

Tab 1	CS/SB 164 by HP, Grimsley; (Similar to CS/CS/H 00735) Mammography					
278860	A	S	RCS	RC, Grimsley	Delete L.42 - 44:	02/15 12:38 PM
Tab 2	SR 398 by Bracy (CO-INTRODUCERS) Campbell, Gibson; (Similar to H 08013) Taiwan					
776388	T	S	RCS	RC, Bracy	In title, delete L.51 -	02/15 12:41 PM
Tab 3	CS/CS/SB 618 by JU, CJ, Baxley (CO-INTRODUCERS) Steube, Book, Rouson, Mayfield; (Identical to CS/H 00581) Subpoenas in Investigations of Sexual Offenses					
Tab 4	SB 674 by Young (CO-INTRODUCERS) Rouson; (Identical to H 00463) Steroid Use in Racing Greyhounds					
Tab 5	CS/CS/SB 1020 by CM, RI, Young (CO-INTRODUCERS) Hutson, Brandes; (Similar to H 00667) Alcohol Deliveries					
359082	A	S	RS	RC, Young	Delete L.25 - 40:	02/15 12:49 PM
823640	SA	S	RCS	RC, Young	Delete L.25 - 40:	02/15 12:49 PM
Tab 6	CS/SB 826 by GO, Hukill; (Similar to H 01345) Taxpayers' Rights Advocate					
487372	PCS	S	RCS	RC, AFT		02/15 12:55 PM
Tab 7	SB 894 by Garcia; (Similar to CS/H 00935) Mortgage Lending					
101422	D	S	L RCS	RC, Garcia	Delete everything after	02/15 12:57 PM
Tab 8	SB 1316 by Simmons; (Similar to H 00979) Uniform Voidable Transactions Act					
138372	D	S	L RCS	RC, Simmons	Delete everything after	02/15 12:59 PM
Tab 9	SB 738 by Perry; (Similar to CS/H 00411) Public Records and Public Meetings/Firesafety System Plans					
785894	D	S	L WD	RC, Perry	Delete everything after	02/15 01:02 PM
Tab 10	SB 988 by Perry; (Similar to CS/H 00755) Public Records/ First Responder Network Authority/Nationwide Public Safety Broadband Network					
Tab 11	CS/CS/SB 970 by JU, CJ, Brandes; (Similar to H 01261) Alcohol and Drug-related Overdoses					
Tab 12	SB 1776 by Bradley (CO-INTRODUCERS) Bean, Brandes; Vegetable Gardens					
Tab 13	CS/SB 8 by HP, Benacquisto (CO-INTRODUCERS) Perry, Stargel, Bean, Passidomo; (Similar to CS/H 00021) Controlled Substances					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, February 15, 2018

TIME: 10:00 a.m.—12:00 noon

PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 164 Health Policy / Grimsley (Similar CS/CS/H 735)	Mammography; Requiring facilities performing mammography to include certain information in a summary of the mammography report which must be provided to each patient, etc. HP 01/23/2018 Fav/CS RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0
2	SR 398 Bracy (Similar HR 8013)	Taiwan; Recognizing the relationship between and shared interests of the people of Taiwan and the United States and supporting these interests, as well as future opportunities for international trade between the two nations, etc. CM 01/16/2018 Favorable RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0
3	CS/CS/SB 618 Judiciary / Criminal Justice / Baxley (Identical CS/H 581)	Subpoenas in Investigations of Sexual Offenses; Authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony; authorizing a subpoenaed person to petition a court for an order modifying or setting aside the subpoena or a prohibition on disclosure; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt, etc. CJ 01/09/2018 Fav/CS JU 01/18/2018 Fav/CS RC 02/15/2018 Favorable	Favorable Yeas 9 Nays 1
4	SB 674 Young (Identical H 463, Compare H 1433, S 1774)	Steroid Use in Racing Greyhounds; Providing that a positive test result for anabolic steroids in certain samples taken from a greyhound violates the prohibition on the racing of animals that are impermissibly medicated or determined to have a prohibited substance present, etc. RI 01/17/2018 Favorable AG 02/07/2018 Favorable RC 02/15/2018 Favorable	Favorable Yeas 8 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 15, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	CS/CS/SB 1020 Commerce and Tourism / Regulated Industries / Young (Similar H 667)	Alcohol Deliveries; Including an electronic order as a type of order construed as a sale made at a vendor's licensed place of business; authorizing a manufacturer, distributor, or vendor to make certain deliveries in a third-party vehicle under certain circumstances; requiring that the recipient's identity and age be verified and documented at the time of delivery, etc. RI 01/10/2018 Fav/CS CM 01/22/2018 Fav/CS RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0
6	CS/SB 826 Governmental Oversight and Accountability / Hukill (Similar H 1345)	Taxpayers' Rights Advocate; Providing for the appointment of the taxpayers' rights advocate within the Department of Revenue by the Chief Inspector General rather than by the department's executive director; revising the supervisory authority over the taxpayers' rights advocate; providing that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General, etc. GO 01/10/2018 Fav/CS AFT 02/05/2018 Fav/CS RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation – Finance and Tax			
7	SB 894 Garcia (Similar CS/H 935, Compare S 282)	Mortgage Lending; Revising the definition of the term "mortgage loan"; defining the term "hold himself or herself out to the public as being in the mortgage lending business", etc. BI 01/23/2018 Favorable CM 02/06/2018 Favorable RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0
8	SB 1316 Simmons (Similar H 979)	Uniform Voidable Transactions Act; Removing conditions under which a partnership is insolvent; providing conditions under which attachments or other provisional remedies are available to creditors; revising the parties subject to judgments for recovery of a creditor's claim; providing that claims for relief are governed by specified claims law, etc. BI 01/30/2018 Favorable JU 02/06/2018 Favorable RC 02/15/2018 Fav/CS	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 15, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 738 Perry (Similar CS/H 411)	Public Records and Public Meetings/Firesafety System Plans; Providing an exemption from public records requirements for firesafety system plans held by an agency; providing an exemption from public records and public meetings requirements for information relating to firesafety systems for certain properties and meetings relating to such systems and information; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. BI 01/23/2018 Favorable GO 02/06/2018 Favorable RC 02/15/2018 Favorable	Favorable Yeas 11 Nays 0
10	SB 988 Perry (Similar CS/H 755)	Public Records/ First Responder Network Authority/Nationwide Public Safety Broadband Network ; Providing an exemption from public records requirements for information obtained by persons or agencies from the First Responder Network Authority and information relating to the Nationwide Public Safety Broadband Network obtained by persons or agencies from entities operating pursuant to a contract with the First Responder Network Authority; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/23/2018 Favorable RC 02/15/2018 Favorable	Favorable Yeas 11 Nays 0
11	CS/CS/SB 970 Judiciary / Criminal Justice / Brandes (Similar H 1261)	Alcohol and Drug-related Overdoses; Prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting a person from being penalized for a violation of a condition of certain programs if that person in good faith seeks medical assistance for himself or herself or for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose, etc. CJ 01/09/2018 Fav/CS JU 01/25/2018 Fav/CS RC 02/15/2018 Favorable	Favorable Yeas 11 Nays 0
12	SB 1776 Bradley	Vegetable Gardens; Prohibiting local governