subsections (6) and (7) are added to that
 49 section, to read:

50 916.105 Legislative intent.—

51 (4) It is the intent of the Legislature that a defendant
 52 who is charged with a misdemeanor and who has a mental illness,
 53 intellectual disability, or autism be evaluated and provided
 54 services in a community setting.

55 (6) It is the intent of the Legislature that law
 56 enforcement agencies in this state provide law enforcement
 57 officers with crisis intervention team training.

58 (7) It is the intent of the Legislature that, in all

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

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59 instances in which a person meeting the criteria for involuntary
 60 placement under the Baker Act commits a nonviolent misdemeanor,
 61 that person be committed civilly under that act in lieu of, and
 62 not in addition to, criminal prosecution.

63 Section 2. Subsection (6) of section 916.106, Florida
 64 Statutes, is amended to read:

65 916.106 Definitions.—For the purposes of this chapter, the
 66 term:

67 (6) "Defendant" means an adult, or a juvenile who is
 68 prosecuted as an adult, who has been arraigned and charged with
 69 a felony offense or a misdemeanor offense as described in s.
 70 916.135 under the laws of this state.

71 Section 3. Section 916.135, Florida Statutes, is created to
 72 read:

73 916.135 Mental health screening of defendants who commit
 74 misdemeanors; mental health diversion program.—

75 (1) Within 24 hours after a defendant is booked into a jail
 76 on a misdemeanor charge, the jail's staff shall screen the
 77 defendant using a standardized validated mental health screening
 78 instrument to determine if there is an indication of a mental
 79 health disorder. If there is an indication of a mental health
 80 disorder, the defendant must be evaluated by an authorized
 81 professional to determine if the person appears to meet the
 82 criteria for involuntary examination under the Baker Act, as
 83 provided in s. 394.463.

84 (a) If the evaluation demonstrates that the defendant
 85 appears to meet the criteria for involuntary examination under
 86 the Baker Act, the authorized professional completing the
 87 evaluation must issue a professional certificate stating that he

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88 or she has examined the person and finds that the person appears
 89 to meet the criteria for involuntary examination and stating the
 90 observations upon which that conclusion is based.

91 (b) Upon the issuance of a professional certificate, the
 92 jail shall immediately send a copy of the certificate to the
 93 assigned misdemeanor judge, or to a designated mental health
 94 judge if available, who shall sign a transport order requiring
 95 the sheriff or jail authorities to transport the defendant
 96 within 48 hours to a designated receiving facility as defined in
 97 s. 394.455(12) for further evaluation under the Baker Act
 98 pursuant to the professional certificate. The jail shall also
 99 send a copy of the professional certificate to the state
 100 attorney and the public defender or private counsel. Such
 101 transport order must indicate that the transfer is made with a
 102 hold for jail custody notation so that the designated receiving
 103 facility may only release the defendant back to jail custody,
 104 and must reset the misdemeanor case for return to court within
 105 14 days.

106 (c) Once at the designated receiving facility, the
 107 defendant must be assessed and evaluated to determine whether he
 108 or she meets the criteria to file a petition for involuntary
 109 inpatient placement under the Baker Act, as provided in s.
 110 394.467

111 1. If the defendant appears to meet the criteria for
 112 involuntary inpatient placement under the Baker Act and refuses
 113 voluntary treatment, the facility must file with the court a
 114 petition for involuntary inpatient placement, as provided in s.
 115 394.467. Upon discharge from involuntary inpatient placement,
 116 the involuntary inpatient treatment provider must submit a

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117 written proposed outpatient treatment plan to the assigned
 118 misdemeanor judge, state attorney, and public defender or
 119 private counsel for the continued supervision and compliance of
 120 the defendant.

121 2. If the defendant meets the criteria for involuntary
 122 inpatient placement under the Baker Act and chooses to accept
 123 the terms of a treatment plan on a voluntary basis, the
 124 defendant, upon discharge from the designated receiving
 125 facility, must be returned to court before the assigned judge
 126 for issuance of an order releasing the defendant on his or her
 127 own recognizance, on the condition that the defendant comply
 128 with all aspects of the treatment plan. As a condition of
 129 participating in a mental health diversion program, the
 130 defendant must be required to authorize the release of
 131 information and clinical records to appropriate persons to
 132 ensure the continuity of the patient's health care or mental
 133 health care and to appear for all court appearances. The
 134 defendant must be advised that failure to comply fully with any
 135 aspect of the treatment plan or release order may cause the
 136 court to issue a warrant for the defendant's arrest and return
 137 to jail. The defendant's successful completion of the treatment
 138 plan may also be a requirement of a diversion contract that the
 139 state attorney may offer and the defendant may accept in
 140 resolution of a misdemeanor charge.

141 (d) If the defendant does not meet the criteria for
 142 involuntary inpatient placement under the Baker Act and the
 143 defendant does not choose to accept the terms of an outpatient
 144 treatment plan on a voluntary basis, the designated receiving
 145 facility must further evaluate the defendant to determine if he

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146 or she meets the criteria to file a petition for involuntary
 147 outpatient placement under the Baker Act, as provided in s.
 148 394.4655.

149 1. If the defendant meets the criteria for involuntary
 150 outpatient placement under the Baker Act, the facility must file
 151 with the court a petition for involuntary outpatient services,
 152 along with a written proposed treatment plan, as provided in s.
 153 394.4655. If necessary, the defendant may be returned to the
 154 custody of the jail to await the hearing on involuntary
 155 outpatient services.

156 2. The assigned judge shall promptly review the defendant's
 157 case and charges with the assigned assistant state attorney and
 158 assistant public defender or private counsel. The parties shall
 159 consider diverting the defendant's case to a mental health
 160 diversion program on the condition that the defendant must
 161 comply with the involuntary outpatient placement treatment plan.
 162 If the defendant is assigned an assistant public defender or
 163 regional counsel or if private counsel is retained, a guardian
 164 does not need to be appointed for the purpose of the involuntary
 165 outpatient treatment statute.

166 (e) If the defendant does not meet the criteria for
 167 involuntary placement under the Baker Act, as provided in s.
 168 394.4655 or s. 394.467, but has a qualifying mental health
 169 diagnosis and chooses to voluntarily participate in a mental
 170 health diversion program, the defendant must be returned to
 171 court before the assigned judge to be advised as provided for
 172 under subparagraph (c)2. Qualifying mental health diagnoses
 173 include schizophrenia spectrum and other psychotic disorders,
 174 bipolar disorder, major depressive disorder, post-traumatic

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175 stress disorder, or other disorders diagnosed by a qualified
 176 professional, as defined in s. 394.455(38), and resulting in
 177 serious functional impairment that substantially interferes with
 178 or limits one or more major life activities.

179 (f) If a defendant admitted to a designated receiving
 180 facility pursuant to this section does not meet the criteria for
 181 involuntary inpatient placement or involuntary outpatient
 182 placement under the Baker Act and the defendant does not choose
 183 to accept the terms of a treatment plan on a voluntary basis, or
 184 if the state attorney declines to offer a mental health
 185 diversion contract to the defendant, the defendant must be
 186 returned to the custody of the jail where his or her case must
 187 proceed under the applicable rules of criminal procedure.

188 (2) At any stage of the criminal proceedings, if a party or
 189 the court raises a concern regarding a defendant's competency to
 190 proceed due to a mental illness and the defendant is in jail
 191 custody, the judge must order the jail medical staff to assess
 192 the defendant for issuance of a professional certificate under
 193 the Baker Act. If a professional certificate is issued, speedy
 194 trial must immediately be tolled and the parties must follow the
 195 procedures in paragraph (1)(b).

196 (a) If the jail medical staff finds that the defendant does
 197 not meet the criteria for issuance of a professional certificate
 198 under the Baker Act or if the defendant is not in jail custody,
 199 the assigned judge on the misdemeanor case must promptly hold an
 200 evidentiary hearing to determine whether clear and convincing
 201 evidence exists to conclude that the defendant meets any of the
 202 following criteria:

203 1. The defendant is manifestly incapable of surviving alone

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204 or without the help of willing and responsible family or
 205 friends, including available alternative services, and without
 206 treatment the defendant is likely to suffer from neglect or
 207 refuse to care for herself or himself and such neglect or
 208 refusal poses a real and present threat of substantial harm to
 209 the defendant's well-being.

210 2. There is a substantial likelihood that in the near
 211 future the defendant will inflict serious bodily harm on herself
 212 or himself or another person, as evidenced by recent behavior
 213 causing, attempting, or threatening such harm.

214 3. There is a substantial likelihood that a mental illness
 215 played a central role in the behavior leading to the current
 216 arrest, or there is a substantial likelihood that a mental
 217 illness will lead to repeated arrests for criminal behavior if
 218 the defendant does not receive treatment.

219 (b) If the assigned judge concludes that any of the
 220 criteria in paragraph (a) is met, the judge must immediately
 221 enter an order tolling speedy trial in the misdemeanor case and
 222 enter an ex parte order stating that the person appears to meet
 223 the criteria for involuntary examination and specifying the
 224 findings on which that conclusion is based, as provided in s.
 225 394.4655. The defendant is required to appear within 48 hours at
 226 the nearest mental health treatment center to submit to a full
 227 mental health assessment. If the defendant is in jail custody,
 228 the assigned judge must execute an order directing the sheriff
 229 or jail authorities to transport the defendant for purposes of
 230 completing the assessment. The results of the assessment must be
 231 immediately relayed to the assigned judge, who shall provide the
 232 results to the state attorney and the public defender or private

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233 counsel. The assigned judge then shall enter an order amending
234 the conditions of the defendant's pretrial release to compel the
235 defendant to comply with all recommendations for treatment from
236 the assessment. The defendant must be advised in the order that
237 failure to comply with the order may result in the issuance of a
238 warrant revoking the defendant's pretrial release and directing
239 the sheriff to arrest and return the defendant to the jail.

240 (c) Upon the defendant's successful completion of all
241 recommendations from the mental health assessment pursuant to
242 this section, the state attorney shall consider dismissal of the
243 charges. If dismissal is deemed inappropriate by the state
244 attorney, the parties must consider referral of the defendant's
245 case to mental health court or another available mental health
246 diversion program. Alternatively, the defendant may avail
247 herself or himself of the Rules of Criminal Procedure to contest
248 the misdemeanor charges.

249 Section 4. This act shall take effect July 1, 2019.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

1102

Bill Number (if applicable)

Topic Defendants with Mental Illness

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 1102

Bill Number (if applicable)

Topic DEFENDANTS WITH MENTAL ILLNESS

Amendment Barcode (if applicable)

Name NATALIE KELLY

Job Title CEO

Address 122 S. CALHOUN STREET

Phone (850) 570-5747

Street

TALLAHASSEE FLORIDA 32301

Email NATALIE@FLMANAGEMENTENTITIES.COM

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL ASSOCIATION OF MANAGEMENT ENTITIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19 Meeting Date

SB 1102 Bill Number (if applicable)

Topic Defendants With Mental Illness

Amendment Barcode (if applicable)

Name Tonnette Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street

Phone 850.509.5333

Tallahassee, FL 32301

Email tgraham@fl-counties.com

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 25, 2019

Meeting Date

1102

Bill Number (if applicable)

Topic Defendants with Mental Illness

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president

Address 319 E Park Ave

Street

Phone 850 570-1967

Tallahassee

FL

32301

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Tallahassee Veterans Legal Collaborative

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 1102

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Christine Hanavan, MSW

Job Title Community Organizer

Address 208 Arrowhead Ct

Phone 1-877-776-2004 x106

Street

Winter Springs, FL 32708

Email christine@swopbehindbars.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SWOP Behind Bars

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1102
FINAL ACTION: Favorable
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1144

INTRODUCER: Senator Montford

SUBJECT: Child Care Subsidies for Foster Parents

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.			AHS	
3.			AP	

I. Summary:

SB 1144 provides an additional subsidy of up to \$300 for foster care parents who place their foster children in an early education or child care program which provides a state subsidy that is insufficient to pay the full cost of care.

The Rilya Wilson Act requires out-of-home caregivers of foster children who are enrolled in an early education or child care program to maintain enrollment of the children in the program and ensure attendance at least 5 days per week. Child care subsidies provided by the Early Learning Coalitions are often insufficient to cover the full cost of child care, creating a financial barrier for placement of children with foster parents. The bill provides that foster parents will receive an additional \$300 per month and that the payment is intended to cover the difference between the amount of the subsidy and the full cost of child care services.

The bill will likely have an indeterminate fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as relative and non-relative caregivers, foster families, or adoptive families.¹

¹ See s. 39.001(1), F.S.

Foster Care

A licensed foster home is identified when placement with a relative or non-relative caregiver is not possible. This type of setting is intended to provide a temporary, safe place to live until a child can be reunited with his or her family, an adoptive family is identified, or other permanency is achieved. Section 409.175(2)(e), F.S., defines a “family foster home” as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.²

Foster Parent Qualifications

In order to qualify as a potential foster parent, an individual must:³

- Attend an orientation,
- Complete 20 to 30 hours of foster parent training,
- Have a child abuse and criminal background check,
- Participate in a home inspection, and
- Participate in a home study to review readiness for fostering.

The recruitment, training, and licensing of foster parents is conducted by 18 community-based care agencies that maintain contracts with the Department of Children and Families.⁴ Families are licensed to care for up to five children, including foster parents’ biological and adopted children. Foster parents are responsible for the care and well-being of the child, including maintaining their health, safety, and best interests and encouraging emotional and developmental growth. Following placement, a foster child is closely monitored by a case worker, who provides support and additional training related to special needs.⁵

Section 409.145(2)(a), F.S., specifies the roles and responsibilities of foster parents, which include:⁶

- participating in the development of the child’s case plan and assisting in implementing the case plan;
- completing all training needed to improve skills in parenting a child who has experienced trauma;
- respecting and supporting the child’s ties to members of his or her biological family and assist with maintaining allowable visitation;
- effectively advocating for the child;

² Section 409.175(2)(e), F.S.

³ Department of Children of Families, How Do I Become A Foster Parent?, available at <http://www.myflfamilies.com/service-programs/foster-care/how-do-i> (last visited March 20, 2019).

⁴ Department of Children and Families, Fostering in Florida, available at <http://www.myflfamilies.com/service-programs/foster-care/fostering> (last visited March 20, 2019).

⁵ OurKids, How Foster Care Works, available at <http://fosteringourkids.org/how-foster-care-works/> (last visited March 20, 2019).

⁶Section 409.175(2)(e), F.S.

- participating fully in the child’s medical, psychological, and dental care as the caregiver would for his or her biological child;
- supporting the child’s educational success by participating in activities and meetings associated with the child’s school;
- working in partnership with other stakeholders to obtain and maintain records that are important to the child’s well-being;
- ensuring that children between the ages of 13 and 17 learn and master independent living skills;
- ensuring that the child is aware of the requirements and benefits of the Road-to-Independence Program; and
- working to enable the child to establish and maintain naturally occurring mentoring relationships.

Foster Parent Compensation

The current room and board rates paid to foster parents under statute are:⁷

- \$457.95 monthly for children 0-5 years of age.
- \$469.68 monthly for children 6-12 years of age.
- \$549.74 monthly for children 13-21 years of age.⁸

According to s. 409.145(4)(a), F.S., foster parents shall receive an annual cost of living increase. Additionally, the board rate amount may be increased upon agreement between the department, the community-based care lead agency, and the foster parent.⁹ These rates do not include medical and behavioral health needs, which are covered by Medicaid. In addition, the amount of the basic monthly payment is before any deductions for income of the child.¹⁰

The Rilya Wilson Act

Rilya Wilson disappeared from state custody in January 2001. The child’s caregiver maintained that someone from the Department of Children and Families (DCF or department) removed Rilya from her home sometime in January 2001. The department was unaware that the child was missing until April 2002 due to casework failures. While her caregiver was sentenced to 55 years in prison in 2013 for her disappearance, Rilya remains missing.¹¹

With the disappearance of Rilya Wilson, the responsibility of the state to ensure the safety of the children while in the state’s care received heightened attention. Frequent and continuous face-to-face contact with children who are in the custody or under the supervision of the state has been identified as a mechanism for ensuring the children’s safety and well-being. The current requirement that each child in the custody or supervision of the state receive a monthly home visit offers child protection staff a regular opportunity to check on the well-being of the child.

⁷ Section 409.145(4)(a), F.S.

⁸ Family foster parents receive this monthly room and board rate through the child reaching age 21.

⁹ Section 409.145(4)(c), F.S.

¹⁰ *Id.*

¹¹ David Ovalle, *Geralyn Graham get 55 years in Rilya Wilson foster child abuse case*, MIAMI HERALD, Feb. 12, 2013), available at <http://www.miamiherald.com/latest-news/article1947207.html>. (last visited March 20, 2019).

For a number of children, the increased visibility that participation in early education and childcare programs provides can minimize further abuse, neglect, or abandonment. Participation in these programs can also be an important ingredient in reversing the developmental effects that abuse, neglect, and abandonment can have on children. Early education and child care programs are provided in Florida through the school readiness program under ss. 1001.213 and 1002.82, F.S. With the establishment of the school readiness program, the different early education and child care programs and their funding sources were merged for the delivery of a comprehensive program of school readiness services to be designed and administered through local early learning coalitions.¹² The school readiness program is housed with the Office of Early Learning.

Historically, children who have been abused, neglected, or abandoned and are being served through the dependency system have received one of the highest priorities for child care service. This is due, at least in part, to the interpretation of earlier statutory language that these children were to be provided the highest priority. Current law requires each early learning coalition to give priority for participation in the school readiness program according to specified criteria with an at-risk child being second on the priority list.¹³

Under the Rilya Wilson Act, children in the foster care system who are enrolled in an early education or child care program must be kept in the program and attend the program at least 5 days per week.¹⁴ The cost of participating in the school readiness program is subsidized in part or fully by the funding of the coalition for eligible children. Criteria have been established for the children who are to receive priority for participating in the program at no cost or at a subsidized rate. The cost of child care shall be assumed by the licensed out-of-home caregiver to the extent that subsidized child care is unavailable.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 409.145, F.S., related to care of children, to provide that in addition to the foster care room and board rate provided under current law, a foster care parent who is required to place a child in an early education or child care program and who chooses a program where the state subsidy from an early learning coalition is insufficient to pay the full cost of care shall receive a payment of up to \$300 per month to cover the difference between the amount of the subsidy provided by the early learning coalition and the full cost of the services.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² Section 1002.83, F.S.

¹³ Section 1002.87, F.S.

¹⁴ Section 39.604, F.S.

¹⁵ Rule 65C-13.030, F.A.C.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would have an indeterminate fiscal impact on the state due to the increased child care subsidies paid to eligible foster families.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.145 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Montford

3-01083A-19 20191144__

1 A bill to be entitled
2 An act relating to child care subsidies for foster
3 parents; amending s. 409.145, F.S.; providing an early
4 education or child care subsidy for certain foster
5 parents; providing an effective date.

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

9 Section 1. Subsection (4) of section 409.145, Florida
10 Statutes, is amended to read:

11 409.145 Care of children; quality parenting; "reasonable
12 and prudent parent" standard.-The child welfare system of the
13 department shall operate as a coordinated community-based system
14 of care which empowers all caregivers for children in foster
15 care to provide quality parenting, including approving or
16 disapproving a child's participation in activities based on the
17 caregiver's assessment using the "reasonable and prudent parent"
18 standard.

19 (4) FOSTER CARE ROOM AND BOARD RATES; ADDITIONAL SUBSIDY
20 FOR CHILD CARE EXPENSES.-

21 (a) Effective July 1, 2018, room and board rates shall be
22 paid to foster parents as follows:

Table with 3 columns: Monthly Foster Care Rate, 0-5 Years Age, 6-12 Years Age, 13-21 Years Age

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\$457.95 \$469.68 \$549.74

26 (b) Each January, foster parents shall receive an annual
27 cost of living increase. The department shall calculate the new
28 room and board rate increase equal to the percentage change in
29 the Consumer Price Index for All Urban Consumers, U.S. City
30 Average, All Items, not seasonally adjusted, or successor
31 reports, for the preceding December compared to the prior
32 December as initially reported by the United States Department
33 of Labor, Bureau of Labor Statistics. The department shall make
34 available the adjusted room and board rates annually.

35 (c) Effective July 1, 2019, foster parents of level I
36 family foster homes, as defined in s. 409.175(5)(a) shall
37 receive a room and board rate of \$333.

38 (d) Effective July 1, 2019, the foster care room and board
39 rate for level II family foster homes as defined in s.
40 409.175(5)(a) shall be the same as the new rate established for
41 family foster homes as of January 1, 2019.

42 (e) Effective January 1, 2020, paragraph (b) shall only
43 apply to level II through level V family foster homes, as
44 defined in s. 409.175(5)(a).

45 (f) The amount of the monthly foster care room and board
46 rate may be increased upon agreement among the department, the
47 community-based care lead agency, and the foster parent.

48 (g) From July 1, 2018, through June 30, 2019, community-
49 based care lead agencies providing care under contract with the
50 department shall pay a supplemental room and board payment to
51 foster care parents of all family foster homes, on a per-child
52 basis, for providing independent life skills and normalcy
53

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54 supports to children who are 13 through 17 years of age placed
55 in their care. The supplemental payment shall be paid monthly to
56 the foster care parents in addition to the current monthly room
57 and board rate payment. The supplemental monthly payment shall
58 be based on 10 percent of the monthly room and board rate for
59 children 13 through 21 years of age as provided under this
60 section and adjusted annually. Effective July 1, 2019, such
61 supplemental payments shall only be paid to foster parents of
62 level II through level V family foster homes.

63 (h) In addition to the foster care room and board rate, a
64 foster care parent who is required under s. 39.604 to place a
65 child in an early education or child care program and who
66 chooses a program where the state subsidy from an early learning
67 coalition under part VI of chapter 1002 is insufficient to pay
68 the full cost shall receive a payment of up to \$300 per month to
69 pay the difference between the amount of the subsidy provided by
70 the early learning coalition and the full cost of the services.

71 Section 2. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

1144

Bill Number (if applicable)

Topic Childcare subsidies for foster parents

Name Kim McMath

Amendment Barcode (if applicable)

Job Title foster parent

Address 12148 Wadesboro Rd

Street

Phone 850-567-1935

Tallahassee

FL 32317

City

State

Zip

Email holakim2002@gmail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Tallahassee Area Foster & Adoptive Association (TAFAPA)

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

1144

Bill Number (if applicable)

Topic Child Care Subsidies for Foster Parents

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Street

Phone 850.510.9922

Tallahassee

FL

32308

City

State

Zip

Email barney@barneybishop.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

SB 1144

Bill Number (if applicable)

Topic Childcare Subsidies for Foster Parents

Amendment Barcode (if applicable)

Name Rose Tuzik

Job Title Legislative and Communications Assistant

Address 501 S Blairstone Rd

Phone 850-345-3023

Street

Tallahassee

FL

32301

Email rmt042794@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1144

Bill Number (if applicable)

Topic Childcare Subsidies for Foster Parents Amendment Barcode (if applicable)

Name Daniel Burns

Job Title Vice President Tallahassee Area Foster & Adoptive Parent Association

Address 5080 Tallow Point Rd Street

Phone 850-322-2052

Tallahassee, FL City State Zip

Email danielrburns@gmail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19
Meeting Date

1144
Bill Number (if applicable)

Topic Childcare Subsidies for foster parents Amendment Barcode (if applicable)

Name Cassandra Branch

Job Title Foster Parent

Address 2724 Masterson Lane
Street

Phone 850-508-8278

Tallahassee FL 32311
City State Zip

Email branchfam2018@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Foster Parents

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1144

Bill Number (if applicable)

Topic Childcare Subsidies for Fosterparents Amendment Barcode (if applicable)

Name Jennifer Patty

Job Title Foster Parent

Address 3643 Uncle Glover Rd. Street

Phone 850-508-6777

Tallahassee FL 32312 City State Zip

Email jenniferpatty@comcast.net

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Foster Parent

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

1144

Bill Number (if applicable)

Topic Child Care Subsidies for Foster Parents

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title Chief Policy and Research Officer

Address 411 E. College Avenue

Phone 850-561-1102

Street

Tallahassee

FL

32301

Email Victoria@flchildren.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Children (FCC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1144

Bill Number (if applicable)

Topic Childcare Subsidies for Foster Parents

Amendment Barcode (if applicable)

Name Saralyn Grass

Job Title Executive Director / Regional V.P.

Address 206 B S. Monroe St.

Phone 904-651-5959

Street

Tallahassee FL 32301

Email sgrass@aelcfl.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Association of Early Learning Coalitions / FL Foster & Adoptive Parent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1144
FINAL ACTION: Favorable
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1214

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Child Abuse, Abandonment, and Neglect

DATE: March 26, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1214 reorganizes and clarifies provisions and requirements currently in s. 39.201, F.S., relating to reports of child abuse, abandonment, or neglect and the central abuse hotline at the Department of Children and Families (DCF or department).

The bill also creates a new section of the Florida Statutes, relating to reporting animal abuse, to recognize the strong link between child abuse and animal abuse and cruelty by requiring any person who is required to investigate child abuse, abandonment, or neglect and who knows or has reasonable cause to suspect that abuse, neglect, cruelty, or abandonment of an animal has occurred must report such knowledge or suspicion within 24 hours to the local animal control officer or an agent appointed under s. 828.03. The bill specifies the information that is to be included in a report.

The bill provides for penalties for knowingly and willfully failing to report and requires the department's training program for persons who are required to investigate child abuse, abandonment, or neglect must include training on identifying harm to, neglect of, and cruelty toward animals and on the strong link between animal abuse and cruelty and child welfare case practice.

The bill will have no fiscal impact to the state and has an effective date of July 1, 2019.

II. Present Situation:

Mandatory Reporting of Child Abuse, Abandonment, and Neglect

Current law requires any person who knows or has reasonable cause to suspect a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare is required to report that suspicion to the department's central abuse hotline.¹

In addition, any person who knows, or who has reasonable cause to suspect, that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare or any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender, as defined in this chapter, shall report such knowledge or suspicion to the central abuse hotline.²

Florida currently does not require any reporting of animal cruelty or neglect.

Penalties for Failing to Report Child Abuse

According to s. 39.205, F.S., a person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.³

Likewise, a person who is 18 years of age or older and lives in the same house as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist.⁴

Postsecondary educational entities including Florida College System institutions, state universities, or nonpublic colleges, universities, or schools, as defined in s. 1000.21 or s. 1005.02, F.S., whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, are subject to fines of \$1 million for each such failure.⁵

¹ Section 39.201, F.S.

² *Id.*

³ Section 39.205, F.S.

⁴ *Id.*

⁵ *Id.*

Link Between Child Abuse and Animal Cruelty

Since the 1970's agencies such as the Federal Bureau of Investigation and the Humane Society of the United States (HSUS) have conducted research on the connection between animal abuse and later violence towards humans, finding a strong correlation. Research indicates:

- Young people who are cruel to animals are more likely to become aggressive toward humans as they develop.
- Violent, imprisoned offenders have usually abused animals during their childhood.
- Children learn cruel behaviors from adults and may reenact them on animals.
- Children may abuse animals to release the aggression they feel toward abusive adults
- or because of psychological trauma

Animal abuse, cruelty and neglect are often considered isolated incidents completely separated from other forms of family violence. Today, however, professionals involved with victims of family violence are not surprised when they learn that often these acts are linked, and that various agencies are working with the same families. The intentional harming or killing of pets by adults or children is now recognized as a sentinel indicator of violence in the home and often the first sign of other family and community violence. Intentional abuse in any form should be taken seriously. Knowing that there is a "link," agencies involved in preventing family violence are increasingly beginning to work together for a more effective, species-spanning response.⁶

It is reported by advocacy groups to be essential that all those who seek to identify and reduce such violence be alert to this connection. Likewise, it is deemed important for professionals in domestic violence intervention, law-enforcement, child protection, human and veterinary medicine, education and animal care and control get to know their counterparts in other professions and work together to establish strategies for a coordinated response to these needs.

Statistics support the efficacy of mandatory cross-reporting.

- Animal abusers are five times as likely to harm humans.
- In eighty-eight percent (88%) of the families of children referred for services because a child had been abused, at least one person had abused pets.
- In approximately two-thirds of those families, it was the abusive parent who had injured or killed a pet. In the remaining one-third, it was a child who abused the pet.
- Seventy percent (70%) of people charged with cruelty to animals were known by police for other violent behavior — including homicide.
- Sixty percent (60%) of the homes where child abuse or neglect occurred had abused animals.
- Seventy-one percent (71%) of abused women said their partners harmed, killed or threatened pets.
- Twelve independent surveys found that between eighteen percent (18%) and forty-eight percent (48%) of battered women delayed their decision to leave, or returned to their abusers out of fear for the welfare of their animals.

⁶ National Link Coalition, *What is the Link?* Available at: <http://nationallinkcoalition.org/what-is-the-link> (Last visited March 21, 2019).

- Children exposed to domestic violence were three (3) times more likely to be cruel to animals. Twenty-six point eight percent (26.8%) of boys and twenty-nine point four percent (29.4%) of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse the family pets. Seventy-five percent (75%) of the incidents of animal abuse occurred in the presence of children to psychologically control and coerce them.⁷

School Specific Violence

While some researchers disagree,⁸ the National School Safety Council, the U.S. Department of Education, the American Psychological Association and the National Crime Prevention Council agree that animal cruelty is a warning sign for at-risk youth. A number of studies have drawn links between the abuse of animals and violent incidents in schools. A 2001-2004 study by the Chicago Police Department discovered that in seven school shootings that took place across the country between 1997 and 2001, all involved boys had previously committed acts of animal cruelty.⁹ Another study in 2014 study found that between 1988 and 2012, 43 percent of school shooters had previously tortured animals.¹⁰ More recently, Nikolas Cruz, charged with 17 counts of premeditated murder, following the 2018 attack at Marjory Stoneman Douglas High School in Parkland, has a history of animal cruelty and abuse.

Florida and Other States

Fifteen states now have cross-reporting laws.¹¹ The increasing availability of orders of protection is widely viewed as an acknowledgement of the link and a step in the right direction. Twenty-four states, the District of Columbia, and the territory of Puerto Rico have statutes granting courts the power to enter orders of protection protecting against child abuse and domestic violence by protecting pets. The New York Family Court Act, for example, allows an order of protection “to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.” Orders of protection are therefore viewed as a step in the right direction.¹²

⁷ Devereaux, M.J., *Mandatory Cross-Reporting of Animal and Child Abuse Protects Domestic Violence Victims and Animals*. June 17, 2014, Available at: <http://devlegal.com/page/mandatory-cross-reporting-of-animal-and-child-abuse-protects-domestic-violence-victims-and-animals/> (Last visited March 21, 2019).

⁸ Psychology Today, *Animal Cruelty Does Not Predict Who Will Be A School Shooter*, February 21, 2018. Available at: <https://www.psychologytoday.com/us/blog/animals-and-us/201802/animal-cruelty-does-not-predict-who-will-be-school-shooter> (Last visited March 20, 2019).

⁹ The Humane Society of the United States. Available at: <https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq> (Last visited March 21, 2019).

¹⁰ Care2, *Animal Cruelty is a Gateway Crime to Mass Shootings*, November 12, 2018. Available at: <https://www.care2.com/causes/animal-cruelty-is-a-gateway-crime-to-mass-shootings.html> (Last visited March 21, 2019).

¹¹ Those states are California, Colorado, Connecticut, District of Columbia, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Nebraska, Ohio, Oregon, Tennessee, Virginia and West Virginia. Devereaux, M.J., *Mandatory Cross-Reporting of Animal and Child Abuse Protects Domestic Violence Victims and Animals*. June 17, 2014, Available at: <http://devlegal.com/page/mandatory-cross-reporting-of-animal-and-child-abuse-protects-domestic-violence-victims-and-animals/> (Last visited March 21, 2019).

¹² *Id.*

At least 28 states have counseling provisions in their animal cruelty laws. Four of these states require psychological counseling for anyone convicted of animal cruelty and six mandate counseling for juveniles convicted of animal cruelty.¹³

The FBI and Federal Tracking

On January 1, 2016 the Federal Bureau of Investigation's (FBI or Bureau) National Incident-Based Reporting System (NIBRS) began collecting detailed data from participating law enforcement agencies on acts of animal cruelty, including gross neglect, torture, organized abuse, and sexual abuse. Before this year, crimes that involved animals were lumped into an "All Other Offenses" category in the FBI's Uniform Crime Reporting (UCR) Program's annual Crime in the United States report, a survey of crime data provided by about 18,000 city, county, state, tribal, and federal law enforcement agencies. Acts of cruelty against animals are now counted alongside felony crimes like arson, burglary, assault, and homicide in the FBI's expansive criminal database.¹⁴

The National Sheriffs' Association was a leading advocate for adding animal cruelty as a data set in the Bureau's collection of crime statistics. The association for years has cited studies linking animal abuse and other types of crimes—most famously, murders committed by serial killers like Ted Bundy, Jeffrey Dahmer, and the "Son of Sam" killer David Berkowitz. The organization also points out the overlap animal abuse has with domestic violence and child abuse. John Thompson, deputy executive director of the National Sheriffs' Association stated that "If somebody is harming an animal, there is a good chance they also are hurting a human. If we see patterns of animal abuse, the odds are that something else is going on."¹⁵

A first look at NIBRS animal cruelty statistics will be available next year, but it will take at least three to five years for the data to begin showing helpful patterns. Groups that advocated for the new animal cruelty data hope that by adding it to NIBRS, rather than the summary-based statistics agencies provide the Bureau each year, they will get a much richer data set from which to mine. That's because NIBRS requires participating agencies to not only report crimes but also all the circumstances of a crime. Additionally, the Bureau plans to phase out summary-based UCR statistics—which have been collected roughly the same way since 1930—in favor of NIBRS by 2021.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., relating to definitions, to delete the definition of the term "juvenile sexual abuse" and create a definition for the term "child-on-child sexual abuse."

¹³ The Humane Society of the United States. Available at: <https://www.humanesociety.org/resources/animal-cruelty-and-human-violence-faq> (Last visited March 21, 2019).

¹⁴ Federal Bureau of Investigation. Tracking Animal Crimes, February 1, 2016, Available at: <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> (Last visited March 22, 2019).

¹⁵ Sheltering Animals Of Abuse Victims, Available at: <http://www.saaavprogram.org/blog/2018/3/8/t49dzj8ci62m7cera4bc5enfoe8ct7> (Last visited March 21, 2019).

¹⁶ Federal Bureau of Investigation. Tracking Animal Crimes, February 1, 2016, Available at: <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> (Last visited March 22, 2019).

Section 2 creates s. 39.101, F.S., relating to the central abuse hotline, to reorganize and clarify provisions currently in s. 39.201, F.S., that are specific to the operation of the central abuse hotline.

Section 3 amends s. 39.201, F.S., relating to mandatory reporting of child abuse, abandonment or neglect, to reorganize and clarify provisions currently in s. 39.201, F.S., that are specific to the child abuse, abandonment, or neglect mandatory reporting process. The only new requirement is for an animal control officer as defined in s. 828.27, F.S., or agents appointed under s. 828.03, F.S., to provide his or her name to the hotline when making a report.

Section 4 amends s. 30.302, F.S., relating to institutional child abuse, abandonment or neglect, to provide that in an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or may be accompanied by another person, if the attorney or the person executes an affidavit of understanding with the department and agrees to comply with the confidentiality requirements under s. 39.202. This provision is currently in s. 39.201, F.S., and is being relocated to the more appropriate section.

Section 5 creates s. 828.075, F.S., relating to reporting of child and animal abuse, to recognize the importance of the strong link between child abuse and animal abuse and cruelty by requiring any person who is required to investigate child abuse, abandonment, or neglect and who knows or has reasonable cause to suspect that abuse, neglect, cruelty, or abandonment of an animal has occurred must report such knowledge or suspicion within 24 hours to the local animal control officer or an agent appointed under s. 828.03., F.S. The bill specifies the information that is to be included in a report.

The bill provides for penalties for knowingly and willfully failing to report and requires the department's training program for persons who are required to investigate child abuse, abandonment, or neglect to include training on identifying harm to, neglect of, and cruelty toward animals and on the strong link between animal abuse and cruelty and child welfare case practice.

Section 6 amends s. 828.27, F.S., to add detecting child abuse, abandonment and neglect to the minimum standards training course for all county and municipal animal control officers.

Section 7 amends s. 39.307, F.S., relating to child-on-child sexual abuse, to conform to changes made by this act.

Section 8 amends s. 39.301, F.S., relating to child protective investigations, to conform a reference to changes made by this act.

Section 9 amends s. 934.03, F.S., relating to the interception and disclosure of wire, oral, or electronic communications, to conform a reference to changes made by this act.

Section 10 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends ss. 39.01, 39.201, 39.302, 828.27, 39.307, 39.301, and 934.03 of the Florida Statutes.

The bill creates ss. 39.101 and 828.075 of the Florida Statutes.

Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 25, 2019:

- Makes technical changes to reflect current operating practices for the central abuse hotline.
- Relocates provisions in newly created section 39.208, F.S., to newly created s. 828.075, F.S.

B. Amendments:

None.



201704

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (8) through (12) of section 39.01, Florida Statutes, are redesignated as subsections (7) through (11), respectively, a new subsection (12) is added to that section, and present subsection (7) of that section is amended, to read:

39.01 Definitions.—When used in this chapter, unless the



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11 context otherwise requires:

12 ~~(7) "Juvenile sexual abuse" means any sexual behavior by a~~
13 ~~child which occurs without consent, without equality, or as a~~
14 ~~result of coercion. For purposes of this subsection, the~~
15 ~~following definitions apply:~~

16 ~~(a) "Coercion" means the exploitation of authority or the~~
17 ~~use of bribes, threats of force, or intimidation to gain~~
18 ~~cooperation or compliance.~~

19 ~~(b) "Equality" means two participants operating with the~~
20 ~~same level of power in a relationship, neither being controlled~~
21 ~~nor coerced by the other.~~

22 ~~(c) "Consent" means an agreement, including all of the~~
23 ~~following:~~

24 ~~1. Understanding what is proposed based on age, maturity,~~
25 ~~developmental level, functioning, and experience.~~

26 ~~2. Knowledge of societal standards for what is being~~
27 ~~proposed.~~

28 ~~3. Awareness of potential consequences and alternatives.~~

29 ~~4. Assumption that agreement or disagreement will be~~
30 ~~accepted equally.~~

31 ~~5. Voluntary decision.~~

32 ~~6. Mental competence.~~

33

34 ~~Juvenile sexual behavior ranges from noncontact sexual behavior~~
35 ~~such as making obscene phone calls, exhibitionism, voyeurism,~~
36 ~~and the showing or taking of lewd photographs to varying degrees~~
37 ~~of direct sexual contact, such as frottage, fondling, digital~~
38 ~~penetration, rape, fellatio, sodomy, and various other sexually~~
39 ~~aggressive acts.~~



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40 (12) (a) "Child-on-child sexual abuse" means sexual activity
41 between children and without the direct involvement of an adult
42 which:

- 43 1. Is overt and deliberate;
44 2. Is directed at sexual stimulation; and
45 3.a. Occurs without consent or without equality mentally,
46 physically, or in age; or
47 b. Occurs as a result of physical or emotional coercion.

48 (b) For purposes of this subsection, the following
49 definitions apply:

50 1. "Coercion" means the exploitation of authority or the
51 use of bribes, threats of force, or intimidation to gain
52 cooperation or compliance.

53 2. "Consent" means an agreement including all of the
54 following:

55 a. Understanding of what is proposed which is based on age,
56 maturity, and developmental level.

57 b. Knowledge of societal standards for what is being
58 proposed.

59 c. Awareness of the potential consequences.

60 d. Assumption that participation or non-participation will
61 be accepted equally.

62 e. Voluntary decision.

63 f. Mental competence.

64 3. "Equality" means two participants operating with the
65 same level of power in a relationship, without one being
66 controlled or coerced by the other.

67
68 The term includes both noncontact sexual behavior, such as



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69 making obscene phone calls, exhibitionism, voyeurism, and the
70 showing or taking of lewd photographs, and direct sexual
71 contact, such as frottage, fondling, digital penetration, rape,
72 fellatio, sodomy, and various other sexually aggressive acts.
73 Child-on-child sexual abuse does not include normative sexual
74 play or anatomical curiosity and exploration.

75 Section 2. Section 39.101, Florida Statutes, is created to
76 read:

77 39.101 Central abuse hotline.—The central abuse hotline is
78 the first step in the safety assessment and investigation
79 process.

80 (1) ESTABLISHMENT AND OPERATION.—The department shall
81 establish and maintain a central abuse hotline capable of
82 receiving, 24 hours a day, 7 days a week, all reports of known
83 or suspected child abuse, abandonment, or neglect and reports
84 that a child is in need of supervision and care and has no
85 parent, legal custodian, or responsible adult relative
86 immediately known and available to provide supervision and care
87 when such reports are made pursuant to s. 39.201. Reports may be
88 made in writing, through a single statewide toll-free telephone
89 number, or through electronic reporting. Any person may use any
90 of these methods to make a report at any hour of the day or
91 night, on any day of the week.

92 (a) If it appears that the immediate safety or well-being
93 of a child is endangered, that the family may flee or the child
94 will be unavailable for purposes of conducting a child
95 protective investigation, or that the facts otherwise so
96 warrant, the department must commence an investigation
97 immediately, regardless of the time of day or night.



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98 (b) In all other child abuse, abandonment, or neglect
99 cases, a child protective investigation must be commenced within
100 24 hours after receipt of the report.

101 (2) GENERAL REQUIREMENTS.—The central abuse hotline must be
102 operated in such a manner as to enable the department to:

103 (a) Accept reports for investigation when there is a
104 reasonable cause to suspect that a child has been or is being
105 abused or neglected or has been abandoned.

106 (b) Determine whether the allegations made by the reporter
107 require an immediate or a 24-hour response priority.

108 (c) Immediately identify and locate prior reports or cases
109 of child abuse, abandonment, or neglect through the use of the
110 department's automated tracking system.

111 (d) Track critical steps in the investigative process to
112 ensure compliance with all requirements for any report of abuse,
113 abandonment, or neglect.

114 (e) When appropriate, refer calls that do not allege the
115 abuse, neglect, or abandonment of a child to other organizations
116 that may better resolve the reporter's concerns.

117 (f) Serve as a resource for the evaluation, management, and
118 planning of preventive and remedial services for children who
119 have been subject to abuse, abandonment, or neglect.

120 (g) Initiate and enter into agreements with other states
121 for the purposes of gathering and sharing information contained
122 in reports on child maltreatment to further enhance programs for
123 the protection of children.

124
125 The department shall promote public awareness of the central
126 abuse hotline through community-based partner organizations and



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127 public service campaigns.

128 (3) COLLECTION OF INFORMATION AND DATA.—The department
129 shall:

130 (a) Voice-record all incoming or outgoing calls that are
131 received or placed by the central abuse hotline which relate to
132 suspected or known child abuse, neglect, or abandonment. The
133 department shall maintain an electronic copy of each electronic
134 report. The recording or electronic copy of each electronic
135 report must become a part of the record of the report but,
136 notwithstanding s. 39.202, must be released in full only to law
137 enforcement agencies and state attorneys for the purposes of
138 investigating and prosecuting criminal charges pursuant to s.
139 39.205, or to employees of the department for the purposes of
140 investigating and seeking administrative penalties pursuant to
141 s. 39.206. This paragraph does not prohibit hotline staff from
142 using the recordings or the electronic reports for quality
143 assurance or training.

144 (b) Secure and install electronic equipment that
145 automatically provides to the hotline the number from which the
146 call or fax is placed or the Internet protocol address from
147 which the report is received. This number shall be entered into
148 the report of abuse, abandonment, or neglect and become a part
149 of the record of the report, but shall enjoy the same
150 confidentiality as provided to the identity of the reporter
151 pursuant to s. 39.202.

152 (c)1. Update the web form used for reporting child abuse,
153 abandonment, or neglect to include qualifying questions in order
154 to obtain necessary information required to assess need and a
155 response.



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156 2. The report must be made available to the counselors in
157 its entirety as needed to update the Florida Safe Families
158 Network or other similar systems.

159 (d) Monitor and evaluate the effectiveness of the
160 department's program for the reporting and investigating of
161 suspected abuse, abandonment, or neglect of children through the
162 development and analysis of statistical and other information.

163 (e) Maintain and produce aggregate statistical reports
164 monitoring patterns of child abuse, child abandonment, and child
165 neglect. The department shall collect and analyze child-on-child
166 sexual abuse reports and include such information in the
167 aggregate statistical reports. The department shall collect and
168 analyze, in separate statistical reports, those reports of child
169 abuse and sexual abuse which are reported from or which occurred
170 on the campus of any Florida College System institution or state
171 university, as those terms are defined in s. 10021, or any
172 school, as defined in s. 1005.02.

173 (4) EMPLOYMENT SCREENING.—Information received by the
174 central abuse hotline may not be used for employment screening,
175 except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15).

176 (a) Information in the central abuse hotline and the
177 department's automated abuse information system may be used by
178 the department, its authorized agents or contract providers, the
179 Department of Health, or county agencies as part of the
180 licensure or registration process pursuant to ss. 402.301-
181 402.319 and ss. 409.175-409.176.

182 (b) Information in the central abuse hotline may also be
183 used by the Department of Education for purposes of educator
184 certification discipline and review pursuant to s. 39.202(2)(q).



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185 (5) QUALITY ASSURANCE.—On an ongoing basis, the
186 department's quality assurance program shall review screened-out
187 reports involving three or more unaccepted reports on a single
188 child, where jurisdiction applies, in order to detect such
189 things as harassment and situations that warrant an
190 investigation because of the frequency of the reports or the
191 variety of the sources of the reports. A component of the
192 quality assurance program must analyze unaccepted reports to the
193 hotline by identified relatives as a part of the review of
194 screened-out calls. The Assistant Secretary for Child Welfare
195 may refer a case for investigation when it is determined, as a
196 result of such review, that an investigation may be warranted.

197 Section 3. Section 39.201, Florida Statutes, is amended to
198 read:

199 (Substantial rewording of section. See
200 s. 39.201, F.S., for present text.)

201 39.201 Mandatory reports of child abuse, abandonment, or
202 neglect; mandatory reports of death; central abuse hotline.—

203 (1) MANDATORY REPORTING.—

204 (a) Any person who knows, or has reasonable cause to
205 suspect, that any of the following has occurred shall report
206 such knowledge or suspicion to the central abuse hotline on the
207 single statewide toll-free telephone number or by electronic
208 report pursuant to s. 39.101:

209 1. Child abuse, neglect, or abandonment by a parent or
210 caregiver.—A child is abused, abandoned, or neglected by a
211 parent, legal custodian, caregiver, or other person responsible
212 for the child's welfare, or that a child is in need of
213 supervision and care and has no parent, legal custodian, or



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214 responsible adult relative immediately known and available to
215 provide supervision and care.

216 a. Personnel at the department's central abuse hotline
217 shall determine if the report received meets the statutory
218 definition of child abuse, abandonment, or neglect. Any report
219 meeting one of these definitions must be accepted for protective
220 investigation pursuant to part III of this chapter.

221 b. Any call received from a parent or legal custodian
222 seeking assistance for himself or herself which does not meet
223 the criteria for being a report of child abuse, abandonment, or
224 neglect may be accepted by the hotline for response to
225 ameliorate a potential future risk of harm to a child.

226 c. If it is determined by a child welfare professional that
227 a need for community services exists, the department must refer
228 the parent or legal custodian for appropriate voluntary
229 community services.

230 2. Child abuse by a non-caregiver.—A child is abused by an
231 adult other than a parent, legal custodian, caregiver, or other
232 person responsible for the child's welfare. Such reports must be
233 immediately electronically transferred to the appropriate county
234 sheriff's office by the central abuse hotline.

235 3. Child-on-child sexual abuse.—A child, including a child
236 who is in the custody of the department, is the victim of child-
237 on-child sexual abuse.

238 a. The central abuse hotline shall immediately
239 electronically transfer the report to the appropriate county
240 sheriff's office. The department shall conduct an assessment,
241 assist the family in receiving appropriate services pursuant to
242 s. 39.307, and send a written report of the allegation to the



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243 appropriate county sheriff's office within 48 hours after the
244 initial report is made to the central abuse hotline.

245 b. The department shall ensure that the facts and results
246 of any investigation of child-on-child sexual abuse involving a
247 child in the custody of or under the protective supervision of
248 the department are made known to the court at the next hearing
249 or included in the next report to the court concerning the
250 child.

251 (b) While central abuse hotline counselors are required to
252 receive periodic training in encouraging all reporters to
253 provide their names when making a report and are required to
254 advise callers that the names of reporters must be entered into
255 the record of the report but are held confidential and exempt as
256 provided in s. 39.202, any reporter in the following
257 occupational categories is required to provide his or her name
258 to the central abuse hotline staff:

259 1. Physician, osteopathic physician, medical examiner,
260 chiropractic physician, nurse, or hospital personnel engaged in
261 the admission, examination, care, or treatment of persons;

262 2. Health professional or mental health professional other
263 than ones listed in subparagraph 1.;

264 3. Practitioner who relies solely on spiritual means for
265 healing;

266 4. School teacher or other school official or personnel;

267 5. Social worker, day care center worker, or other
268 professional child care worker, foster care worker, residential
269 worker, or institutional worker;

270 6. Law enforcement officer;

271 7. Judge; or



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272 8. Animal control officer as defined in s. 828.27 or agents
273 appointed under s. 828.03.

274 (2) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—

275 (a) Abuse occurring out of state.—If a report is of an
276 instance of known or suspected child abuse, abandonment, or
277 neglect that occurred out of state and the alleged perpetrator
278 and the child alleged to be a victim live out of state, the
279 central abuse hotline may not accept the report or call for
280 investigation and shall transfer the information on the report
281 to the appropriate state.

282 (b) Abuse involving impregnation of a child.—If the report
283 is of an instance of known or suspected child abuse involving
284 impregnation of a child under 16 years of age by a person 21
285 years of age or older solely under s. 827.04(3), and such person
286 is not a caregiver, the report must be immediately
287 electronically transferred to the appropriate county sheriff's
288 office by the central abuse hotline.

289 (c) Institutional child abuse or neglect.—Reports involving
290 known or suspected institutional child abuse or neglect, as
291 defined in s. 39.01, must be made and received in the same
292 manner as all other reports made pursuant to this section.

293 (d) Surrendered newborn infants.—Reports involving
294 surrendered newborn infants as described in s. 383.50 must be
295 made and received by the department.

296 1. If the report is of a surrendered newborn infant as
297 described in s. 383.50 and there is no indication of abuse,
298 neglect, or abandonment other than that necessarily entailed in
299 the infant having been left at a hospital, emergency medical
300 services station, or fire station, the department shall provide



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301 to the caller the name of a licensed child-placing agency on a
302 rotating basis from a list of licensed child-placing agencies
303 eligible and required to accept physical custody of and to place
304 newborn infants left at a hospital, emergency medical services
305 station, or fire station. The report may not be considered a
306 report of abuse, neglect, or abandonment solely because the
307 infant has been left at a hospital, emergency medical services
308 station, or fire station pursuant to s. 383.50.

309 2. If the report includes indications of abuse or neglect
310 beyond that necessarily entailed in the infant having been left
311 at a hospital, emergency medical services station, or fire
312 station, the report must be considered as a report of abuse,
313 neglect, or abandonment and must be subject to the requirements
314 of s. 39.395 and all other relevant provisions of this chapter,
315 notwithstanding chapter 383.

316 (3) EXCEPTIONS TO REPORTING.—

317 (a) An additional report of child abuse, abandonment, or
318 neglect does not have to be made by:

319 1. A professional who is hired by or who enters into a
320 contract with the department for the purpose of treating or
321 counseling any person as a result of a report of child abuse,
322 abandonment, or neglect if such person was the subject of the
323 referral for treatment.

324 2. An officer or employee of the judicial branch when the
325 child is currently being investigated by the department, when
326 there is an existing dependency case, or when the matter has
327 previously been reported to the department, if there is
328 reasonable cause to believe that the information is already
329 known to the department. This subparagraph applies only when the



330 information has been provided to the officer or employee in the
331 course of carrying out his or her official duties.

332 3. An officer or employee of a law enforcement agency when
333 the incident under investigation by the law enforcement agency
334 was reported to law enforcement by the central abuse hotline
335 through the electronic transfer of the report or call. The
336 department's central abuse hotline is not required to
337 electronically transfer calls and reports received pursuant to
338 paragraph (2)(b) to the county sheriff's office if the matter
339 was initially reported to the department by the county sheriff's
340 office or by another law enforcement agency. This subparagraph
341 applies only when the information related to the alleged child
342 abuse has been provided to the officer or employee of a law
343 enforcement agency or central abuse hotline employee in the
344 course of carrying out his or her official duties.

345 (b) Nothing in this chapter or in the contracting with
346 community-based care providers for foster care and related
347 services as specified in s. 409.987 may be construed to remove
348 or reduce the duty and responsibility of any person, including
349 any employee of the community-based care provider, to report a
350 suspected or actual case of child abuse, abandonment, or neglect
351 or the sexual abuse of a child to the department's central abuse
352 hotline.

353 (4) MANDATORY REPORTS OF A CHILD DEATH.—Any person required
354 to report or investigate cases of suspected child abuse,
355 abandonment, or neglect who has reasonable cause to suspect that
356 a child died as a result of child abuse, abandonment, or neglect
357 shall report his or her suspicion to the appropriate medical
358 examiner. The medical examiner shall accept the report for



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359 investigation and shall report his or her findings, in writing,
360 to the local law enforcement agency, the appropriate state
361 attorney, and the department. Autopsy reports maintained by the
362 medical examiner are not subject to the confidentiality
363 requirements provided for in s. 39.202.

364 Section 4. Subsections (1) and (2) of section 39.302,
365 Florida Statutes, are amended to read:

366 39.302 Protective investigations of institutional child
367 abuse, abandonment, or neglect.—

368 (1) The department shall conduct a child protective
369 investigation of each report of institutional child abuse,
370 abandonment, or neglect. Upon receipt of a report that alleges
371 that an employee or agent of the department, or any other entity
372 or person covered by s. 39.01(37) or (54), acting in an official
373 capacity, has committed an act of child abuse, abandonment, or
374 neglect, the department shall initiate a child protective
375 investigation within the timeframe established under s.
376 39.101(1) ~~s. 39.201(5)~~ and notify the appropriate state
377 attorney, law enforcement agency, and licensing agency, which
378 shall immediately conduct a joint investigation, unless
379 independent investigations are more feasible. When conducting
380 investigations or having face-to-face interviews with the child,
381 investigation visits shall be unannounced unless it is
382 determined by the department or its agent that unannounced
383 visits threaten the safety of the child. If a facility is exempt
384 from licensing, the department shall inform the owner or
385 operator of the facility of the report. Each agency conducting a
386 joint investigation is entitled to full access to the
387 information gathered by the department in the course of the



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388 investigation. A protective investigation must include an
389 interview with the child's parent or legal guardian. The
390 department shall make a full written report to the state
391 attorney within 3 working days after making the oral report. A
392 criminal investigation shall be coordinated, whenever possible,
393 with the child protective investigation of the department. Any
394 interested person who has information regarding the offenses
395 described in this subsection may forward a statement to the
396 state attorney as to whether prosecution is warranted and
397 appropriate. Within 15 days after the completion of the
398 investigation, the state attorney shall report the findings to
399 the department and shall include in the report a determination
400 of whether or not prosecution is justified and appropriate in
401 view of the circumstances of the specific case.

402 (2) (a) If in the course of the child protective
403 investigation, the department finds that a subject of a report,
404 by continued contact with children in care, constitutes a
405 threatened harm to the physical health, mental health, or
406 welfare of the children, the department may restrict a subject's
407 access to the children pending the outcome of the investigation.
408 The department or its agent shall employ the least restrictive
409 means necessary to safeguard the physical health, mental health,
410 and welfare of the children in care. This authority shall apply
411 only to child protective investigations in which there is some
412 evidence that child abuse, abandonment, or neglect has occurred.
413 A subject of a report whose access to children in care has been
414 restricted is entitled to petition the circuit court for
415 judicial review. The court shall enter written findings of fact
416 based upon the preponderance of evidence that child abuse,



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417 abandonment, or neglect did occur and that the department's
418 restrictive action against a subject of the report was justified
419 in order to safeguard the physical health, mental health, and
420 welfare of the children in care. The restrictive action of the
421 department shall be effective for no more than 90 days without a
422 judicial finding supporting the actions of the department.

423 (b) In an institutional investigation, the alleged
424 perpetrator may be represented by an attorney, at his or her own
425 expense, or may be accompanied by another person, if the
426 attorney or the person executes an affidavit of understanding
427 with the department and agrees to comply with the
428 confidentiality requirements under s. 39.202. The absence of an
429 attorney or an accompanying person does not prevent the
430 department from proceeding with other aspects of the
431 investigation, including interviews with other persons. In
432 institutional child abuse cases when the institution is not
433 operational and the child cannot otherwise be located, the
434 investigation must commence immediately upon the resumption of
435 operation. If requested by a state attorney or local law
436 enforcement agency, the department shall furnish all
437 investigative reports to such state attorney or agency.

438 (c) ~~(b)~~ Upon completion of the department's child protective
439 investigation, the department may make application to the
440 circuit court for continued restrictive action against any
441 person necessary to safeguard the physical health, mental
442 health, and welfare of the children in care.

443 Section 5. Section 828.075, Florida Statutes, is created to
444 read:

445 828.075 Cross-reporting child and animal abuse and



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446 cruelty.-

447 (1) The purpose of this section is to recognize the
448 importance of the strong link between child abuse and animal
449 abuse and cruelty.

450 (2) Any person who is required to investigate child abuse,
451 abandonment, or neglect under chapter 39 and who knows or has
452 reasonable cause to suspect that abuse, neglect, cruelty, or
453 abandonment of an animal has occurred must report such knowledge
454 or suspicion within 24 hours to the local animal control officer
455 or an agent appointed under s. 828.03. If no local animal
456 control officer or agent exists, the report must be made to the
457 appropriate local law enforcement agency.

458 (3) The report must include all of the following
459 information:

460 (a) A description of the animal.

461 (b) A description of any injury, cruelty, or abuse of the
462 animal, including any evidence of prior injury, cruelty, or
463 abuse of the animal or of other animals.

464 (c) Any evidence of neglect or abandonment of the animal,
465 including any evidence of prior neglect or abandonment of the
466 animal or of other animals.

467 (d) The name and address of the person or persons alleged
468 to be responsible for causing the injury, abuse, neglect,
469 cruelty, or abandonment of the animal.

470 (e) The source of the report.

471 (f) Any action taken by the reporting source with regard to
472 the injury, abuse, neglect, cruelty, or abandonment of the
473 animal.

474 (g) The name, address, and telephone number of the person



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475 making the report.

476 (4) A person who is required to report known or suspected
477 abuse, neglect, cruelty, or abandonment of an animal and who
478 knowingly and willfully fails to do so commits a misdemeanor of
479 the second degree, punishable as provided in s. 775.082 or s.
480 775.083.

481 (5) The Department of Children and Families' training
482 program for persons who are required to investigate child abuse,
483 abandonment, or neglect must include training on identifying
484 harm to, neglect of, and cruelty toward animals and on the
485 strong link between animal abuse and cruelty and child welfare
486 case practice.

487 Section 6. Paragraph (a) of subsection (4) of section
488 828.27, Florida Statutes, is amended to read:

489 828.27 Local animal control or cruelty ordinances;
490 penalty.—

491 (4) (a) 1. County-employed animal control officers must, and
492 municipally employed animal control officers may, successfully
493 complete a 40-hour minimum standards training course. Such
494 course must include, but is not limited to, training for: animal
495 cruelty investigations; ~~;~~ search and seizure; ~~;~~ animal handling; ~~;~~
496 courtroom demeanor; ~~;~~ and civil citations; and detecting child
497 abuse, neglect, and abandonment. The course curriculum must be
498 approved by the Florida Animal Control Association. An animal
499 control officer who successfully completes such course shall be
500 issued a certificate indicating that he or she has received a
501 passing grade.

502 2. Any animal control officer who is authorized before
503 January 1, 1990, by a county or municipality to issue citations



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504 is not required to complete the minimum standards training
505 course.

506 3. In order to maintain valid certification, every 2 years
507 each certified animal control officer must complete 4 hours of
508 postcertification continuing education training. Such training
509 may include, but is not limited to, training for: animal cruelty
510 investigations, search and seizure, animal handling, courtroom
511 demeanor, and civil citations.

512 Section 7. Subsection (1) and paragraph (a) of subsection
513 (2) of section 39.307, Florida Statutes, are amended to read:

514 39.307 Reports of child-on-child sexual abuse.—

515 (1) Upon receiving a report alleging child-on-child
516 ~~juvenile~~ sexual abuse or inappropriate sexual behavior as
517 defined in s. 39.01, the department shall assist the family,
518 child, and caregiver in receiving appropriate services to
519 address the allegations of the report.

520 (a) The department shall ensure that information describing
521 the child's history of child sexual abuse is included in the
522 child's electronic record. This record must also include
523 information describing the services the child has received as a
524 result of his or her involvement with child sexual abuse.

525 (b) Placement decisions for a child who has been involved
526 with child sexual abuse must include consideration of the needs
527 of the child and any other children in the placement.

528 (c) The department shall monitor the occurrence of child
529 sexual abuse and the provision of services to children involved
530 in child-on-child ~~child sexual abuse or juvenile~~ sexual abuse,
531 or who have displayed inappropriate sexual behavior.

532 (2) The department, contracted sheriff's office providing



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533 protective investigation services, or contracted case management
534 personnel responsible for providing services, at a minimum,
535 shall adhere to the following procedures:

536 (a) The purpose of the response to a report alleging child-
537 on-child ~~juvenile~~ sexual abuse behavior or inappropriate sexual
538 behavior shall be explained to the caregiver.

539 1. The purpose of the response shall be explained in a
540 manner consistent with legislative purpose and intent provided
541 in this chapter.

542 2. The name and office telephone number of the person
543 responding shall be provided to the caregiver of the alleged
544 abuser or child who has exhibited inappropriate sexual behavior
545 and the victim's caregiver.

546 3. The possible consequences of the department's response,
547 including outcomes and services, shall be explained to the
548 caregiver of the alleged abuser or child who has exhibited
549 inappropriate sexual behavior and the victim's caregiver.

550 Section 8. Subsection (6) of section 39.301, Florida
551 Statutes, is amended to read:

552 39.301 Initiation of protective investigations.—

553 (6) Upon commencing an investigation under this part, if a
554 report was received from a reporter under s. 39.201(1)(a)2. ~~s.~~
555 ~~39.201(1)(b)~~, the protective investigator must provide his or
556 her contact information to the reporter within 24 hours after
557 being assigned to the investigation. The investigator must also
558 advise the reporter that he or she may provide a written summary
559 of the report made to the central abuse hotline to the
560 investigator which shall become a part of the electronic child
561 welfare case file.



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562 Section 9. Paragraph (g) of subsection (2) of section
563 934.03, Florida Statutes, is amended to read:

564 934.03 Interception and disclosure of wire, oral, or
565 electronic communications prohibited.-

566 (2)

567 (g) It is lawful under this section and ss. 934.04-934.09
568 for an employee of:

569 1. An ambulance service licensed pursuant to s. 401.25, a
570 fire station employing firefighters as defined by s. 633.102, a
571 public utility, a law enforcement agency as defined by s.
572 934.02(10), or any other entity with published emergency
573 telephone numbers;

574 2. An agency operating an emergency telephone number "911"
575 system established pursuant to s. 365.171; or

576 3. The central abuse hotline operated pursuant to s. 39.101
577 ~~s. 39.201~~

578

579 to intercept and record incoming wire communications; however,
580 such employee may intercept and record incoming wire
581 communications on designated "911" telephone numbers and
582 published nonemergency telephone numbers staffed by trained
583 dispatchers at public safety answering points only. It is also
584 lawful for such employee to intercept and record outgoing wire
585 communications to the numbers from which such incoming wire
586 communications were placed when necessary to obtain information
587 required to provide the emergency services being requested. For
588 the purpose of this paragraph, the term "public utility" has the
589 same meaning as provided in s. 366.02 and includes a person,
590 partnership, association, or corporation now or hereafter owning



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591 or operating equipment or facilities in the state for conveying
592 or transmitting messages or communications by telephone or
593 telegraph to the public for compensation.

594 Section 10. This act shall take effect July 1, 2019.

595

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

597 And the title is amended as follows:

598 Delete everything before the enacting clause

599 and insert:

600

A bill to be entitled

601

An act relating to child abuse, abandonment, and

602

neglect; amending s. 39.01, F.S.; deleting the term

603

"juvenile sexual abuse"; defining the term "child-on-

604

child sexual abuse"; creating s. 39.101, F.S.;

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relocating provisions relating to the central abuse

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hotline of the Department of Children and Families;

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providing additional requirements relating to the

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hotline; amending s. 39.201, F.S.; requiring animal

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control officers and certain agents to provide their

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names to hotline staff; revising requirements relating

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to reports of abuse involving impregnation of

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children; amending s. 39.302, F.S.; conforming a

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cross-reference; relocating provisions relating to the

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representation of alleged perpetrators in

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institutional investigations; creating s. 828.075,

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F.S.; providing a purpose; requiring individuals who

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are required to investigate child abuse, abandonment,

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or neglect to also report certain animal abuse to

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specified persons or agencies; requiring that the



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620 report include certain information; providing a
621 criminal penalty for knowingly and willfully failing
622 to make such report; requiring the department to
623 include certain training in the training program for
624 persons required to investigate child abuse,
625 abandonment, or neglect; amending s. 828.27, F.S.;
626 requiring training for animal control officers to
627 include training for detecting child abuse, neglect,
628 and abandonment; amending s. 39.307, F.S.; conforming
629 provisions to changes made by the act; amending ss.
630 39.301 and 934.03, F.S.; conforming cross-references;
631 providing an effective date.

By Senator Book

32-00962-19

20191214__

1 A bill to be entitled
 2 An act relating to child abuse, abandonment, and
 3 neglect; amending s. 39.01, F.S.; deleting the term
 4 "juvenile sexual abuse"; defining the term "child-on-
 5 child sexual abuse"; creating s. 39.101, F.S.;
 6 relocating provisions relating to the central abuse
 7 hotline of the Department of Children and Families;
 8 providing additional requirements relating to the
 9 hotline; amending s. 39.201, F.S.; requiring animal
 10 control officers and certain agents to provide their
 11 names to hotline staff; creating s. 39.208, F.S.;
 12 providing a purpose; requiring individuals who are
 13 required to investigate child abuse, abandonment, or
 14 neglect to also report certain animal abuse to
 15 specified persons or agencies; requiring that the
 16 report include certain information; providing a
 17 criminal penalty for knowingly and willfully failing
 18 to make such report; requiring the department to
 19 include certain training in the training program for
 20 persons required to investigate child abuse,
 21 abandonment, or neglect; amending s. 39.302, F.S.;
 22 conforming a cross-reference; relocating provisions
 23 relating to the representation of alleged perpetrators
 24 in institutional investigations; amending s. 828.27,
 25 F.S.; requiring training for animal control officers
 26 to include training for detecting child abuse,
 27 neglect, and abandonment; amending s. 39.307, F.S.;
 28 conforming provisions to changes made by the act;
 29 amending ss. 39.301 and 934.03, F.S.; conforming

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

32-00962-19

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30 cross-references; providing an effective date.

31

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

33

34 Section 1. Present subsections (8) through (12) of section
 35 39.01, Florida Statutes, are redesignated as subsections (7)
 36 through (11), respectively, a new subsection (12) is added to
 37 that section, and present subsection (7) of that section is
 38 amended, to read:

39 39.01 Definitions.—When used in this chapter, unless the
 40 context otherwise requires:

41 ~~(7) "Juvenile sexual abuse" means any sexual behavior by a~~
 42 ~~child which occurs without consent, without equality, or as a~~
 43 ~~result of coercion. For purposes of this subsection, the~~
 44 ~~following definitions apply:~~

45 ~~(a) "Coercion" means the exploitation of authority or the~~
 46 ~~use of bribes, threats of force, or intimidation to gain~~
 47 ~~cooperation or compliance.~~

48 ~~(b) "Equality" means two participants operating with the~~
 49 ~~same level of power in a relationship, neither being controlled~~
 50 ~~nor coerced by the other.~~

51 ~~(c) "Consent" means an agreement, including all of the~~
 52 ~~following:~~

53 ~~1. Understanding what is proposed based on age, maturity,~~
 54 ~~developmental level, functioning, and experience.~~

55 ~~2. Knowledge of societal standards for what is being~~
 56 ~~proposed.~~

57 ~~3. Awareness of potential consequences and alternatives.~~

58 ~~4. Assumption that agreement or disagreement will be~~

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59 ~~accepted equally.~~

60 ~~5. Voluntary decision.~~

61 ~~6. Mental competence.~~

62
63 ~~Juvenile sexual behavior ranges from noncontact sexual behavior~~
64 ~~such as making obscene phone calls, exhibitionism, voyeurism,~~
65 ~~and the showing or taking of lewd photographs to varying degrees~~
66 ~~of direct sexual contact, such as frottage, fondling, digital~~
67 ~~penetration, rape, fellatio, sodomy, and various other sexually~~
68 ~~aggressive acts.~~

69 (12) (a) "Child-on-child sexual abuse" means sexual activity
70 between children and without the direct involvement of an adult
71 which:

72 1. Is overt and deliberate;

73 2. Is directed at sexual stimulation; and

74 3.a. Occurs without consent or without equality mentally,
75 physically, or in age; or

76 b. Occurs as a result of physical or emotional coercion.

77 (b) For purposes of this subsection, the following
78 definitions apply:

79 1. "Coercion" means the exploitation of authority or the
80 use of bribes, threats of force, or intimidation to gain
81 cooperation or compliance.

82 2. "Consent" means an agreement including all of the
83 following:

84 a. Understanding of what is proposed which is based on age,
85 maturity, developmental level, functioning, and experience.

86 b. Knowledge of societal standards for what is being
87 proposed.

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88 c. Awareness of the potential consequences and
89 alternatives.

90 d. Assumption that agreement or disagreement will be
91 accepted equally.

92 e. Voluntary decision.

93 f. Mental competence.

94 3. "Equality" means two participants operating with the
95 same level of power in a relationship, without being controlled
96 or coerced by the other.

97
98 The term includes both noncontact sexual behavior, such as
99 making obscene phone calls, exhibitionism, voyeurism, and the
100 showing or taking of lewd photographs, and direct sexual
101 contact, such as frottage, fondling, digital penetration, rape,
102 fellatio, sodomy, and various other sexually aggressive acts.
103 Child-on-child sexual abuse does not include normative sexual
104 play or anatomical curiosity and exploration.

105 Section 2. Section 39.101, Florida Statutes, is created to
106 read:

107 39.101 Central abuse hotline.—The central abuse hotline is
108 the first step in the safety assessment and investigation
109 process.

110 (1) ESTABLISHMENT AND OPERATION.—The department shall
111 establish and maintain a central abuse hotline capable of
112 receiving, 24 hours a day, 7 days a week, all reports of known
113 or suspected child abuse, abandonment, or neglect and reports
114 that a child is in need of supervision and care and has no
115 parent, legal custodian, or responsible adult relative
116 immediately known and available to provide supervision and care

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 117 when such reports are made pursuant to s. 39.201. Reports may be
 118 made in writing, through a single statewide toll-free telephone
 119 number, or via fax, web-based reporting, or web-based chat. Any
 120 person may use any of these methods to make a report at any hour
 121 of the day or night, on any day of the week.

122 (a) If it appears that the immediate safety or well-being
 123 of a child is endangered, that the family may flee or the child
 124 will be unavailable for purposes of conducting a child
 125 protective investigation, or that the facts otherwise so
 126 warrant, the department must commence an investigation
 127 immediately, regardless of the time of day or night.

128 (b) In all other child abuse, abandonment, or neglect
 129 cases, a child protective investigation must be commenced within
 130 24 hours after receipt of the report.

131 (2) GENERAL REQUIREMENTS.—The central abuse hotline must be
 132 operated in such a manner as to enable the department to:

133 (a) Accept reports for investigation when there is a
 134 reasonable cause to suspect that a child has been or is being
 135 abused or neglected or has been abandoned.

136 (b) Determine whether the allegations made by the reporter
 137 require an immediate, a 24-hour, or a next-working-day response
 138 priority.

139 (c) Immediately identify and locate prior reports or cases
 140 of child abuse, abandonment, or neglect through the use of the
 141 department's automated tracking system.

142 (d) Track critical steps in the investigative process to
 143 ensure compliance with all requirements for any report of abuse,
 144 abandonment, or neglect.

145 (e) When appropriate, refer calls that do not allege the

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 146 abuse, neglect, or abandonment of a child to other organizations
 147 that may better resolve the reporter's concerns.

148 (f) Serve as a resource for the evaluation, management, and
 149 planning of preventive and remedial services for children who
 150 have been subject to abuse, abandonment, or neglect.

151 (g) Initiate and enter into agreements with other states
 152 for the purpose of gathering and sharing information contained
 153 in reports on child maltreatment to further enhance programs for
 154 the protection of children.

155 The department shall promote public awareness of the central
 156 abuse hotline through community-based partner organizations and
 157 public service campaigns.

158 (3) COLLECTION OF INFORMATION AND DATA.—The department
 159 shall:

160 (a) Voice-record all incoming or outgoing calls that are
 161 received or placed by the central abuse hotline which relate to
 162 suspected or known child abuse, neglect, or abandonment. The
 163 department shall maintain an electronic copy of each fax and
 164 web-based report. The recording or electronic copy of each fax
 165 and web-based report must become a part of the record of the
 166 report but, notwithstanding s. 39.202, must be released in full
 167 only to law enforcement agencies and state attorneys for the
 168 purposes of investigating and prosecuting criminal charges
 169 pursuant to s. 39.205, or to employees of the department for the
 170 purposes of investigating and seeking administrative penalties
 171 pursuant to s. 39.206. This paragraph does not prohibit hotline
 172 staff from using the recordings, the electronic copies of faxes,
 173 or the web-based reports for quality assurance or training.
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175 (b) Secure and install electronic equipment that
 176 automatically provides to the hotline the number from which the
 177 call or fax is placed or the Internet protocol address from
 178 which the report is received. This number shall be entered into
 179 the report of abuse, abandonment, or neglect and become a part
 180 of the record of the report, but shall enjoy the same
 181 confidentiality as provided to the identity of the reporter
 182 pursuant to s. 39.202.

183 (c)1. Update the web form used for reporting child abuse,
 184 abandonment, or neglect to:

185 a. Include qualifying questions in order to obtain
 186 necessary information required to assess need and a response;
 187 b. Indicate which fields are required to submit the report;
 188 and

189 c. Allow a reporter to save his or her report and return to
 190 it at a later time.

191 2. The report must be made available to the counselors in
 192 its entirety as needed to update the Florida Safe Families
 193 Network or other similar systems.

194 (d) Monitor and evaluate the effectiveness of the
 195 department's program for the reporting and investigating of
 196 suspected abuse, abandonment, or neglect of children through the
 197 development and analysis of statistical and other information.

198 (e) Maintain and produce aggregate statistical reports
 199 monitoring patterns of child abuse, child abandonment, and child
 200 neglect. The department shall collect and analyze child-on-child
 201 sexual abuse reports and include such information in the
 202 aggregate statistical reports. The department shall collect and
 203 analyze, in separate statistical reports, those reports of child

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204 abuse and sexual abuse which are reported from or which occurred
 205 on the campus of any Florida College System institution or state
 206 university, as those terms are defined in s. 10021, or any
 207 school, as defined in s. 1005.02.

208 (4) EMPLOYMENT SCREENING.—Information received by the
 209 central abuse hotline may not be used for employment screening,
 210 except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15).

211 (a) Information in the central abuse hotline and the
 212 department's automated abuse information system may be used by
 213 the department, its authorized agents or contract providers, the
 214 Department of Health, or county agencies as part of the
 215 licensure or registration process pursuant to ss. 402.301-
 216 402.319 and ss. 409.175-409.176.

217 (b) Information in the central abuse hotline may also be
 218 used by the Department of Education for purposes of educator
 219 certification discipline and review pursuant to s. 39.202(2)(g).

220 (5) QUALITY ASSURANCE.—On an ongoing basis, the
 221 department's quality assurance program shall review calls, fax
 222 reports, and web-based reports to the hotline involving three or
 223 more unaccepted reports on a single child, where jurisdiction
 224 applies, in order to detect such things as harassment and
 225 situations that warrant an investigation because of the
 226 frequency of the reports or the variety of the sources of the
 227 reports. A component of the quality assurance program must
 228 analyze unaccepted reports to the hotline by identified
 229 relatives as a part of the review of screened out calls. The
 230 Assistant Secretary for Child Welfare may refer a case for
 231 investigation when it is determined, as a result of such review,
 232 that an investigation may be warranted.

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233 Section 3. Section 39.201, Florida Statutes, is amended to
234 read:

235 (Substantial rewording of section. See
236 s. 39.201, F.S., for present text.)

237 39.201 Mandatory reports of child abuse, abandonment, or
238 neglect; mandatory reports of death; central abuse hotline.-

239 (1) MANDATORY REPORTING.-

240 (a) Any person who knows, or has reasonable cause to
241 suspect, that any of the following has occurred shall report
242 such knowledge or suspicion to the central abuse hotline on the
243 single statewide toll-free telephone number or via fax, web-
244 based chat, or web-based report pursuant to s. 39.101:

245 1. Child abuse, neglect, or abandonment by a parent or
246 caregiver.-A child is abused, abandoned, or neglected by a
247 parent, legal custodian, caregiver, or other person responsible
248 for the child's welfare, or that a child is in need of
249 supervision and care and has no parent, legal custodian, or
250 responsible adult relative immediately known and available to
251 provide supervision and care.

252 a. Personnel at the department's central abuse hotline
253 shall determine if the report received meets the statutory
254 definition of child abuse, abandonment, or neglect. Any report
255 meeting one of these definitions must be accepted for protective
256 investigation pursuant to part III of this chapter.

257 b. Any call received from a parent or legal custodian
258 seeking assistance for himself or herself which does not meet
259 the criteria for being a report of child abuse, abandonment, or
260 neglect may be accepted by the hotline for response to
261 ameliorate a potential future risk of harm to a child.

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262 c. If it is determined by a child welfare professional that
263 a need for community services exists, the department must refer
264 the parent or legal custodian for appropriate voluntary
265 community services.

266 2. Child abuse by a non-caregiver.-A child is abused by an
267 adult other than a parent, legal custodian, caregiver, or other
268 person responsible for the child's welfare. Such reports or
269 calls must be immediately electronically transferred to the
270 appropriate county sheriff's office by the central abuse
271 hotline.

272 3. Child-on-child sexual abuse.-A child, including a child
273 who is in the custody of the department, is the victim of child-
274 on-child sexual abuse.

275 a. The central abuse hotline shall immediately
276 electronically transfer the report or call to the appropriate
277 county sheriff's office. The department shall conduct an
278 assessment, assist the family in receiving appropriate services
279 pursuant to s. 39.307, and send a written report of the
280 allegation to the appropriate county sheriff's office within 48
281 hours after the initial report is made to the central abuse
282 hotline.

283 b. The department shall ensure that the facts and results
284 of any investigation of child-on-child sexual abuse involving a
285 child in the custody of or under the protective supervision of
286 the department are made known to the court at the next hearing
287 or included in the next report to the court concerning the
288 child.

289 (b) While central abuse hotline counselors are required to
290 receive periodic training in encouraging all reporters to

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291 provide their names when making a report and are required to
 292 advise callers that the names of reporters must be entered into
 293 the record of the report but are held confidential and exempt as
 294 provided in s. 39.202, any reporter in the following
 295 occupational categories is required to provide his or her name
 296 to the central abuse hotline staff:

297 1. Physician, osteopathic physician, medical examiner,
 298 chiropractic physician, nurse, or hospital personnel engaged in
 299 the admission, examination, care, or treatment of persons;
 300 2. Health professional or mental health professional other
 301 than ones listed in subparagraph 1.;
 302 3. Practitioner who relies solely on spiritual means for
 303 healing;
 304 4. School teacher or other school official or personnel;
 305 5. Social worker, day care center worker, or other
 306 professional child care worker, foster care worker, residential
 307 worker, or institutional worker;
 308 6. Law enforcement officer;
 309 7. Judge; or
 310 8. Animal control officer as defined in s. 828.27 or agents
 311 appointed under s. 828.03.

312 (2) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—
 313 (a) Abuse occurring out of state.—If a report is of an
 314 instance of known or suspected child abuse, abandonment, or
 315 neglect that occurred out of state and the alleged perpetrator
 316 and the child alleged to be a victim live out of state, the
 317 central abuse hotline may not accept the report or call for
 318 investigation and shall transfer the information on the report
 319 to the appropriate state.

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320 (b) Abuse involving impregnation of a child.—If the report
 321 is of an instance of known or suspected child abuse involving
 322 impregnation of a child under 16 years of age by a person 21
 323 years of age or older solely under s. 827.04(3), the report must
 324 be made immediately to the appropriate county sheriff's office
 325 or other appropriate law enforcement agency. If the report is of
 326 an instance of known or suspected child abuse solely under s.
 327 827.04(3), the reporting provisions of this subsection do not
 328 apply to health care professionals or other persons who provide
 329 medical or counseling services to pregnant children when such
 330 reporting would interfere with the provision of medical
 331 services.

332 (c) Institutional child abuse or neglect.—Reports involving
 333 known or suspected institutional child abuse or neglect, as
 334 defined in s. 39.01, must be made and received in the same
 335 manner as all other reports made pursuant to this section.

336 (d) Surrendered newborn infants.—Reports involving
 337 surrendered newborn infants as described in s. 383.50 must be
 338 made and received by the department.

339 1. If the report is of a surrendered newborn infant as
 340 described in s. 383.50 and there is no indication of abuse,
 341 neglect, or abandonment other than that necessarily entailed in
 342 the infant having been left at a hospital, emergency medical
 343 services station, or fire station, the department shall provide
 344 to the caller the name of a licensed child-placing agency on a
 345 rotating basis from a list of licensed child-placing agencies
 346 eligible and required to accept physical custody of and to place
 347 newborn infants left at a hospital, emergency medical services
 348 station, or fire station. The report may not be considered a

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349 report of abuse, neglect, or abandonment solely because the
 350 infant has been left at a hospital, emergency medical services
 351 station, or fire station pursuant to s. 383.50.

352 2. If the report includes indications of abuse or neglect
 353 beyond that necessarily entailed in the infant having been left
 354 at a hospital, emergency medical services station, or fire
 355 station, the report must be considered as a report of abuse,
 356 neglect, or abandonment and must be subject to the requirements
 357 of s. 39.395 and all other relevant provisions of this chapter,
 358 notwithstanding chapter 383.

359 (3) EXCEPTIONS TO REPORTING.-

360 (a) An additional report of child abuse, abandonment, or
 361 neglect does not have to be made by:

362 1. A professional who is hired by or who enters into a
 363 contract with the department for the purpose of treating or
 364 counseling any person as a result of a report of child abuse,
 365 abandonment, or neglect if such person was the subject of the
 366 referral for treatment.

367 2. An officer or employee of the judicial branch when the
 368 child is currently being investigated by the department, when
 369 there is an existing dependency case, or when the matter has
 370 previously been reported to the department, if there is
 371 reasonable cause to believe that the information is already
 372 known to the department. This subparagraph applies only when the
 373 information has been provided to the officer or employee in the
 374 course of carrying out his or her official duties.

375 3. An officer or employee of a law enforcement agency when
 376 the incident under investigation by the law enforcement agency
 377 was reported to law enforcement by the central abuse hotline

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378 through the electronic transfer of the report or call. The
 379 department's central abuse hotline is not required to
 380 electronically transfer calls and reports received pursuant to
 381 paragraph (2) (b) to the county sheriff's office if the matter
 382 was initially reported to the department by the county sheriff's
 383 office or by another law enforcement agency. This subparagraph
 384 applies only when the information related to the alleged child
 385 abuse has been provided to the officer or employee of a law
 386 enforcement agency or central abuse hotline employee in the
 387 course of carrying out his or her official duties.

388 (b) Nothing in this chapter or in the contracting with
 389 community-based care providers for foster care and related
 390 services as specified in s. 409.987 may be construed to remove
 391 or reduce the duty and responsibility of any person, including
 392 any employee of the community-based care provider, to report a
 393 suspected or actual case of child abuse, abandonment, or neglect
 394 or the sexual abuse of a child to the department's central abuse
 395 hotline.

396 (4) MANDATORY REPORTS OF A CHILD DEATH.-Any person required
 397 to report or investigate cases of suspected child abuse,
 398 abandonment, or neglect who has reasonable cause to suspect that
 399 a child died as a result of child abuse, abandonment, or neglect
 400 shall report his or her suspicion to the appropriate medical
 401 examiner. The medical examiner shall accept the report for
 402 investigation and shall report his or her findings, in writing,
 403 to the local law enforcement agency, the appropriate state
 404 attorney, and the department. Autopsy reports maintained by the
 405 medical examiner are not subject to the confidentiality
 406 requirements provided for in s. 39.202.

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407 Section 4. Section 39.208, Florida Statutes, is created to
408 read:

409 39.208 Cross-reporting child and animal abuse and cruelty.-

410 (1) The purpose of this section is to recognize the
411 importance of the strong link between child abuse and animal
412 abuse and cruelty.

413 (2) Any person who is required to investigate child abuse,
414 abandonment, or neglect and who knows or has reasonable cause to
415 suspect that abuse, neglect, cruelty, or abandonment of an
416 animal has occurred must report such knowledge or suspicion
417 within 24 hours to the local animal control officer or an agent
418 appointed under s. 828.03. If no local animal control officer or
419 agent exists, the report must be made to the appropriate local
420 law enforcement agency.

421 (3) The report must include all of the following
422 information:

423 (a) A description of the animal.

424 (b) A description of any injury, cruelty, or abuse of the
425 animal, including any evidence of prior injury, cruelty, or
426 abuse of the animal or of other animals.

427 (c) Any evidence of neglect or abandonment of the animal,
428 including any evidence of prior neglect or abandonment of the
429 animal or of other animals.

430 (d) The name and address of the person or persons alleged
431 to be responsible for causing the injury, abuse, neglect,
432 cruelty, or abandonment of the animal.

433 (e) The source of the report.

434 (f) Any action taken by the reporting source with regard to
435 the injury, abuse, neglect, cruelty, or abandonment of the

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436 animal.

437 (g) The name, address, and telephone number of the person
438 making the report.

439 (4) A person who is required to report known or suspected
440 abuse, neglect, cruelty, or abandonment of an animal and who
441 knowingly and willfully fails to do so commits a misdemeanor of
442 the second degree, punishable as provided in s. 775.082 or s.
443 775.083.

444 (5) The department's training program for persons who are
445 required to investigate child abuse, abandonment, or neglect
446 must include training on identifying harm to, neglect of, and
447 cruelty toward animals and on the strong link between animal
448 abuse and cruelty and child welfare case practice.

449 Section 5. Subsections (1) and (2) of section 39.302,
450 Florida Statutes, are amended to read:

451 39.302 Protective investigations of institutional child
452 abuse, abandonment, or neglect.-

453 (1) The department shall conduct a child protective
454 investigation of each report of institutional child abuse,
455 abandonment, or neglect. Upon receipt of a report that alleges
456 that an employee or agent of the department, or any other entity
457 or person covered by s. 39.01(37) or (54), acting in an official
458 capacity, has committed an act of child abuse, abandonment, or
459 neglect, the department shall initiate a child protective
460 investigation within the timeframe established under s.
461 39.101(1) ~~s. 39.201(5)~~ and notify the appropriate state
462 attorney, law enforcement agency, and licensing agency, which
463 shall immediately conduct a joint investigation, unless
464 independent investigations are more feasible. When conducting

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465 investigations or having face-to-face interviews with the child,
 466 investigation visits shall be unannounced unless it is
 467 determined by the department or its agent that unannounced
 468 visits threaten the safety of the child. If a facility is exempt
 469 from licensing, the department shall inform the owner or
 470 operator of the facility of the report. Each agency conducting a
 471 joint investigation is entitled to full access to the
 472 information gathered by the department in the course of the
 473 investigation. A protective investigation must include an
 474 interview with the child's parent or legal guardian. The
 475 department shall make a full written report to the state
 476 attorney within 3 working days after making the oral report. A
 477 criminal investigation shall be coordinated, whenever possible,
 478 with the child protective investigation of the department. Any
 479 interested person who has information regarding the offenses
 480 described in this subsection may forward a statement to the
 481 state attorney as to whether prosecution is warranted and
 482 appropriate. Within 15 days after the completion of the
 483 investigation, the state attorney shall report the findings to
 484 the department and shall include in the report a determination
 485 of whether or not prosecution is justified and appropriate in
 486 view of the circumstances of the specific case.

487 (2) (a) If in the course of the child protective
 488 investigation, the department finds that a subject of a report,
 489 by continued contact with children in care, constitutes a
 490 threatened harm to the physical health, mental health, or
 491 welfare of the children, the department may restrict a subject's
 492 access to the children pending the outcome of the investigation.
 493 The department or its agent shall employ the least restrictive

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494 means necessary to safeguard the physical health, mental health,
 495 and welfare of the children in care. This authority shall apply
 496 only to child protective investigations in which there is some
 497 evidence that child abuse, abandonment, or neglect has occurred.
 498 A subject of a report whose access to children in care has been
 499 restricted is entitled to petition the circuit court for
 500 judicial review. The court shall enter written findings of fact
 501 based upon the preponderance of evidence that child abuse,
 502 abandonment, or neglect did occur and that the department's
 503 restrictive action against a subject of the report was justified
 504 in order to safeguard the physical health, mental health, and
 505 welfare of the children in care. The restrictive action of the
 506 department shall be effective for no more than 90 days without a
 507 judicial finding supporting the actions of the department.

508 (b) In an institutional investigation, the alleged
 509 perpetrator may be represented by an attorney, at his or her own
 510 expense, or may be accompanied by another person, if the
 511 attorney or the person executes an affidavit of understanding
 512 with the department and agrees to comply with the
 513 confidentiality requirements under s. 39.202. The absence of an
 514 attorney or an accompanying person does not prevent the
 515 department from proceeding with other aspects of the
 516 investigation, including interviews with other persons. In
 517 institutional child abuse cases when the institution is not
 518 operational and the child cannot otherwise be located, the
 519 investigation must commence immediately upon the resumption of
 520 operation. If requested by a state attorney or local law
 521 enforcement agency, the department shall furnish all
 522 investigative reports to such state attorney or agency.

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523 ~~(c)(b)~~ Upon completion of the department's child protective
 524 investigation, the department may make application to the
 525 circuit court for continued restrictive action against any
 526 person necessary to safeguard the physical health, mental
 527 health, and welfare of the children in care.

528 Section 6. Paragraph (a) of subsection (4) of section
 529 828.27, Florida Statutes, is amended to read:

530 828.27 Local animal control or cruelty ordinances;
 531 penalty.—

532 (4)(a)1. County-employed animal control officers must, and
 533 municipally employed animal control officers may, successfully
 534 complete a 40-hour minimum standards training course. Such
 535 course must include, but is not limited to, training for: animal
 536 cruelty investigations; ~~;~~ search and seizure; ~~;~~ animal handling; ~~;~~
 537 courtroom demeanor; ~~;~~ and civil citations; and detecting child
 538 abuse, neglect, and abandonment. The course curriculum must be
 539 approved by the Florida Animal Control Association. An animal
 540 control officer who successfully completes such course shall be
 541 issued a certificate indicating that he or she has received a
 542 passing grade.

543 2. Any animal control officer who is authorized before
 544 January 1, 1990, by a county or municipality to issue citations
 545 is not required to complete the minimum standards training
 546 course.

547 3. In order to maintain valid certification, every 2 years
 548 each certified animal control officer must complete 4 hours of
 549 postcertification continuing education training. Such training
 550 may include, but is not limited to, training for: animal cruelty
 551 investigations, search and seizure, animal handling, courtroom

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552 demeanor, and civil citations.

553 Section 7. Subsection (1) and paragraph (a) of subsection
 554 (2) of section 39.307, Florida Statutes, are amended to read:

555 39.307 Reports of child-on-child sexual abuse.—

556 (1) Upon receiving a report alleging child-on-child
 557 ~~juvenile~~ sexual abuse or inappropriate sexual behavior as
 558 defined in s. 39.01, the department shall assist the family,
 559 child, and caregiver in receiving appropriate services to
 560 address the allegations of the report.

561 (a) The department shall ensure that information describing
 562 the child's history of child sexual abuse is included in the
 563 child's electronic record. This record must also include
 564 information describing the services the child has received as a
 565 result of his or her involvement with child sexual abuse.

566 (b) Placement decisions for a child who has been involved
 567 with child sexual abuse must include consideration of the needs
 568 of the child and any other children in the placement.

569 (c) The department shall monitor the occurrence of child
 570 sexual abuse and the provision of services to children involved
 571 in child-on-child ~~child sexual abuse or juvenile~~ sexual abuse,
 572 or who have displayed inappropriate sexual behavior.

573 (2) The department, contracted sheriff's office providing
 574 protective investigation services, or contracted case management
 575 personnel responsible for providing services, at a minimum,
 576 shall adhere to the following procedures:

577 (a) The purpose of the response to a report alleging child-
 578 on-child ~~juvenile~~ sexual abuse behavior or inappropriate sexual
 579 behavior shall be explained to the caregiver.

580 1. The purpose of the response shall be explained in a

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581 manner consistent with legislative purpose and intent provided
582 in this chapter.

583 2. The name and office telephone number of the person
584 responding shall be provided to the caregiver of the alleged
585 abuser or child who has exhibited inappropriate sexual behavior
586 and the victim's caregiver.

587 3. The possible consequences of the department's response,
588 including outcomes and services, shall be explained to the
589 caregiver of the alleged abuser or child who has exhibited
590 inappropriate sexual behavior and the victim's caregiver.

591 Section 8. Subsection (6) of section 39.301, Florida
592 Statutes, is amended to read:

593 39.301 Initiation of protective investigations.-

594 (6) Upon commencing an investigation under this part, if a
595 report was received from a reporter under s. 39.201(1)(a)2. ~~s.~~
596 ~~39.201(1)(b)~~, the protective investigator must provide his or
597 her contact information to the reporter within 24 hours after
598 being assigned to the investigation. The investigator must also
599 advise the reporter that he or she may provide a written summary
600 of the report made to the central abuse hotline to the
601 investigator which shall become a part of the electronic child
602 welfare case file.

603 Section 9. Paragraph (g) of subsection (2) of section
604 934.03, Florida Statutes, is amended to read:

605 934.03 Interception and disclosure of wire, oral, or
606 electronic communications prohibited.-

607 (2)

608 (g) It is lawful under this section and ss. 934.04-934.09
609 for an employee of:

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610 1. An ambulance service licensed pursuant to s. 401.25, a
611 fire station employing firefighters as defined by s. 633.102, a
612 public utility, a law enforcement agency as defined by s.
613 934.02(10), or any other entity with published emergency
614 telephone numbers;

615 2. An agency operating an emergency telephone number "911"
616 system established pursuant to s. 365.171; or

617 3. The central abuse hotline operated pursuant to s. 39.101
618 ~~s. 39.201~~

619
620 to intercept and record incoming wire communications; however,
621 such employee may intercept and record incoming wire
622 communications on designated "911" telephone numbers and
623 published nonemergency telephone numbers staffed by trained
624 dispatchers at public safety answering points only. It is also
625 lawful for such employee to intercept and record outgoing wire
626 communications to the numbers from which such incoming wire
627 communications were placed when necessary to obtain information
628 required to provide the emergency services being requested. For
629 the purpose of this paragraph, the term "public utility" has the
630 same meaning as provided in s. 366.02 and includes a person,
631 partnership, association, or corporation now or hereafter owning
632 or operating equipment or facilities in the state for conveying
633 or transmitting messages or communications by telephone or
634 telegraph to the public for compensation.

635 Section 10. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19
Meeting Date

1214
Bill Number (if applicable)

Topic Mandated Reporters

Name Alexandra Serafini

Amendment Barcode (if applicable)

Job Title Student

Address 173 Harston Ct.
Street

Phone 407 687 7654

Lake Mary FL 32746
City State Zip

Email alexandraserafini1@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1214

Bill Number (if applicable)

Topic Cross Reporting - Child Abuse, etc.

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title state director

Address 1624 Metropolitan Circle

Phone 850 508-1001

Street

1allaham FL 32308

City

State

Zip

Email kmacfall@usos.org

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Humane Society of the United States

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19

Meeting Date

1214

Bill Number (if applicable)

Topic SB 1214

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD, Ph. D.

Job Title SENIOR DIRECTOR OF LEGISLATION

Address PO BOX 5741

Phone 850 445 5245

Street

TALLAHASSEE FL

32301

City

State

Zip

Email jen.hobgood@aspca.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ASPCA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

SB 1214

Bill Number (if applicable)

Topic Child Abuse, Abandonment, and Neglect

Amendment Barcode (if applicable)

Name Rose Tuzik

Job Title Legislative and Communications Assistant

Address 501 S Blairstone Rd

Phone 850-345-3023

Street

Tallahassee

FL

32301

Email rmt042794@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

1214

Meeting Date

Bill Number (if applicable)

Topic Child Abuse, Abandonment and Neglect

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

1214

Bill Number (if applicable)

Topic Child Abuse, Abandonment, and Neglect

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title Chief Policy and Research Officer

Address 411 E. College Avenue

Phone 850/561-1102

Street

Tallahassee

FL

32301

Email Victoria@flchildren.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Children (FCC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1214
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS	3/25/2019 Amendment 201704 ¹					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1218

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Homelessness

DATE: March 26, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1218 creates a dedicated revenue source for challenge grants provided to the State Office on Homelessness and local homeless continuums of care (CoC), which are dedicated to preventing and ending homelessness throughout the state. The bill also increases the amount of funds each CoC may receive annually through challenge grants.

The bill makes a number of changes to chapter 420, F.S., relating to homelessness, with the aim of bringing state law in line with corresponding federal statutes in order to eliminate outdated provisions and allow sources of federal funding matches to be accessed on an expedited basis.

The bill will likely have a fiscal impact on the state through the increased provision of funding for homelessness challenge grants, and has an effective date of July 1, 2019.

II. Present Situation:

Housing for Individuals with Lower Incomes

In 1986¹ the Legislature found that:

- Decent, safe, and sanitary housing for individuals of very low income, low income, and moderate income is a critical need in the state;

¹ Chapter 86-192, Laws of Fla.

- New and rehabilitated housing must be provided at a cost affordable to such persons in order to alleviate this critical need;
- Special programs are needed to stimulate private enterprise to build and rehabilitate housing in order to help eradicate slum conditions and provide housing for very-low-income persons, low-income persons, and moderate-income persons as a matter of public purpose; and
- Public-private partnerships are an essential means of bringing together resources to provide affordable housing.²

As a result of these findings, the Legislature determined that legislation was urgently needed to alleviate crucial problems related to housing shortages for individuals with very low,³ low⁴ and moderate⁵ incomes. In 1986, part VI of ch. 420, F.S., was titled as the “Florida Affordable Care Act of 1986”⁶ and programs and funding mechanisms were created over the years to help remedy low-income housing issues.

State Office on Homelessness

In 2001, the Legislature created the State Office on Homelessness within the Department of Children and Families (DCF) to serve as a central point of contact within state government on homelessness. The State Office on Homelessness is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service continuum of care plans.⁷

Council on Homelessness

The inter-agency Council on Homelessness was also created in 2001. The 17-member council is charged with developing recommendations on how to reduce homelessness statewide and advising the State Office on Homelessness.⁸

² Section 420.6015, F.S.

³ “Very-low-income persons” means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

⁴ “Low-income persons” means one or more persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the person or family resides, whichever is greater.

⁵ “Moderate-income persons” means one or more persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or within the county in which the household is located, whichever is greater.

⁶ Chapter 86-192, Laws of Fla., Part VI, was subsequently renamed the “Affordable Housing Planning and Community Assistance Act.” Chapter 92-317, Laws of Fla.

⁷ Section 420.622(1), F.S.

⁸ *Id.*

Local Coalitions for the Homeless

DCF is required to establish local coalitions to plan, network, coordinate, and monitor the delivery of services to the homeless.⁹ Groups and organizations provided the opportunity to participate in such coalitions include:

- Organizations and agencies providing mental health and substance abuse services;
- County health departments and community health centers;
- Organizations and agencies providing food, shelter, or other services targeted to the homeless;
- Local law enforcement agencies;
- Local workforce development boards;
- County and municipal governments;
- Local public housing authorities;
- Local school districts;
- Local organizations and agencies serving specific subgroups of the homeless population such as veterans, victims of domestic violence, persons with HIV/AIDS, and runaway youth; and
- Local community-based care alliances.¹⁰

Continuum of Care

A local coalition serves as the lead agency for the local homeless assistance continuum of care.¹¹ A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.¹² The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions.¹³

DCF interacts with the state's 28 CoCs through the State Office on Homelessness, which serves as the state's central point of contact on homelessness. The State Office on Homelessness has designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The State Office on Homelessness has made these designations in consultation with the local homeless coalitions and the Florida offices of the federal Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes the community eligible to compete for the state's Challenge Grants and Homeless Housing Assistance Grants.¹⁴

⁹ Section 420.623, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 420.624, F.S.

¹³ *Id.*

¹⁴ Florida Department of Children and Families, *Lead Agencies*, available at: <http://www.myflfamilies.com/service-programs/homelessness/lead-agencies> (last visited March 15, 2019).

Challenge Grants

The State Office on Homelessness is authorized to accept and administer moneys appropriated to it to provide Challenge Grants annually to designated lead agencies of homeless assistance CoCs.¹⁵ The State Office on Homelessness may award grants in an amount of up to \$500,000 per lead agency.¹⁶ A lead agency may spend a maximum of 8 percent of its funding on administrative costs. To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated area.¹⁷ There is no dedicated revenue for these grants which in the past have been funded by the Sadowski State and Local Housing Trust Funds, general revenue, and state trust funds.

Pursuant to s. 420.624, F.S., the DCF provides funding for local homeless assistance CoC, which is a framework for providing an array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons and persons at risk of becoming homeless.

In 2017, the Collier homeless coalition used the challenge grant to help the Shelter for Abused Women & Children with staffing of two case managers who work in outreach and transitional housing, and the remainder of the funds provided emergency rental or utility assistance to nearly 89 adults and 129 children.¹⁸ The Volusia/Flagler coalition have utilized challenge grant funding to help lower-income residents pay rent following job losses, car accidents, and other costly expenses.¹⁹ The Tampa-Hillsborough Homeless Initiative has used challenge grant money to establish a financial incentive program for developers, landlords, and property owners which has been successful at reducing levels of homelessness throughout Hillsborough County.²⁰

Rapid ReHousing

Rapid ReHousing is a model for providing housing for individuals and families who are homeless. The model places a priority on moving a family or individual experiencing homelessness into permanent housing as quickly as possible, hopefully within 30 days of a client becoming homeless and entering a program. While originally focused primarily on people experiencing homelessness due to short-term financial crises, programs across the country have begun to assist individuals and families who are traditionally perceived as more difficult to serve. This includes people with limited or no income, survivors of domestic violence, and those with substance abuse issues. Although the duration of financial assistance may vary, many programs

¹⁵ “Section 420.621(1), F.S., defines “Continuum of Care” to mean the community components needed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.”

¹⁶ Section 420.622, F.S.

¹⁷ *Id.*

¹⁸ <https://www.news-press.com/story/news/2018/07/04/gov-rick-scott-acts-resolve-homeless-grant-funding-southwest-florida-agencies/757846002/> (last visited March 15, 2019).

¹⁹ <https://www.gainesville.com/news/20180703/state-moves-to-fund-homeless-programs> (last visited March 15, 2019).

²⁰ The University of Tampa, *Cypress Landing Cost-Benefit Analysis Report*, (2015). On filed with the Senate Children, Families, and Elder Affairs Committee.

find that, on average, 4 to 6 months of financial assistance is sufficient to stably re-house a household.²¹

Since federal funding for rapid re-housing first became available in 2008, a number of communities, including Palm Beach County, Florida, that prioritized rapid re-housing as a response to homelessness have seen decreases in the amount of time that households spend homeless, less recidivism, and improved permanent housing outcomes relative to other available interventions.²²

There are three core components of rapid re-housing: housing identification, rent and move-in assistance (financial), and rapid re-housing case management and services. While all three components are present and available in effective rapid re-housing programs, there are instances where the components are provided by different entities or agencies, or where a household does not utilize all three.²³ A key element of rapid re-housing is the “Housing First” philosophy, which offers housing without preconditions such as employment, income, lack of a criminal background, or sobriety. If issues such as these need to be addressed, the household can address them most effectively once they are in housing.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 201.15, F.S., requiring that \$10 million of all document stamp tax money collected annually by the state be dedicated to funding the Grants and Donations Trust Fund for the challenge grant program within DCF.

Section 2 amends s. 420.621, F.S., modifying the definition of ‘continuum of care’ to mean a group organized to carry out responsibilities imposed under ch. 420, F.S., to coordinate, plan, and pursue ending homelessness in a designated catchment area. The bill provides that a CoC should be comprised of local community organizations to the extent that they are represented within the catchment area and available to participate.

The bill defines ‘continuum of care lead agency’ or ‘continuum of care collaborative applicant’ as the organization designated by a CoC pursuant to s. 420.6225, F.S.

The bill also redefines ‘homeless’ to mean either:

- an individual or family who lacks a fixed, regular, and adequate nighttime residence as defined under ‘homeless’ in federal statute;
- an individual or family who will immediately lose their primary nighttime residence as defined under ‘homeless’ in federal statute; or

²¹ National Alliance to End Homelessness, *Rapid Re-Housing: A History and Core Components*, (2014), available at: <http://www.endhomelessness.org/library/entry/rapid-re-housing-a-history-and-core-components> (last visited March 15, 2019).

²² *Id.*

²³ *Id.*

²⁴ The Florida Legislature expressed the intent to encourage homeless continuums of care to adopt the Housing First approach to ending homelessness for individuals and families in 2009. See s. 420.6275, F.S.

Section 3 amends s. 420.622, F.S., adding one member of the FHFC and the Secretary of the Department of Elder Affairs, or his or her designee, to the Council on Homelessness. The bill provides that members of the council are encouraged to have experience in the administration or provision of resources, services, or housing that addresses the needs of persons experiencing homelessness.

The bill replaces the term ‘regionally developed plans’ with the term ‘local continuum of care plans’ to bring state statute in line with federal law. The bill also requires the State Office on Homelessness to collect, maintain, and make available information concerning persons who are homeless, including summary demographics information drawn from the local continuum of care Housing Inventory Chart required by HUD. The bill replaces all instances of the term ‘local homeless continuum of care’ and ‘local homeless assistance coalition’ with ‘continuum of care.’

The bill also revises the goals of the State Office on Homelessness to promote a federal policy agenda that is responsive to the needs of those who are homeless or at risk of homelessness, rather than only the current homeless population. The bill modifies policy objectives to reflect an emphasis on ending homelessness in the state, as opposed to meeting the needs of the homeless.

The bill increases the amount of funds available to each CoC for challenge grants from \$500,000 to \$750,000 per continuum of care lead agency, and requires each CoC lead agency to document the commitment of local government or private organizations to provide matching funds or in-kind support in an amount equal to 25 percent of the grant requested.

Section 4 creates s. 420.6225, to provide that the purpose of a CoC is to coordinate community efforts to prevent and end homelessness in its catchment area. The bill requires each CoC to designate a collaborative applicant that is responsible for submitting a CoC funding application for the designated catchment area to HUD. The bill provides that the collaborative applicant shall serve as the point of contact to the State Office on Homelessness. The bill also requires CoC catchment areas to be designated and revised as necessary by the State Office on Homelessness, and the catchment areas must be consistent with the CoC catchment areas recognized by HUD. The bill provides that the State Office on Homelessness shall recognize only one CoC lead agency for each catchment area.

The bill requires each CoC to create a ‘continuum of care plan,’ which must include outreach to unsheltered individuals and families, a coordinated entry system for services, identification of emergency shelters, identification of permanent supportive housing, rapid rehousing, and an ongoing planning mechanism to homelessness for all subpopulations of persons experiencing homelessness.

The bill also requires CoCs to promote participation by all interested individuals and organizations and may not exclude anyone on the basis of race, color, national origin, sex, handicap, familial status, or religion. The bill also provides for coordination of these individuals and organizations, to the extent possible, with other mainstream health and social services.

Section 5 creates s. 420.6227, F.S., to create a new version of the grant-in-aid program already existing under current law in s. 420.625, F.S. The bill replaces references to ‘local agencies’ with references to ‘continuums of care’ in order to bring the state grant-in-aid program language and

requirements in line with federal statutes and ultimately allow federal matching dollars to be drawn down more efficiently.

Section 6 repeals s. 420.623, F.S., relating to local coalitions for the homeless.

Section 7 repeals s. 420.624, F.S., relating to local homeless assistance continuums of care.

Section 8 repeals s. 420.625, F.S., relating to the grant-in-aid program.

Section 9 amends s. 420.626, F.S., making technical revisions to discharge guidelines for homelessness facilities and institutions.

Section 10 amends s. 420.6265, F.S., to revise legislative intent with respect to rapid rehousing. The bill provides that findings that rapid rehousing should employ temporary financial assistance for the purposes of both quickly moving families and individuals into permanent housing and using housing stabilization support services to help them remain stably housed. The bill also expands legislative intent to provide that rapid rehousing has proven to be a cost-effective approach to ending homelessness, and is demonstrably proven to be more cost-effective than alternative approaches.

Section 11 amends s. 420.6275, F.S., to revise legislative intent with respect to the housing first methodology. The bill provides findings that housing first is a cost-effective approach to ending homelessness and reducing the length of time of homelessness for many individuals and families. The bill also provides legislative intent to emphasize maintaining stable housing under the housing first approach.

Section 12 amends s. 420.507, F.S., to correct two cross references.

Section 13 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will direct \$10 million annually from the Sadowski State and Local Housing Trust Funds to the challenge grants.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will reduce the funding available in the Sadowski State and Local Housing Trust Funds. Challenge grants totaled \$4.1 million statewide for fiscal year 2018-2019.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 201.15, 420.621, 420.622, 420.626, 420.6265, 420.6275, and 420.507 of the Florida Statutes.

This bill creates sections 420.6225 and 420.6227 of the Florida Statutes.

This bill repeals sections 420.623, 420.624, and 420.625 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 25, 2019:

- The CS removes the ability of the Florida Housing Finance Corporation to add additional populations to the definition of homelessness.

²⁵ Specific Appropriation 345, General Appropriations Act, Chapter 2018-9, Laws of Florida.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



371296

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Book)
recommended the following:

Senate Amendment

Delete lines 219 - 220
and insert:
~~applied to~~

By Senator Book

32-00548A-19

20191218__

1 A bill to be entitled
 2 An act relating to homelessness; amending s. 201.15,
 3 F.S.; requiring that certain taxes of a specified
 4 amount be transferred annually to the Grants and
 5 Donations Trust Fund within the Department of Children
 6 and Families for the purpose of funding challenge
 7 grants; amending s. 420.621, F.S.; revising, adding,
 8 and deleting defined terms; amending s. 420.622, F.S.;
 9 increasing the number of members on the Council on
 10 Homelessness to include a representative of the
 11 Florida Housing Coalition and the Secretary of the
 12 Department of Elder Affairs or his or her designee;
 13 providing that appointed council members are
 14 encouraged to have certain experience; revising the
 15 duties of the State Office on Homelessness; revising
 16 requirements for the state's system of homeless
 17 programs; requiring entities that receive state
 18 funding to provide summary aggregated data to assist
 19 the council in providing certain information; removing
 20 the requirement that the office have the concurrence
 21 of the council to accept and administer moneys
 22 appropriated to it to provide certain annual challenge
 23 grants to continuums of care lead agencies; clarifying
 24 the source of such appropriation; increasing the
 25 maximum amount of grant awards per continuum of care
 26 lead agency; conforming provisions to changes made by
 27 the act; revising requirements for use of grant funds
 28 by continuum of care lead agencies; revising
 29 preference criteria for certain grants; increasing the

Page 1 of 29

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

32-00548A-19

20191218__

30 maximum percentage of its funding which a continuum of
 31 care lead agency may spend on administrative costs;
 32 requiring such agencies to submit a final report to
 33 the Department of Children and Families documenting
 34 certain outcomes achieved by grant-funded programs;
 35 removing the requirement that the office have the
 36 concurrence of the council to administer moneys given
 37 to it to provide homeless housing assistance grants
 38 annually to certain continuum of care lead agencies to
 39 acquire, construct, or rehabilitate permanent housing
 40 units for homeless persons; conforming a provision to
 41 changes made by the act; requiring grant applicants to
 42 be ranked competitively based on criteria determined
 43 by the office; deleting preference requirements;
 44 increasing the minimum number of years for which
 45 projects must reserve certain units acquired,
 46 constructed, or rehabilitated; increasing the maximum
 47 percentage of funds the office and each applicant may
 48 spend on administrative costs; revising certain
 49 performance measure requirements; authorizing, instead
 50 of requiring, the Department of Children and Families,
 51 with input from the council, to adopt rules relating
 52 to certain grants and related issues; revising
 53 requirements for an annual report the council must
 54 submit to the Governor, Legislature, and Secretary of
 55 Children and Families; authorizing the office to
 56 administer moneys appropriated to it for distribution
 57 among certain designated continuum of care lead
 58 agencies and entities; creating s. 420.6225, F.S.;

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59 specifying the purpose of a continuum of care;
 60 requiring each continuum of care, pursuant to federal
 61 law, to designate a collaborative applicant that is
 62 responsible for submitting the continuum of care
 63 funding application for the designated catchment area
 64 to the United States Department of Housing and Urban
 65 Development; providing requirements for such
 66 designated collaborative applicants; authorizing the
 67 applicant to be referred to as the continuum of care
 68 lead agency; providing requirements for continuum of
 69 care catchment areas and lead agencies; requiring that
 70 each continuum of care create a continuum of care plan
 71 for specified purposes; specifying requirements for
 72 such plans; requiring continuums of care to promote
 73 participation by all interested individuals and
 74 organizations, subject to certain requirements;
 75 creating s. 420.6227, F.S.; providing legislative
 76 findings and program purpose; establishing a grant-in-
 77 aid program to help continuums of care prevent and end
 78 homelessness, which may include any aspect of the
 79 local continuum of care plan; requiring continuums of
 80 care to submit an application for grant-in-aid funds
 81 to the office for review; requiring the office to
 82 develop guidelines for the development, evaluation,
 83 and approval of spending plans; requiring grant-in-aid
 84 funds for continuums of care to be administered by the
 85 office and awarded on a competitive basis; requiring
 86 the office to distribute such funds to local agencies
 87 to fund programs that are required by the local

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88 continuum of care plan, based on certain
 89 recommendations; limiting the percentage of the total
 90 state funds awarded under a spending plan which may be
 91 used by the continuum of care lead agency for staffing
 92 and administrative expenditures; requiring entities
 93 contracting with local agencies to provide services
 94 through certain financial assistance programs to
 95 provide a specified minimum percentage of the funding
 96 necessary for the support of project operations;
 97 authorizing in-kind contributions to be evaluated and
 98 counted as part or all of the required local funding,
 99 at the discretion of the office; repealing s. 420.623,
 100 F.S., relating to local coalitions for the homeless;
 101 repealing s. 420.624, F.S., relating to local homeless
 102 assistance continuums of care; repealing s. 420.625,
 103 F.S., relating to a grant-in-aid program; amending s.
 104 420.626, F.S.; revising procedures that certain
 105 facilities and institutions are encouraged to develop
 106 and implement to reduce the discharge of persons into
 107 homelessness when such persons are admitted or housed
 108 for a specified period at such facilities or
 109 institutions; amending s. 420.6265, F.S.; revising
 110 legislative findings and intent for Rapid ReHousing;
 111 revising the Rapid ReHousing methodology; amending s.
 112 420.6275, F.S.; revising legislative findings relating
 113 to Housing First; revising the Housing First
 114 methodology to reflect current practice; amending s.
 115 420.507, F.S.; conforming cross-references; providing
 116 an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 201.15, Florida Statutes, is amended, and subsection (5) of that section is republished, to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All

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taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(c) Eleven and twenty-four hundredths percent of the remainder in each fiscal year shall be paid into the State Treasury to the credit of the State Housing Trust Fund. Of such funds, the first \$35 million shall be transferred annually, subject to any distribution required under subsection (5), to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The next \$10 million shall be transferred annually, subject to any distribution required under subsection (5), to the Grants and Donations Trust Fund within the Department of Children and Families for the purpose of funding the challenge grants established in s. 420.622(4). The remainder shall be used as follows:

1. Half of that amount shall be used for the purposes for which the State Housing Trust Fund was created and exists by law.

2. Half of that amount shall be paid into the State Treasury to the credit of the Local Government Housing Trust Fund and used for the purposes for which the Local Government Housing Trust Fund was created and exists by law.

(5) Distributions to the State Housing Trust Fund pursuant to paragraphs (4)(c) and (d) must be sufficient to cover amounts required to be transferred to the Florida Affordable Housing Guarantee Program's annual debt service reserve and guarantee

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175 fund pursuant to s. 420.5092(6) (a) and (b) up to the amount
 176 required to be transferred to such reserve and fund based on the
 177 percentage distribution of documentary stamp tax revenues to the
 178 State Housing Trust Fund which is in effect in the 2004-2005
 179 fiscal year.

180 Section 2. Section 420.621, Florida Statutes, is amended to
 181 read:

182 420.621 Definitions.—As used in ss. 420.621-420.628, the
 183 term:

184 (1) "Continuum of care" means the group organized to carry
 185 out the responsibilities imposed under ss. 420.621-420.628 to
 186 coordinate, plan, and pursue ending homelessness in a designated
 187 catchment area. The group is composed of representatives from
 188 certain organizations, including, but not limited to, nonprofit
 189 homeless providers, victim service providers, faith-based
 190 organizations, governments, businesses, advocates, public
 191 housing agencies, school districts, social service providers,
 192 mental health agencies, hospitals, universities, affordable
 193 housing developers, law enforcement, organizations that serve
 194 homeless and formerly homeless veterans, and organizations that
 195 serve homeless and formerly homeless persons, to the extent that
 196 these organizations are represented within the designated
 197 catchment area and are available to participate the community
 198 components needed to organize and deliver housing and services
 199 to meet the specific needs of people who are homeless as they
 200 move to stable housing and maximum self-sufficiency. It includes
 201 action steps to end homelessness and prevent a return to
 202 homelessness.

203 (2) "Continuum of care lead agency" or "continuum of care

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204 collaborative applicant" means the organization designated by a
 205 continuum of care pursuant to s. 420.6225.

206 ~~(3)(2)~~ "Council on Homelessness" means the council created
 207 in s. 420.622.

208 ~~(4)(3)~~ "Department" means the Department of Children and
 209 Families.

210 ~~(4) "District" means a service district of the department,~~
 211 ~~as set forth in s. 20.19.~~

212 (5) "Homeless," means any of the following:

213 (a) An individual or family who lacks a fixed, regular, and
 214 adequate nighttime residence as defined under "homeless" in 24
 215 C.F.R. 578.3.

216 (b) An individual or family who will imminently lose their
 217 primary nighttime residence as defined under "homeless" in 24
 218 C.F.R. 578.3.

219 (c) Additional populations as may be defined in rules
 220 developed by the Florida Housing Finance Corporation applied to
 221 an individual, or "individual experiencing homelessness" means
 222 an individual who lacks a fixed, regular, and adequate nighttime
 223 residence and includes an individual who:

224 ~~(a) Is sharing the housing of other persons due to loss of~~
 225 ~~housing, economic hardship, or a similar reason;~~

226 ~~(b) Is living in a motel, hotel, travel trailer park, or~~
 227 ~~camping ground due to a lack of alternative adequate~~
 228 ~~accommodations;~~

229 ~~(c) Is living in an emergency or transitional shelter;~~

230 ~~(d) Has a primary nighttime residence that is a public or~~
 231 ~~private place not designed for, or ordinarily used as, a regular~~
 232 ~~sleeping accommodation for human beings;~~

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233 ~~(e) Is living in a car, park, public space, abandoned~~
 234 ~~building, bus or train station, or similar setting; or~~
 235 ~~(f) Is a migratory individual who qualifies as homeless~~
 236 ~~because he or she is living in circumstances described in~~
 237 ~~paragraphs (a) (e).~~

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239 ~~The terms do not refer to an individual imprisoned pursuant to~~
 240 ~~state or federal law or to individuals or families who are~~
 241 ~~sharing housing due to cultural preferences, voluntary~~
 242 ~~arrangements, or traditional networks of support. The terms~~
 243 ~~include an individual who has been released from jail, prison,~~
 244 ~~the juvenile justice system, the child welfare system, a mental~~
 245 ~~health and developmental disability facility, a residential~~
 246 ~~addiction treatment program, or a hospital, for whom no~~
 247 ~~subsequent residence has been identified, and who lacks the~~
 248 ~~resources and support network to obtain housing.~~

249 ~~(6) "Local coalition for the homeless" means a coalition~~
 250 ~~established pursuant to s. 420.623.~~

251 ~~(7) "New and temporary homeless" means individuals or~~
 252 ~~families who are homeless due to societal factors.~~

253 ~~(6)(8)~~ "State Office on Homelessness" means the state
 254 office created in s. 420.622.

255 Section 3. Section 420.622, Florida Statutes, is amended to
 256 read:
 257 420.622 State Office on Homelessness; Council on
 258 Homelessness.—

259 (1) The State Office on Homelessness is created within the
 260 Department of Children and Families to provide interagency,
 261 council, and other related coordination on issues relating to

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262 homelessness.

263 (2) The Council on Homelessness is created to consist of 19
 264 ~~17~~ representatives of public and private agencies who shall
 265 develop policy and advise the State Office on Homelessness. The
 266 council members shall be: the Secretary of Children and
 267 Families, or his or her designee; the executive director of the
 268 Department of Economic Opportunity, or his or her designee, who
 269 shall advise the council on issues related to rural development;
 270 the State Surgeon General, or his or her designee; the Executive
 271 Director of Veterans' Affairs, or his or her designee; the
 272 Secretary of Corrections, or his or her designee; the Secretary
 273 of Health Care Administration, or his or her designee; the
 274 Commissioner of Education, or his or her designee; the Director
 275 of CareerSource Florida, Inc., or his or her designee; one
 276 representative of the Florida Association of Counties; one
 277 representative of the Florida League of Cities; one
 278 representative of the Florida Supportive Housing Coalition; one
 279 representative of the Florida Housing Coalition; the Executive
 280 Director of the Florida Housing Finance Corporation, or his or
 281 her designee; one representative of the Florida Coalition for
 282 the Homeless; the Secretary of the Department of Elder Affairs,
 283 or his or her designee; and four members appointed by the
 284 Governor. The council members shall be nonpaid volunteers and
 285 shall be reimbursed only for travel expenses. The appointed
 286 members of the council shall be appointed to staggered 2-year
 287 terms, and are encouraged to have experience in the
 288 administration or provision of resources, services, or housing
 289 that addresses the needs of persons experiencing homelessness.
 290 The council shall meet at least four times per year. The

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291 importance of minority, gender, and geographic representation
 292 shall be considered in appointing members to the council.

293 (3) The State Office on Homelessness, pursuant to the
 294 policies set by the council and subject to the availability of
 295 funding, shall:

296 (a) Coordinate among state, local, and private agencies and
 297 providers to produce a statewide consolidated inventory for the
 298 state's entire system of homeless programs which incorporates
 299 local continuum of care plans regionally developed plans. Such
 300 programs include, but are not limited to:

301 1. Programs authorized under the McKinney-Vento Homeless
 302 Assistance Stewart B. McKinney Homeless Assistance Act of 1987,
 303 as amended by the Homeless Emergency Assistance and Rapid
 304 Transition to Housing (HEARTH) Act of 2009, 42 U.S.C. ss. 11302
 305 ss. 11371 et seq., and carried out under funds awarded to this
 306 state; and

307 2. Programs, components thereof, or activities that assist
 308 persons who are homeless or at risk for homelessness.

309 (b) Collect, maintain, and make available information
 310 concerning persons who are homeless ~~or at risk for homelessness,~~
 311 including summary demographics information drawn from the local
 312 continuum of care Homeless Management Information System or the
 313 annual Point-in-Time Count, current services and resources
 314 available and the local continuum of care Housing Inventory
 315 Chart required by the Department of Housing and Urban
 316 Development, the cost and availability of services and programs,
 317 and the met and unmet needs of this population. All entities
 318 that receive state funding must provide summary aggregated
 319 access to all data they maintain in summary form, with no

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320 individual identifying information, to assist the council in
 321 providing this information. The State Office on Homelessness, in
 322 consultation with the designated lead agencies for a ~~local~~
 323 ~~homeless~~ continuum of care and with the Council on Homelessness,
 324 shall develop a process by which summary data is collected ~~the~~
 325 ~~system and process of data collection~~ from all lead agencies for
 326 the purpose of analyzing trends and assessing impacts in the
 327 statewide homeless delivery system for delivering services to
 328 the homeless. ~~Any statewide homelessness survey and database~~
 329 ~~system must comply with all state and federal statutory and~~
 330 ~~regulatory confidentiality requirements.~~

331 (c) Annually evaluate state and continuum of care system
 332 programs local services and resources and develop a consolidated
 333 plan for addressing the needs of the homeless or those at risk
 334 for homelessness.

335 (d) Explore, compile, and disseminate information regarding
 336 public and private funding sources for state and local programs
 337 serving the homeless and provide technical assistance in
 338 applying for such funding.

339 (e) Monitor and provide recommendations for coordinating
 340 the activities and programs of local continuums of care
 341 ~~coalitions for the homeless~~ and promote the effectiveness of
 342 programs to prevent and end homelessness in the state addressing
 343 ~~the needs of the homeless.~~

344 (f) Provide technical assistance to facilitate efforts to
 345 support and strengthen establish, maintain, and expand local
 346 ~~homeless assistance~~ continuums of care.

347 (g) Develop and assist in the coordination of policies and
 348 procedures relating to the discharge or transfer from the care

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349 or custody of state-supported or state-regulated entities
350 persons who are homeless or at risk for homelessness.

351 (h) Spearhead outreach efforts for maximizing access by
352 people who are homeless or at risk for homelessness to state and
353 federal programs and resources.

354 (i) Promote a federal policy agenda that is responsive to
355 the needs of those who are homeless or at risk of homelessness
356 ~~the homeless population~~ in this state.

357 (j) Review reports on continuum of care system performance
358 ~~measures and Develop outcome and accountability measures and~~
359 ~~promote and~~ use such measures to evaluate program effectiveness
360 and make recommendations for improving current practices to work
361 toward ending homelessness in this state in order to best meet
362 the needs of the homeless.

363 (k) Formulate policies and legislative proposals aimed at
364 preventing and ending homelessness in this state to address more
365 ~~effectively the needs of the homeless~~ and coordinate the
366 implementation of state and federal legislative policies.

367 (l) Convene meetings and workshops of state and local
368 agencies, continuum of care local coalitions and programs, and
369 other stakeholders for the purpose of developing and reviewing
370 policies, services, activities, coordination, and funding of
371 efforts to end homelessness ~~meet the needs of the homeless.~~

372 (m) With the input of the continuum of care, conduct or
373 promote research on the effectiveness of current programs and
374 propose pilot projects aimed at ending homelessness improving
375 services.

376 (n) Serve as an advocate for issues relating to
377 homelessness.

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378 (o) Investigate ways to improve access to participation in
379 state funding and other programs for prevention and reduction
380 ~~alleviation~~ of homelessness to faith-based organizations and
381 collaborate and coordinate with faith-based organizations.

382 (4) The State Office on Homelessness, ~~with the concurrence~~
383 ~~of the Council on Homelessness~~, shall accept and administer
384 moneys appropriated to it pursuant to s. 201.15(4)(c) to provide
385 annual "challenge grants" to lead agencies of ~~homeless~~
386 ~~assistance~~ continuums of care designated by the State Office on
387 Homelessness pursuant to s. 420.6225 ~~s. 420-624~~. The department
388 shall establish varying levels of grant awards up to \$750,000
389 ~~\$500,000~~ per continuum of care lead agency. The department, in
390 consultation with the Council on Homelessness, shall specify a
391 grant award level in the notice of the solicitation of grant
392 applications.

393 (a) To qualify for the grant, a continuum of care lead
394 agency must develop and implement a local ~~homeless assistance~~
395 continuum of care plan for its designated catchment area. The
396 services and housing funded through the grant must be
397 implemented through the continuum of care's ~~eentinum of care~~
398 ~~plan must implement a~~ coordinated assessment or central intake
399 entry system as provided in s. 420.6225(5)(b) and must be
400 designed to screen, assess, and refer persons seeking assistance
401 to the appropriate housing intervention and service provider.
402 The continuum of care lead agency shall also document the
403 commitment of local government or private organizations to
404 provide matching funds or in-kind support in an amount equal to
405 25 percent of the grant requested. Expenditures of leveraged
406 funds or resources, including third-party cash or in-kind

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407 contributions, are authorized only for eligible activities
 408 carried out in connection with a committed on one project in
 409 which such funds or resources have not been used as leverage or
 410 match for any other project or program, and The expenditures
 411 must be certified through a written commitment.

412 (b) Preference must be given to those continuum of care
 413 lead agencies that have demonstrated the ability of their
 414 continuum of care to help households move out of homelessness
 415 ~~provide quality services to homeless persons and the ability to~~
 416 ~~leverage federal homeless-assistance funding under the Stewart~~
 417 ~~B. McKinney Act with local government funding or private funding~~
 418 ~~for the provision of services to homeless persons.~~

419 ~~(c) Preference must be given to lead agencies in catchment~~
 420 ~~areas with the greatest need for the provision of housing and~~
 421 ~~services to the homeless, relative to the population of the~~
 422 ~~catchment area.~~

423 (c)(d) The grant may be used to fund any of the housing,
 424 program, or service needs included in the local ~~homeless~~
 425 ~~assistance~~ continuum of care plan. The continuum of care lead
 426 agency may allocate the grant to programs, services, or housing
 427 providers that implement the local ~~homeless-assistance~~ continuum
 428 ~~of~~ care plan. The lead agency may provide subgrants to a local
 429 agency to implement programs or services or provide housing
 430 identified for funding in the lead agency's application to the
 431 department. A lead agency may spend a maximum of 10 ~~8~~ percent of
 432 its funding on administrative costs.

433 (d)(e) The continuum of care lead agency shall submit a
 434 final report to the department documenting the outcomes achieved
 435 by the grant-funded programs ~~grant~~ in enabling persons who are

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436 homeless to return to permanent housing, thereby ending such
 437 person's episode of homelessness.

438 (5) The State Office on Homelessness, ~~with the concurrence~~
 439 ~~of the Council on Homelessness,~~ may administer moneys given
 440 ~~appropriated~~ to it to provide homeless housing assistance grants
 441 annually to continuum of care lead agencies ~~for local homeless~~
 442 ~~assistance continuum of care,~~ as recognized by the State Office
 443 on Homelessness, to acquire, construct, or rehabilitate
 444 ~~transitional or~~ permanent housing units for homeless persons.
 445 These moneys shall consist of any sums that the state may
 446 appropriate, as well as money received from donations, gifts,
 447 bequests, or otherwise from any public or private source, which
 448 are intended to acquire, construct, or rehabilitate ~~transitional~~
 449 ~~or~~ permanent housing units for homeless persons.

450 (a) Grant applicants shall be ranked competitively based on
 451 criteria determined by the State Office on Homelessness.
 452 ~~Preference must be given to applicants who leverage additional~~
 453 ~~private funds and public funds, particularly federal funds~~
 454 ~~designated for the acquisition, construction, or rehabilitation~~
 455 ~~of transitional or permanent housing for homeless persons, who~~
 456 ~~acquire, build, or rehabilitate the greatest number of units, or~~
 457 ~~who acquire, build, or rehabilitate in catchment areas having~~
 458 ~~the greatest need for housing for the homeless relative to the~~
 459 ~~population of the catchment area.~~

460 (b) Funding for any particular project may not exceed
 461 \$750,000.

462 (c) Projects must reserve, for a minimum of 20 ~~10~~ years,
 463 the number of units acquired, constructed, or rehabilitated
 464 through homeless housing assistance grant funding to serve

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465 persons who are homeless at the time they assume tenancy.

466 (d) No more than two grants may be awarded annually in any
467 given ~~local homeless assistance~~ continuum of care catchment
468 area.

469 (e) A project may not be funded which is not included in
470 the local ~~homeless assistance~~ continuum of care plan, as
471 recognized by the State Office on Homelessness, for the
472 catchment area in which the project is located.

473 (f) The maximum percentage of funds that the State Office
474 on Homelessness and each applicant may spend on administrative
475 costs is 10 ~~5~~ percent.

476 (6) The State Office on Homelessness, in conjunction with
477 the Council on Homelessness, shall establish performance
478 measures related to state funding provided through the State
479 Office on Homelessness and utilize those grant-related measures
480 to and specific objectives by which it may evaluate the
481 performance and outcomes of continuum of care lead agencies that
482 receive state grant funds. Challenge Grants made through the
483 State Office on Homelessness shall be distributed to lead
484 agencies based on their overall performance and their
485 achievement of specified objectives. Each lead agency for which
486 grants are made under this section shall provide the State
487 Office on Homelessness a thorough evaluation of the
488 effectiveness of the program in achieving its stated purpose. In
489 evaluating the performance of the lead agencies, the State
490 Office on Homelessness shall base its criteria upon the program
491 objectives, goals, and priorities that were set forth by the
492 lead agencies in their proposals for funding. Such criteria may
493 include, but are not limited to, the number of persons or

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494 ~~households that are no longer homeless, the rate of recidivism~~
495 ~~to homelessness, and the number of persons who obtain gainful~~
496 ~~employment.~~

497 (7) The State Office on Homelessness must monitor the
498 challenge grants and homeless housing assistance grants to
499 ensure proper expenditure of funds and compliance with the
500 conditions of the applicant's contract.

501 (8) The Department of Children and Families, with input
502 from the Council on Homelessness, ~~may must~~ adopt rules relating
503 to the challenge grants and the homeless housing assistance
504 grants and related issues consistent with the purposes of this
505 section.

506 (9) The council shall, by June 30 of each year, provide to
507 the Governor, the Legislature, and the Secretary of Children and
508 Families a report summarizing the extent of homelessness in the
509 state and the council's recommendations for ending ~~reducing~~
510 homelessness in this state.

511 (10) The State Office on Homelessness may administer moneys
512 appropriated to it for distribution among the ~~28 local homeless~~
513 ~~continuum of care~~ continuum of care lead agencies and entities
514 funded in the 2017-2018 state fiscal year which are designated
515 by the office as local coalitions for the homeless designated by
516 the Department of Children and Families.

517 Section 4. Section 420.6225, Florida Statutes, is created
518 to read:

519 420.6225 Continuum of care.—

520 (1) The purpose of a continuum of care, as defined in s.
521 420.621, is to coordinate community efforts to prevent and end
522 homelessness in its catchment area designated as provided in

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523 subsection (3) and to fulfill the responsibilities set forth in
524 this chapter.

525 (2) Pursuant to the federal HEARTH Act of 2009, each
526 continuum of care is required to designate a collaborative
527 applicant that is responsible for submitting the continuum of
528 care funding application for the designated catchment area to
529 the United States Department of Housing and Urban Development.
530 The continuum of care designated collaborative applicant shall
531 serve as the point of contact to the State Office on
532 Homelessness, is accountable for representations made in the
533 application, and, in carrying out responsibilities under this
534 chapter, may be referred to as the continuum of care lead
535 agency.

536 (3) Continuum of care catchment areas must be designated
537 and revised as necessary by the State Office on Homelessness and
538 must be consistent with the continuum of care catchment areas
539 recognized by the United States Department of Housing and Urban
540 Development for the purposes of awarding federal homeless
541 assistance funding for continuum of care programs.

542 (4) The State Office on Homelessness shall recognize only
543 one continuum of care lead agency for each designated catchment
544 area. Such continuum of care lead agency must be consistent with
545 the continuum of care collaborative applicant designation
546 recognized by the United States Department of Housing and Urban
547 Development in the awarding of federal funds to continuums of
548 care.

549 (5) Each continuum of care shall create a continuum of care
550 plan, the purpose of which is to implement an effective and
551 efficient housing crisis response system to prevent and end

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552 homelessness in the continuum of care catchment area. A
553 continuum of care plan must include all of the following
554 components:

555 (a) Outreach to unsheltered individuals and families to
556 link them with appropriate housing interventions.

557 (b) A coordinated entry system, compliant with the
558 requirements of the federal HEARTH Act of 2009, which is
559 designed to coordinate intake, utilize common assessment tools,
560 prioritize households for housing interventions, and refer
561 households to the appropriate housing intervention.

562 (c) Emergency shelter, designed to provide safe temporary
563 shelter while the household is in the process of obtaining
564 permanent housing.

565 (d) Supportive services, designed to maximize housing
566 stability once the household is in permanent housing.

567 (e) Permanent supportive housing, designed to provide long-
568 term affordable housing and support services to persons with
569 disabilities who are moving out of homelessness.

570 (f) Rapid ReHousing, as specified in s. 420.6265.

571 (g) Permanent housing, including linkages to affordable
572 housing, subsidized housing, long-term rent assistance, housing
573 vouchers, and mainstream private sector housing.

574 (h) An ongoing planning mechanism to end homelessness for
575 all subpopulations of persons experiencing homelessness.

576 (6) Continuums of care must promote participation by all
577 interested individuals and organizations and may not exclude
578 individuals and organizations on the basis of race, color,
579 national origin, sex, handicap, familial status, or religion.
580 Faith-based organizations, local governments, and persons who

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 581 have experienced homelessness are encouraged to participate. To
 582 the extent possible, these individuals and organizations must be
 583 coordinated and integrated with other mainstream health, social
 584 services, and employment programs for which homeless populations
 585 may be eligible, including, but not limited to, Medicaid, the
 586 State Children's Health Insurance Program, the Temporary
 587 Assistance for Needy Families Program, the Food Assistance
 588 Program, and services funded through the Mental Health and
 589 Substance Abuse Block Grant, the Workforce Innovation and
 590 Opportunity Act, and the welfare-to-work grant program.

Section 5. Section 420.6227, Florida Statutes, is created
 to read:

420.6227 Grant-in-aid program.—

(1) LEGISLATIVE FINDINGS.—The Legislature hereby finds and
 595 declares that many services for households experiencing
 596 homelessness have been provided by local communities through
 597 voluntary private agencies and religious organizations and that
 598 those resources have not been sufficient to prevent and end
 599 homelessness in Florida. The Legislature recognizes that the
 600 level of need and types of problems associated with homelessness
 601 may vary from community to community, due to the diversity and
 602 geographic distribution of the homeless population and the
 603 resulting differing needs of particular communities.

(2) PURPOSE.—The principal purpose of the grant-in-aid
 605 program is to provide needed assistance to continuums of care to
 606 enable them to do all of the following:

(a) Assist persons in their communities who have become, or
 608 may likely become, homeless.

(b) Help homeless households move to permanent housing as

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 610 quickly as possible.

(3) ESTABLISHMENT.—There is hereby established a state
 612 grant-in-aid program to help continuums of care prevent and end
 613 homelessness, which may include any aspect of the local
 614 continuum of care plan, as described in s. 420.6225.

(4) APPLICATION PROCEDURE.—Continuums of care that intend
 616 to apply for the grant-in-aid program must submit an application
 617 for grant-in-aid funds to the State Office on Homelessness for
 618 review.

(5) SPENDING PLANS.—The State Office on Homelessness shall
 620 develop guidelines for the development, evaluation, and approval
 621 of spending plans that are created by local continuum of care
 622 lead agencies.

(6) ALLOCATION OF GRANT FUNDS.—The State Office on
 624 Homelessness shall administer state grant-in-aid funds for
 625 continuums of care, which must be awarded on a competitive
 626 basis.

(7) DISTRIBUTION TO LOCAL AGENCIES.—The State Office on
 628 Homelessness shall distribute funds awarded under subsection (6)
 629 to local agencies to fund programs that are required by the
 630 local continuum of care plan, as described in s. 420.6225 and
 631 provided in subsection (3), based upon the recommendations of
 632 the local continuum of care lead agencies, in accordance with
 633 spending plans that are developed by the lead agencies and
 634 approved by the office. Not more than 10 percent of the total
 635 state funds awarded under a spending plan may be used by the
 636 continuum of care lead agency for staffing and administrative
 637 expenditures.

(8) LOCAL MATCHING FUNDS.—If an entity contracts with local

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639 agencies to provide services and receives financial assistance
 640 obtained under this section, the entity must provide a minimum
 641 of 25 percent of the funding necessary for the support of
 642 project operations. In-kind contributions, including, but not
 643 limited to, materials, commodities, transportation, office
 644 space, other types of facilities, or personal services may be
 645 evaluated and counted as part or all of the required local
 646 funding, at the discretion of the State Office on Homelessness.

647 Section 6. Section 420.623, Florida Statutes, is repealed.

648 Section 7. Section 420.624, Florida Statutes, is repealed.

649 Section 8. Section 420.625, Florida Statutes, is repealed.

650 Section 9. Subsection (3) of section 420.626, Florida
 651 Statutes, is amended, and subsection (2) of that section is
 652 republished, to read:

653 420.626 Homelessness; discharge guidelines.—

654 (2) The following facilities and institutions are
 655 encouraged to develop and implement procedures designed to
 656 reduce the discharge of persons into homelessness when such
 657 persons are admitted or housed for more than 24 hours at such
 658 facilities or institutions: hospitals and inpatient medical
 659 facilities; crisis stabilization units; residential treatment
 660 facilities; assisted living facilities; and detoxification
 661 centers.

662 (3) The procedures should include all of the following:

663 (a) Development and implementation of a screening process
 664 or other mechanism for identifying persons to be discharged from
 665 the facility or institution who are at considerable risk for
 666 homelessness or face some imminent threat to health and safety
 667 upon discharge.†

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668 (b) Development and implementation of a discharge plan
 669 addressing how identified persons will secure housing and other
 670 needed care and support upon discharge.†

671 (c) ~~Communication with Assessment of the capabilities of~~
 672 the entities to whom identified persons may potentially be
 673 discharged to determine their capability to serve such persons
 674 and their acceptance of such discharge into their programs, and
 675 selection of the entity determined to be best equipped to
 676 provide or facilitate the provision of suitable care and
 677 support.†

678 (d) Coordination of effort and sharing of information with
 679 entities that are expected to bear the responsibility for
 680 providing care or support to identified persons upon discharge.†
 681 ~~and~~

682 (e) Provision of sufficient medication, medical equipment
 683 and supplies, clothing, transportation, and other basic
 684 resources necessary to assure that the health and well-being of
 685 identified persons are not jeopardized upon their discharge.

686 Section 10. Section 420.6265, Florida Statutes, is amended
 687 to read:

688 420.6265 Rapid ReHousing.—

689 (1) LEGISLATIVE FINDINGS AND INTENT.—

690 (a) The Legislature finds that Rapid ReHousing is a
 691 strategy of using temporary financial assistance ~~and case~~
 692 ~~management~~ to quickly move an individual or family out of
 693 homelessness and into permanent housing, and using housing
 694 stabilization support services to help them remain stably
 695 housed.

696 (b) The Legislature also finds that public and private

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697 solutions to homelessness in the past have focused on providing
 698 individuals and families who are experiencing homelessness with
 699 emergency shelter, transitional housing, or a combination of
 700 both. While emergency shelter and transitional housing programs
 701 may provide critical access to services for individuals and
 702 families in crisis, the programs often fail to address permanent
 703 housing their long-term needs and may unnecessarily extend their
 704 episodes of homelessness.

705 (c) The Legislature further finds that most households
 706 become homeless as a result of a financial crisis that prevents
 707 individuals and families from paying rent or a domestic conflict
 708 that results in one member being ejected or leaving without
 709 resources or a plan for housing.

710 (d) The Legislature further finds that Rapid ReHousing has
 711 proven to be a cost-effective is an alternative approach to
 712 ending homelessness which reduces to the current system of
 713 emergency shelter or transitional housing which tends to reduce
 714 the length of time that a person is homeless and is demonstrably
 715 has proven to be more cost effective than alternative
 716 approaches.

717 (e) It is therefore the intent of the Legislature to
 718 encourage ~~homeless~~ continuums of care to adopt the Rapid
 719 ReHousing approach to ending preventing homelessness for
 720 individuals and families who do not require the intensive
 721 intense level of supports provided in the permanent supportive
 722 housing model.

723 (2) RAPID REHOUSING METHODOLOGY.—

724 (a) The Rapid ReHousing response to homelessness differs
 725 from traditional approaches to addressing homelessness by

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726 focusing on each individual's or family's barriers to housing.
 727 By using this approach, communities can significantly reduce the
 728 amount of time that individuals and families are homeless and
 729 prevent further episodes of homelessness.

730 (b) In Rapid ReHousing, when an individual or a family is
 731 identified as being homeless, the individual or family is
 732 assessed and prioritized for housing through the continuum of
 733 care's coordinated entry system, temporary assistance is
 734 provided to allow the individual or family to obtain permanent
 735 housing as quickly as possible, and necessary, if needed,
 736 assistance is provided to allow the individual or family to
 737 retain housing.

738 (c) The objective of Rapid ReHousing is to provide
 739 assistance for as short a term as possible so that the
 740 individual or family receiving assistance attains stability and
 741 integration into the community as quickly as possible ~~does not~~
 742 ~~develop a dependency on the assistance.~~

743 Section 11. Section 420.6275, Florida Statutes, is amended
 744 to read:

745 420.6275 Housing First.—

746 (1) LEGISLATIVE FINDINGS AND INTENT.—

747 (a) The Legislature finds that many communities plan to
 748 manage homelessness rather than ~~plan~~ to end it.

749 (b) The Legislature also finds that for nearly most of the
 750 ~~past~~ two decades, public and private solutions to homelessness
 751 ~~have~~ focused on providing individuals and families who were are
 752 experiencing homelessness with emergency shelter, transitional
 753 housing, or a combination of both. This strategy failed to
 754 recognize that, while emergency shelter programs may provide

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754 critical access to services for individuals and families in
755 crisis, they often fail to address their long-term needs.

756 (c) The Legislature further finds that Housing First is a
757 cost-effective an alternative approach to the current system of
758 emergency shelter or transitional housing which tends to ending
759 homelessness and reducing reduce the length of time of
760 homelessness for many individuals and families and has proven to
761 be cost-effective.

762 (d) It is therefore the intent of the Legislature to
763 encourage ~~homeless~~ continuums of care to adopt the Housing First
764 approach to ending homelessness for individuals and families.

765 (2) HOUSING FIRST METHODOLOGY.—

766 (a) The Housing First approach to homelessness provides
767 permanent ~~differs from traditional approaches by providing~~
768 housing assistance, followed by case management, and support
769 services responsive to individual or family needs once after
770 housing is obtained. By using this approach ~~when appropriate,~~
771 communities can significantly reduce the amount of time that
772 individuals and families are homeless and prevent further
773 episodes of homelessness. Housing First emphasizes that social
774 services provided to enhance individual and family well-being
775 can be more effective when people are in their own home, and:

- 776 1. The housing is not time-limited.
- 777 2. The housing is not contingent on compliance with
778 services. Instead, participants must comply with a standard
779 lease agreement.

780 3. Individuals and families ~~and~~ are provided with
781 individualized the services and support ~~that are~~ necessary to
782 help them maintain stable housing ~~do so successfully.~~

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784 ~~3. A background check and any rehabilitation necessary to~~
785 ~~combat an addiction related to alcoholism or substance abuse has~~
786 ~~been completed by the individual for whom assistance or support~~
787 ~~services are provided.~~

788 (b) The Housing First approach addresses the societal
789 causes of homelessness and advocates for the immediate return of
790 individuals and families into housing and communities. Housing
791 First links affordable housing with community-based social
792 service and health care organizations ~~Housing First provides a~~
793 ~~critical link between the emergency and transitional housing~~
794 ~~system and community-based social service, educational, and~~
795 ~~health care organizations~~ and consists of four components:

- 796 1. Crisis intervention and short-term stabilization.
- 797 2. Screening, intake, and needs assessment.
- 798 3. Provision of housing resources.
- 799 4. Provision of case management.

800 Section 12. Paragraph (d) of subsection (22) of section
801 420.507, Florida Statutes, is amended to read:

802 420.507 Powers of the corporation.—The corporation shall
803 have all the powers necessary or convenient to carry out and
804 effectuate the purposes and provisions of this part, including
805 the following powers which are in addition to all other powers
806 granted by other provisions of this part:

807 (22) To develop and administer the State Apartment
808 Incentive Loan Program. In developing and administering that
809 program, the corporation may:

810 (d) In counties or rural areas of counties that do not have
811 existing units set aside for homeless persons, forgive
812 indebtedness for loans provided to create permanent rental

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813 housing units for persons who are homeless, as defined in s.
814 420.621 ~~s. 420.621(5)~~, or for persons residing in time-limited
815 transitional housing or institutions as a result of a lack of
816 permanent, affordable housing. Such developments must be
817 supported by a ~~local homeless assistance~~ continuum of care
818 developed under s. 420.6225 ~~s. 420.624~~, be developed by
819 nonprofit applicants, be small properties as defined by
820 corporation rule, and be a project in the local housing
821 assistance continuum of care plan recognized by the State Office
822 on Homelessness.

823 Section 13. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 1218

Bill Number (if applicable)

Topic

Name Christine Hanavan, MSW

Job Title Community Organizer

Address 208 Arrowhead Ct

Street

Winter Springs

City

FL

State

32708

Zip

Phone 1-877-776-2004 x106

Email christine@swapbehindbars.org

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing SWOP Behind Bars

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19 Meeting Date

SB 1218 Bill Number (if applicable)

Topic Homelessness

Amendment Barcode (if applicable)

Name Robert Beck

Job Title Partner

Address 150 S. Monroe Street

Phone 850 766 1410

Tallah, FL 32301 City State Zip

Email Robert@pinpointresults.com

Speaking: [] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing FLORIDA Coalition for the Homeless

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1218

Bill Number (if applicable)

Topic Homelessness

Amendment Barcode (if applicable)

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave, Main Library, 8th FL Phone 954-253-7320

Street

Ft. Lauderdale FL 33301

City

State

Zip

Email dsainvil@broward.org

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing Broward County Bd. of County Cmsrs

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1218
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS	3/18/2019 Amendment 371296					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1466

INTRODUCER: Senator Gibson

SUBJECT: Protection for Vulnerable Investors

DATE: March 22, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.			BI	
3.			RC	

I. Summary:

SB 1466 addresses financial exploitation of vulnerable adults and the elderly. The bill adds financial securities dealers and investment advisers to the list of specified persons to report abuse or exploitation to the central abuse hotline. The bill creates a new section of statute in chapter 517 relating to securities transactions to allow securities dealers and investment advisers to place a temporary hold on financial transactions when exploitation of a vulnerable adult or elderly persons is suspected. The dealer or adviser must notify the Office of Financial Regulation of the hold.

The bill is not expected to have a fiscal impact to the state and has an effective date of July 1, 2019.

II. Present Situation:

Adult and Elder Abuse

The Adult Protective Services Act (chapter 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to harm a vulnerable adult's physical, mental, or emotional health. Abuse includes acts as well omissions. A vulnerable adult is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.¹

Section 415.1034, F.S., requires anyone who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to immediately report

¹ Section 415.102, F.S.

suspected abuse to the central abuse hotline. The central abuse hotline is maintained by the Department of Children and Families (department). Once reported, the department must begin a protective investigation within 24 hours.² If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.³

Financial exploitation occurs when a person misuses or takes the assets of a vulnerable adult for his or her own personal benefit. This frequently occurs without the knowledge or consent of a senior or disabled adult, depriving him or her of financial resources for personal needs. Assets are commonly taken by deception, false pretenses, coercion, harassment, duress and threats. These are commonly reported forms of financial exploitation reported to Adult Protective Services:⁴

- Theft - involves taking assets without knowledge, consent or authorization and may include taking of cash, valuables, medications other personal property.
- Fraud - involves acts of dishonestly by persons entrusted to manage assets and may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate - involves unauthorized sales, transfers or changes to property, and may include unauthorized or invalid changes to estate documents.
- Contractor - includes building contractors or handymen who receive payment for building repairs, but fail to initiate or complete project and may include invalid liens by contractors.
- Lottery scams - involves payments to collect unclaimed property or “prizes” from lotteries or sweepstakes.
- Electronic - includes “phishing” e-mail messages to trick persons into unwittingly surrendering bank passwords and may include faxes, wire transfers, telephonic communications.
- Mortgage - includes financial products which are unaffordable or out-of-compliance with regulatory requirements and may include loans issued against property by unauthorized parties.
- Investment - includes investments made without knowledge or consent and may include high-fee funds (front or back-loaded) or excessive trading activity to generate commissions for financial advisors.
- Insurance - involves sales of inappropriate products, such as a thirty-year annuity for a very elderly person and may include unauthorized trading of life insurance policies.

² Section 415.104, F.S.

³ *Id.*

⁴ National Adult Protective Services Association website, see <http://www.napsa-now.org/get-informed/what-is-financial-exploitation/> last visited March 19, 2019.

Regulation of Securities and Investments

The Division of Securities within the Office of Financial Regulation, Department of Financial Services, protects the investing public from unlawful securities activities through regulating the sale of securities and investment advice from Florida securities dealers, issuer dealers, and investment advisers, branch offices, and individuals affiliated with these firms.⁵ As of January 31, 2019, there were:

- 2,501 securities dealers,
- 6,342 investment advisers,
- 10,676 branches, and
- 328,217 associated persons.

The North American Securities Administrators Association (NASAA) is an international organization devoted to investor protection. Its membership consists of securities administrators. On January 22, 2016, the NASAA approved model “Legislation to Protect Vulnerable Adults from Financial Exploitation” (the Model Act).⁶ The Model Act focuses on the reporting and prevention of senior financial exploitation. The Model Act has the following features:

- A mandatory reporting requirement applicable to qualified individuals of broker-dealers and investment advisers;
- Notification to third-parties of potential financial exploitation with advance consent of the investor;
- Authority to temporarily delay disbursement of funds;
- Immunity from civil and administrative liability for reporting, notifications, delays; and
- Mandatory sharing of records related to exploitation with law enforcement and state adult protective services agencies.

As of January 1, 2019, twenty-one states have adopted legislation and in the case of one state, a regulation comparable to the Model Act.⁷

In addition, the Financial Industry Regulatory Authority, a private self-regulatory organization that regulates certain aspects of the securities industry, adopted Rule 2165 on February 5, 2018. This rule is aimed at preventing financial exploitation of the elderly. The rule permits a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a customer.

III. Effect of Proposed Changes:

Section 1 amends s. 415.1034, F.S., relating to reporting of abuse, neglect, and exploitation of a vulnerable adult. The bill adds a dealer of securities, investment advisor, or person regulated by chapter 517, F.S., to the list of specified reporters of abuse. Under current law, the list of persons in s. 415.1034, F.S., is not exclusive to reporting abuse. All persons who suspect abuse must report to the central abuse hotline.

⁵ Florida Office of Financial Regulation bill analysis, dated March 7, 2019.

⁶ *Id.*

⁷ *Id.*

Section 2 creates s. 517.34, F.S., for the protection of specified adults. The bill defines exploitation as when a person in position of trust knowingly uses the specified adults property for the benefit of someone other than the owner. Exploitation may include a misuse of power of attorney or guardianship, the taking of personal assets, misusing or transferring assets, or failing to use assets for the person's needs. Other terms, such as law enforcement agency, specified adult, and trusted contact are defined. Specified adult is defined as a person 65 years or older or a vulnerable adult as defined in s. 415.102, F.S. Trusted contact is a person identified as a contact on the account.

The bill authorizes a securities dealer or investment adviser to delay a transaction or disbursement of funds if they reasonably believe that such an action is exploitation of the specified adult. Within 3 days of such a delay, the securities dealer or investment adviser must provide written or electronic notice to all persons associated with the account, including the trusted contact. The dealer or adviser must notify the Office of Financial Regulation of the temporary hold, the reason for the hold, and if requested, provide all records relating the delay. The bill also allows DCF to share the results of any adult protective service investigation of specified adult with the dealer or adviser.

The bill allows the dealer or adviser to hold the transaction for up to 15 days with an extension of 10 days if the dealer or adviser's review finds exploitation. Dealers or advisers must develop training policies on exploitation and have written procedures for making such delays. In addition, the dealer or adviser must maintain written records of the requirements of the newly created statute. The bill does not alter a dealer or adviser's duty to follow client instructions unless there is a reasonable belief of exploitation.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fewer vulnerable adults and elders would experience financial exploitation under the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Financial Regulation may need rule making authority to implement the provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends section 415.1034 of the Florida Statutes.
This bill creates the section 517.34 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gibson

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1 A bill to be entitled
 2 An act relating to protection for vulnerable
 3 investors; amending s. 415.1034, F.S.; requiring
 4 securities dealers, investment advisers, and
 5 associated persons to immediately report knowledge or
 6 suspicion of abuse, neglect, or exploitation of
 7 vulnerable adults to the Department of Children and
 8 Families' central abuse hotline; creating s. 517.34,
 9 F.S.; defining terms; authorizing dealers, investment
 10 advisers, and associated persons to delay certain
 11 transactions or disbursements if such persons
 12 reasonably believe exploitation of specified adults
 13 has occurred, is occurring, has been attempted, or
 14 will be attempted; providing that such reasonable
 15 belief may be based on certain facts and
 16 circumstances; specifying requirements for dealers,
 17 investment advisers, and associated persons in
 18 notifying certain parties and the Office of Financial
 19 Regulation after placing delays on transactions or
 20 disbursements; requiring the office to specify certain
 21 means of receiving notice; authorizing the department
 22 to share certain information with the reporting
 23 dealer, investment adviser, or associated person;
 24 specifying the expiration of the delays; authorizing
 25 dealers or investment advisers to extend delays, under
 26 certain circumstances, for a specified time period;
 27 providing that delays may be shortened or extended by
 28 a court of competent jurisdiction; requiring dealers,
 29 investment advisers, and associated persons to make

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30 certain records available to the office; providing
 31 immunity from civil or administrative liability to
 32 dealers, investment advisers, or associated persons
 33 under certain circumstances; requiring dealers and
 34 investment advisers to develop certain training
 35 policies and programs, develop and maintain certain
 36 procedures, conduct training for associated persons,
 37 and maintain certain records; providing construction;
 38 providing an effective date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Paragraph (a) of subsection (1) of section
 43 415.1034, Florida Statutes, is amended to read:
 44 415.1034 Mandatory reporting of abuse, neglect, or
 45 exploitation of vulnerable adults; mandatory reports of death.—
 46 (1) MANDATORY REPORTING.—
 47 (a) Any person who knows, or who has reasonable cause to
 48 suspect, that a vulnerable adult has been or is being abused,
 49 neglected, or exploited shall immediately report such knowledge
 50 or suspicion to the central abuse hotline. Such person includes,
 51 ~~including,~~ but is not limited to, any:
 52 1. Physician, osteopathic physician, medical examiner,
 53 chiropractic physician, nurse, paramedic, emergency medical
 54 technician, or hospital personnel engaged in the admission,
 55 examination, care, or treatment of vulnerable adults.~~†~~
 56 2. Health professional or mental health professional other
 57 than one listed in subparagraph 1.~~†~~
 58 3. Practitioner who relies solely on spiritual means for

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healing_+
59

60 4. Nursing home staff; assisted living facility staff;
61 adult day care center staff; adult family-care home staff;
62 social worker; or other professional adult care, residential, or
63 institutional staff_+
64

65 5. State, county, or municipal criminal justice employee or
66 law enforcement officer_+
67

68 6. Employee of the Department of Business and Professional
69 Regulation conducting inspections of public lodging
70 establishments under s. 509.032_+
71

72 7. Florida advocacy council or Disability Rights Florida
73 member or a representative of the State Long-Term Care Ombudsman
74 Program_+ ~~or~~
75

76 8. Bank, savings and loan, or credit union officer,
77 trustee, or employee_+
78

79 9. Dealer, investment adviser, or associated person under
80 chapter 517.
81

82 ~~who knows, or has reasonable cause to suspect, that a vulnerable
83 adult has been or is being abused, neglected, or exploited shall
84 immediately report such knowledge or suspicion to the central
85 abuse hotline_+
86~~

87 Section 2. Section 517.34, Florida Statutes, is created to
88 read:
89

90 517.34 Protection of specified adults.-
91

92 (1) As used in this section, the term:
93

94 (a)1. "Exploitation" means:
95

96 a. With respect to a person who stands in a position of
97 trust and confidence with a specified adult, knowingly, by
98

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88 deception or intimidation, obtaining or using, or endeavoring to
89 obtain or use, the specified adult's funds, assets, or property
90 with the intent to temporarily or permanently deprive the
91 specified adult of the use, benefit, or possession of the funds,
92 assets, or property for the benefit of someone other than the
93 specified adult;
94

95 b. With respect to a person who knows or should know that a
96 specified adult lacks the capacity to consent, obtaining or
97 using, or endeavoring to obtain or use, the specified adult's
98 funds, assets, or property with the intent to temporarily or
99 permanently deprive the specified adult of the use, benefit, or
100 possession of the funds, assets, or property for the benefit of
101 someone other than the specified adult; or
102

103 c. The wrongful or unauthorized taking, withholding,
104 appropriation, or use of money, assets, or property of a
105 specified adult, or any act or omission by a person, including
106 through the use of a power of attorney, guardianship, or
107 conservatorship of an eligible adult, to:
108

109 (I) Obtain control over the specified adult's money,
110 assets, or property through deception, intimidation, or undue
111 influence to deprive him or her of the ownership, use, benefit,
112 or possession of the money, assets, or property; or
113

114 (II) Convert the specified adult's money, assets, or
115 property to deprive him or her of the ownership, use, benefit,
116 or possession of the money, assets, or property.
117

118 2. "Exploitation" may include, but is not limited to:
119

120 a. A breach of a fiduciary relationship, such as the misuse
121 of a power of attorney or the abuse of guardianship duties,
122 resulting in the unauthorized appropriation, sale, or transfer
123

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117 of property.

118 b. An unauthorized taking of personal assets.

119 c. Misappropriation, misuse, or transfer of moneys

120 belonging to a specified adult from a personal or joint account.

121 d. The intentional or negligent failure to effectively use

122 a specified adult's income and assets for the necessities

123 required for the specified adult's support and maintenance.

124 (b) "Law enforcement agency" means an agency or political

125 subdivision of this state or of the United States whose primary

126 responsibility is the prevention and detection of crime or the

127 enforcement of the penal laws of this state or the United

128 States, and whose agents and officers are empowered by law to

129 conduct criminal investigations or to make arrests.

130 (c) "Specified adult" means a natural person 65 years of

131 age or older, or a vulnerable adult as defined in s. 415.102.

132 (d) "Trusted contact" means a natural person 18 years of

133 age or older, whom the account owner has expressly identified as

134 a person who may be contacted about the account.

135 (2) A dealer, investment adviser, or associated person may

136 delay a transaction on, or a disbursement of funds or securities

137 from, an account of a specified adult or an account for which a

138 specified adult is a beneficiary or beneficial owner, if the

139 dealer, investment adviser, or associated person reasonably

140 believes that exploitation of the specified adult has occurred,

141 is occurring, has been attempted, or will be attempted in

142 connection with the transaction or disbursement.

143 (a) The dealer's, investment adviser's, or associated

144 person's reasonable belief of exploitation may be based on the

145 facts and circumstances observed in such dealer's, investment

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146 adviser's, or associated person's business relationship with the

147 specified adult.

148 (b)1. Within 3 business days after the date on which the

149 delay was first placed, the dealer, investment adviser, or

150 associated person shall:

151 a. Provide written notice of the temporary hold and the

152 reason for the hold to all parties authorized to transact

153 business on the account and any trusted contact on the account

154 via the contact information provided in the account, unless the

155 dealer, investment adviser, or associated person reasonably

156 believes that any such party engaged or is engaging in the

157 suspected exploitation of the specified adult. Such written

158 notice may be provided electronically.

159 b. Notify the office, either by telephone or in writing, of

160 the temporary hold and the reason for the temporary hold. The

161 office shall specify a telephone number for receiving such

162 notice and the means by which such notice may be electronically

163 submitted.

164 2. Notwithstanding any law to the contrary, the Department

165 of Children and Families may share the status and result of any

166 investigation with the reporting dealer, investment adviser, or

167 associated person.

168 (3) A delay on a transaction or disbursement under

169 subsection (2) expires 15 business days after the date on which

170 the delay was first placed. However, the dealer or investment

171 adviser may extend the delay for up to 10 additional business

172 days if its review of the available facts and circumstances

173 continues to support its good faith belief that exploitation of

174 the specified adult has occurred, is occurring, has been

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175 attempted, or will be attempted. The length of the delay may be
 176 shortened or extended at any time by a court of competent
 177 jurisdiction. This subsection does not prevent a dealer,
 178 investment adviser, or associated person from terminating a
 179 delay after communication with the parties authorized to
 180 transact business on the account and any trusted contact on the
 181 account.

182 (4) A dealer, investment adviser, or associated person
 183 subject to the jurisdiction of the office shall make available
 184 to the office, upon request, all records relating to a delay or
 185 report made by the dealer, investment adviser, or associated
 186 person pursuant to this section.

187 (5) A dealer, investment adviser, or associated person who
 188 delays a transaction or disbursement pursuant to this section,
 189 who provides records to an agency of competent jurisdiction
 190 pursuant to this section, or who participates in a judicial or
 191 arbitration proceeding resulting therefrom, is presumed to be
 192 acting based upon a reasonable belief of exploitation and is
 193 immune from any civil or administrative liability that otherwise
 194 might be incurred or imposed, unless lack of such reasonable
 195 belief is shown by a preponderance of the evidence. This
 196 subsection does not supersede or diminish any immunity under
 197 chapter 415.

198 (6) (a) Before placing a delay on a transaction or
 199 disbursement pursuant to this section, a dealer or investment
 200 adviser must develop training policies or programs reasonably
 201 designed to educate associated persons on issues pertaining to
 202 exploitation, must develop and maintain written procedures
 203 regarding the manner in which suspected exploitation must be

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204 reported to supervisory personnel, and must conduct training for
 205 all associated persons.

206 (b) The dealer or investment adviser shall maintain a
 207 written record of compliance with this subsection.

208 (7) This section does not create new rights or obligations
 209 of a dealer, investment adviser, or associated person under
 210 other applicable laws or rules. In addition, this section does
 211 not limit the right of a dealer, investment adviser, or
 212 associated person to otherwise refuse or place a delay on a
 213 transaction or disbursement under other applicable laws or rules
 214 or under an applicable customer agreement.

215 (8) Absent a reasonable belief of exploitation as provided
 216 in this section, this section does not alter a dealer's,
 217 investment adviser's, or associated person's obligation to
 218 comply with instructions from a client to close an account or
 219 transfer an account to another dealer, investment adviser, or
 220 associated person.

221 Section 3. This act shall take effect July 1, 2019.



2019 AGENCY LEGISLATIVE BILL ANALYSIS Florida Office of Financial Regulation

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1466
BILL TITLE:	Protection for Vulnerable Investors
BILL SPONSOR:	Senator Gibson
EFFECTIVE DATE:	July 1, 2019

<u>COMMITTEES OF REFERENCE</u>
1)
2)
3)
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 143
SPONSOR:	Representative Donalds

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	SB 662
SPONSOR:	Senator Stargel
YEAR:	2018
LAST ACTION:	Died on Calendar

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>Is this bill part of an agency package?</u>
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	March 7, 2019
LEAD AGENCY ANALYST:	Alex Anderson, Director, Legislative Affairs (850) 410-9789
ADDITIONAL ANALYST(S):	Lee H. Kell, Jr., Director, Division of Securities (850) 410-9601
LEGAL ANALYST:	Anthony Cammarata, General Counsel (850) 410-9601
FISCAL ANALYST:	Mark Hammett, Budget Chief (850) 410-9601

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill amends s. 415.1034, F.S., to require securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; creates s. 517.34, F.S., to protect specified vulnerable adults from financial exploitation and provides immunity for securities dealers, investment advisers, and associated persons from liability for certain actions.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Division of Securities (Division) within the Office of Financial Regulation (OFR or Office) protects the investing public from unlawful securities activities through regulating the sale of securities and investment advice in, to, or from Florida by firms (securities dealers, issuer dealers, and investment advisers), branch offices, and individuals affiliated with these firms.

As of January 31, 2019, the Division had total registrants in the following areas:

- Dealers: 2,501
- Investment Advisers: 6,342
- Branches: 10,676
- Associated Persons: 328,217

The North American Securities Administrators Association (NASAA) is an international organization that is devoted to investor protection. Its membership consists of securities administrators. On January 22, 2016, NASAA members voted to approve model "Legislation to Protect Vulnerable Adults from Financial Exploitation" (the Model Act). The Model Act focuses on the reporting and prevention of senior financial exploitation. The Model Act has the following features: 1) A mandatory reporting requirement applicable to qualified individuals of broker-dealers and investment advisers; 2) Notification to third-parties of potential financial exploitation with advance consent of the investor; 3) Authority to temporarily delay disbursement of funds; 4) Immunity from civil and administrative liability for reporting, notifications, delays; and 5) Mandatory sharing of records related to exploitation with law enforcement and state adult protective services agencies. As of January 1, 2019, twenty-one states have adopted legislation— and in the case of one state a regulation— comparable to the Model Act.

Additionally, the Financial Industry Regulatory Authority (FINRA), a private self-regulatory organization that regulates certain aspects of the securities industry, adopted FINRA Rule 2165 on February 5, 2018, which is aimed at preventing senior financial exploitation. The rule permits a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer.

2. EFFECT OF THE BILL:

The bill requires a dealer, investment adviser, or an associated person to notify Adult Protective Services (APS) within the Department of Children and Families (DCF) through the central abuse hotline pursuant to Chapter 415, F.S., when the dealer, investment adviser, or associated person knows, or has reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

The bill creates s. 517.34, F.S.

The bill creates a definition for the term "exploitation" as used in this section.

The bill creates a definition for the term "law enforcement agency" as used in this section.

The bill creates a definition for the term "specified adult" as used in this section.

The bill creates a definition for the term "trusted contact" as used in this section.

The bill allows a dealer, investment adviser, or an associated person to delay a transaction on, or a disbursement of funds or securities from, an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer, investment adviser, or associated person reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

The bill requires, within three business days of placing a delay on a transaction or disbursement, that the dealer, investment adviser, or associated person notify the Office, either by telephone or in writing, of the temporary hold and the reason for the temporary hold.

The bill requires, within three business days of placing a delay on a transaction or disbursement, that the dealer, investment adviser, or associated person notify, in writing, all parties authorized to transact business on the account and any trusted contact on the account, of the hold and the reason for the temporary hold, unless the dealer, investment adviser, or associated person believes that any of the parties are involved in the suspected exploitation.

The bill places an expiration time of 15 business days on the delay. However, a dealer or investment adviser may extend the delay for up to 10 additional business days if its review of the available facts and circumstances continues to support its good faith belief that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended by an order of a court of competent jurisdiction.

The bill requires that a dealer, investment adviser, or associated person provide access to or copies of any records related to the delay to the Office upon request.

The bill presumes that a dealer, investment adviser, or associated person who delays a transaction or disbursement pursuant to this section, or provides records, or participates in a judicial or arbitration proceeding resulting therefrom, is acting based upon a reasonable belief of exploitation, and grants immunity from any civil or administrative liability to such dealer, investment adviser, or associated person that otherwise might be incurred or imposed, unless lack of such reasonable belief is shown by a preponderance of the evidence.

The bill requires a dealer or investment adviser to develop training policies or programs reasonably designed to educate associated persons on issues pertaining to exploitation, to develop and maintain written procedures regarding the manner in which suspected exploitation is required to be reported to supervisory personnel, and to conduct training for all associated persons before placing a delay on a transaction or disbursement pursuant to this section.

The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules.

The bill does not limit the right of a dealer, investment adviser, or associated person to refuse to place a delay on a transaction or disbursement under other laws or rules or under a customer agreement.

The bill does not alter a dealer's, investment adviser's, or associated person's obligation to comply with instructions from a client absent a reasonable belief of exploitation as provided in this section.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	The bill requires a dealer or investment adviser to notify the Office by telephone or in writing, of every delay placed by the dealer, investment adviser, or associated person. The Office shall specify a telephone number for receiving such notice and the means by which such notice may be electronically submitted.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
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Opponents and summary of position:	Unknown
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5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. FISCAL IMPACT TO LOCAL GOVERNMENT Y N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. FISCAL IMPACT TO STATE GOVERNMENT Y N

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. FISCAL IMPACT TO THE PRIVATE SECTOR Y N

Revenues:	
Expenditures:	
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	
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ADDITIONAL COMMENTS

1. The bill states “[t]he dealer’s, investment adviser’s, or associated person’s reasonable belief of exploitation *may* be based on the facts and circumstances observed in such dealer’s, investment adviser’s, or associated person’s business relationship with the specified adult.” SB 1466, lines 143-47 (2019).

- The bill uses “may” which is permissive. Use of the word “must” would require a dealer’s, investment adviser’s, or associated person’s reasonable belief of exploitation to be based on facts and circumstances observed in such dealer’s, investment adviser’s, or associated person’s business relationship with the specified adult.

2. The bill requires all persons authorized to transact business on the account and any trusted contact on the account to be notified of the temporary hold and the reason for the temporary hold “within 3 business days after the date on which the delay was first placed.” SB 1466, lines 148-58 (2019).

- The bill does not authorize a dealer, investment adviser, or associated person to contact persons authorized to transact business in the account or any trusted contact prior to deciding to delay the transaction or disbursement. The Model Act and the majority of states that have enacted legislation comparable to this bill permit a person previously designated by the customer or another third-party specified by the state, to be contacted about suspected financial exploitation prior to a hold being placed.
- The bill does not require all parties authorized to transact business on the account and any trusted contact on the account to be provided with an explanation of the delay process.

3. The bill requires the Office to specify a telephone number for receiving notice of a delay and the means by which notice of a delay may be electronically submitted. SB 1446, lines 160-63 (2019).

- The bill does not provide the Office with rule-making authority to carry out this mandate.

4. Proposed Section 517.34(2)(b)2. does not appear to belong in Chapter 517, F.S., as it concerns the Department of Children and Families and not the OFR.

5. The bill states that a “dealer or investment adviser may extend the delay for up to 10 additional business days if its review of the available facts and circumstances continues to support its good faith belief that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.” SB 1466, lines 170-75 (2019).

- The bill does not explicitly provide a requirement for a dealer or investment adviser to initiate an internal review of the suspected exploitation regarding the requested transaction or disbursement, or for the dealer or investment adviser to continue to investigate the appropriateness of the delay after the delay is initiated. The Model Act and the majority of states that have enacted legislation comparable to this bill require this type of internal review. Further, the Model Act and the majority of states require a dealer or investment adviser to provide a report of its internal investigation to designated government agencies either after a set period of time or upon request.
- A grant of rulemaking authority to the Office in this subsection would allow the Office to specify the type of information and develop procedures for the receipt of the same from a dealer or investment adviser with regard to the dealer’s or investment adviser’s internal review and determination as to whether the facts and circumstances continue to support a good faith belief exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

6. The bill states, “[a] dealer, investment adviser, or associated person who delays a transaction or disbursement pursuant to this section, who provides records to an agency of competent jurisdiction pursuant to this section, or who participates in a judicial or arbitration proceeding resulting therefrom is **presumed** to be acting based upon a reasonable belief of exploitation and is **immune** from **any** civil or administrative liability that otherwise might be incurred or imposed, unless lack of such reasonable belief is shown by **a preponderance of the evidence.**” SB 1466, lines 187-97 (2019) (emphasis added).

- This language is patterned after the language of Section 415.1036, Florida Statutes, which provides, “[a]ny person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed.” The language of SB 1466 extends immunity not only to the reporter but to the dealer, investment adviser, or associated person who delays a specified adult’s transaction or disbursement and who has a financial interest in the management of that specified adult’s account. Neither the Model Act nor legislation enacted by any state that is comparable to this bill create a presumption that a dealer, investment adviser, or associated person, who delays a transaction or disbursement is acting based upon a reasonable belief of exploitation.
- The immunity granted by SB 1466 extends to “**any** civil or administrative liability.” SB 1466, line 193 (2019). This not only prohibits the Office from taking administrative action against persons violating the requirements of the statute, but also prohibits investors from taking action.
- The immunity provided in SB 1466 is not contingent upon a dealer, investment adviser, or associated person, following all the notification, reporting, and training requirements of the statute. The Model Act and the majority of states that have enacted legislation comparable to this bill require compliance with the applicable provisions of the statute to receive immunity.
- Additionally, it is unclear whether “reasonably believes,” as used in this bill, is a subjective standard, objective standard, or both. The Model Act and the majority of states that have enacted legislation comparable to this bill have adopted the standard of “good faith and reasonable care.” A few states have relied on a “good faith” standard alone. Only one state (Mississippi) relies on the “reasonable belief” standard.

7. The bill requires a dealer or investment adviser to “develop and maintain written procedures regarding the manner in which suspected exploitation is required to be reported to supervisory personnel.” SB 1466, lines 202-04 (2019).

- There is no explicit provision in the bill requiring that suspected exploitation be reported to supervisory personnel. Further, there is no requirement in the bill for a dealer or investment adviser to enforce these procedures.
- A grant of rulemaking authority to the Office in this subsection would allow the Office to specify elements to be contained in training policies and written reporting procedures.
- The bill does not address how a one-person operation would be able to comply with the requirement to report suspected exploitation to supervisory personnel.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	The analysis sufficiently details the bill's effect and areas of impact. OGC has no issues, concerns or further comments regarding the bill.
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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/2019

Meeting Date

1466

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Securities Industry & Financial Markets Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 1466

Bill Number (if applicable)

Topic Protection of Vulnerable Investors

Name Olivia Babis

Amendment Barcode (if applicable)

Job Title Public Policy Analyst

Address 2473 Cove Dr. Suite 200

Phone 850-498-6071

Street

Tallahassee FL 32308

City

State

Zip

Email oliviab@drflorida.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Disability Rights FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

1466

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/15

Meeting Date

1466

Bill Number (if applicable)

Topic Vulnerable Investors

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of port. Affairs

Address 1001 Thomasville Rd

Phone 228-2255

Tallahassee FL 32303

Email admarco@floridabankers.com

Speaking: [] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Bankers Assoc

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19 Meeting Date

1466 Bill Number (if applicable)

Topic Protection of Vulnerable Investors

Amendment Barcode (if applicable)

Name Karl Rasmussen

Job Title Consultant

Address 300 S Duval St Suite 400 Street

Phone (850) 425-4000

1allahussee FL 32302 City State Zip

Email karl@weenenlawfirm.com

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing NAIFA-Florida National Association of Insurance and Financial Advisors

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1466

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title

Address 115 E. Park Avenue
Street

Phone 727-5000

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Financial Services Institute / FSDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019 Meeting Date

1466 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Melissa Acayan

Job Title Compliance Counsel, Senior's AT-Risk Clients, Raymond James

Address 880 Cerillon Pkway Street

Phone 727 567 7078

St. Petersburg FL 33716 City State Zip

Email melissa.acayan@raymondjames.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing FSDA

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1466
FINAL ACTION: Favorable
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1492

INTRODUCER: Senator Book

SUBJECT: Government-sponsored Recreation Programs

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1492 revises the definition of the term “child care facility” to exclude government-sponsored recreation programs. The bill allows counties or other municipalities to create and operate recreation programs for children at least five years old and requires such programs to offer a maximum of 4 programming hours per day and to adopt standards of care specifying staffing ratios, minimum staff qualifications, health and safety standards, and level 2 background screening requirement for all staff and volunteers. The bill also requires such programs to notify parents of all children participating in the program that the program is not state-licensed, and the program may not advertise itself as a child care facility. The bill requires the program to provide all parents with the county or municipality’s standards of care.

The bill may have an indeterminate fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.¹

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.² The definition of child care does not specify a maximum or minimum age.

¹ Section 402.302, F.S.

² *Id.*

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- A school-age child care program is defined as any licensed child care facility serving school-aged children³ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁴
- Any of the after school programs accepting children under the age of the school-age child must be licensed.⁵
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.⁶

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.⁷ The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509, F.S.,⁸ which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435, F.S.⁹

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies¹⁰ approved by the department are the entities responsible for the licensure of such child care facilities.¹¹

³ Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least five years of age by September 1st of the beginning of the school year and who attends kindergarten through grade five.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Section 402.302, F.S.

⁸ “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

⁹ Section 402.302, F.S.

¹⁰ Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

¹¹ Section 402.308, F.S.

Additional Exemptions

In 1974 and in 1987, the legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards. Child care facilities that are an integral part of church or parochial schools and meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., related to child care facilities, by adding a definition for "government-sponsored recreation programs." The bill defines a government-sponsored recreation program as a recreation program for school-age children that:

- offers no more than 4 hours of programming per day;
- is operated by a county or municipality that has adopted standards of care by ordinance for the program, which include, but are not limited to, staffing ratios, minimum staff qualifications, level 2 background screening for all staff and volunteers, and minimum facility, health, and safety standards;
- has been certified by the county or municipality for compliance with such standards of care; and
- provides notice to the parents of all participating children that the program is not state-licensed or advertised as a child care facility and provides them with the county's or municipality's standards of care.

The bill exempts government-sponsored recreation programs from licensure requirements of child care facilities regulated by DCF.

Section 2 amends s. 39.201, F.S., relating to mandatory reports of child abuse, to correct a cross-reference.

Section 3 amends s. 402.305, F.S., relating to licensing standards of child care facilities, to correct a cross-reference.

Section 4 amends s. 1002.82, F.S., relating to powers and duties of the Office of Early Learning, to correct a cross-reference.

Section 5 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² Section 402.316, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement may be impacted through requiring level 2 background screenings for employees of government-sponsored recreation programs. FDLE, however, is authorized to collect a fee to pay for such screenings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires government-sponsored recreation programs to conduct level 2 background screenings on all staff and volunteers. Child care facilities licensed by DCF, as well as other entities which provide child care but are exempt from state licensure, undergo background screenings which entail a search of criminal history records, sexual predator and offender registries, and child abuse and neglect registries of any state in which the applicant has resided during the past 5 years, in addition to level 2 background screening.

VIII. Statutes Affected:

This bill substantially amends sections 402.302, 39.201, 402.305, and 1002.82 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Book

32-00788A-19

20191492__

A bill to be entitled

An act relating to government-sponsored recreation programs; amending s. 402.302, F.S.; revising the definition of the term "child care facility" to exclude government-sponsored recreation programs; defining the term "government-sponsored recreation program"; amending ss. 39.201, 402.305, and 1002.82, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (9) through (18) of section 402.302, Florida Statutes, are redesignated as subsections (10) through (19), respectively, a new subsection (9) is added to that section, and paragraph (f) is added to subsection (2) of that section, to read:

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

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

- (a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025;
- (b) Summer camps having children in full-time residence;
- (c) Summer day camps;
- (d) Bible schools normally conducted during vacation

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periods; ~~and~~

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435; and

(f) Government-sponsored recreation programs.

(9) "Government-sponsored recreation program" means a recreation program for school-age children which meets all of the following requirements:

(a) Offers no more than 4 hours of programming per day.

(b) Is operated by a county or municipality that has adopted standards of care by ordinance for the program, which include, but are not limited to, staffing ratios, minimum staff qualifications, level 2 background screening for all staff and volunteers, and minimum facility, health, and safety standards.

(c) Has been certified by the county or municipality for compliance with such standards of care.

(d) Provides notice to the parents of each child participating in the program that the program is not state-licensed or advertised as a child care facility and provides them with the county's or municipality's standards of care.

Section 2. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(16) ~~s. 402.302(15)~~.

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59 Information in the central abuse hotline and the department's
 60 automated abuse information system may be used by the
 61 department, its authorized agents or contract providers, the
 62 Department of Health, or county agencies as part of the
 63 licensure or registration process pursuant to ss. 402.301-
 64 402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2)(g),
 65 the information in the central abuse hotline may also be used by
 66 the Department of Education for purposes of educator
 67 certification discipline and review.

68 Section 3. Paragraph (a) of subsection (2) of section
 69 402.305, Florida Statutes, is amended to read:

70 402.305 Licensing standards; child care facilities.-

71 (2) PERSONNEL.—Minimum standards for child care personnel
 72 shall include minimum requirements as to:

73 (a) Good moral character based upon screening as defined in
 74 s. 402.302(16) ~~s. 402.302(15)~~. This screening shall be conducted
 75 as provided in chapter 435, using the level 2 standards for
 76 screening set forth in that chapter, and include employment
 77 history checks, a search of criminal history records, sexual
 78 predator and sexual offender registries, and child abuse and
 79 neglect registry of any state in which the current or
 80 prospective child care personnel resided during the preceding 5
 81 years.

82 Section 4. Paragraph (y) of subsection (2) of section
 83 1002.82, Florida Statutes, is amended to read:

84 1002.82 Office of Early Learning; powers and duties.-

85 (2) The office shall:

86 (y) Establish staff-to-children ratios that do not exceed
 87 the requirements of s. 402.302(8) or (12) ~~s. 402.302(8) or (11)~~

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88 or s. 402.305(4), as applicable, for school readiness program
 89 providers.

90 Section 5. This act shall take effect July 1, 2019.

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STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Patterson Chad Poppell

is duly appointed

Secretary,

Department of Children and Families

for a term beginning on the Fourteenth day of January, A.D.,
2019, to serve at the pleasure of the Governor and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-First day of February, A.D., 2019.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear

State of Florida appears in small letters across the face of this 8 1/2 x 11" document

RON DESANTIS
GOVERNOR

RECEIVED

2019 FEB 21 AM 10:03

TALLAHASSEE, FLORIDA

January 14, 2019

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, FL 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.19 Florida Statutes:

Mr. Chad Poppell

as the Secretary of the Florida Department of Children and Families, subject to confirmation by the Florida Senate. This appointment is effective January 14, 2019, for a term ending at the pleasure of the Governor.

Sincerely,



Ron DeSantis
Governor

RD/mm

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

2019 FEB 11 PM 4:52

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Children and Families
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me this 11th day of February, 2019.

Dawn Reichmuth
Signature of Officer Administering Oath or of Notary Public

Dawn Reichmuth
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

1317 Winewood Blvd, Bldg. #1

Street or Post Office Box

Tallahassee, FL 32399

City, State, Zip Code

Patterson Chad Poppell

Print Name

[Signature]
Signature

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25

Meeting Date

Bill Number (if applicable)

Topic Confirmation Hearing

Amendment Barcode (if applicable)

Name Chad Poppell

Job Title Secretary

Address 1617 Winewood Blvd.

Phone 850-488-9410

Tallahassee FL 32308

Email Chad.Poppell@myfloridafamilies.com

Speaking: [] For [] Against [X] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Department of Children + Families

Appearing at request of Chair: [X] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

Meeting Date

Bill Number (if applicable)

Topic Senate Confirmation Hearing -Secretary of Children and Famili

Amendment Barcode (if applicable)

Name Victoria Zepp

Job Title Chief Policy and Research Officer

Address 411 E. College Avenue

Phone 850/561-1102

Street

Tallahassee

FL

32301

Email Victoria@flchildren.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Coalition for Children (FCC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

COMMITTEE VOTE RECORD – EXECUTIVE APPOINTMENT

COMMITTEE: Children, Families, and Elder Affairs
NAME: Poppell, Patterson Chad
BOARD: Secretary of Children and Families
FINAL ACTION: Recommend Confirm
MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: 301 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Harrell						
X		Rader						
X		Torres						
X		Wright						
X		Mayfield, VICE CHAIR						
X		Book, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered VC=Vote Change After Roll Call AV=Abstain from Voting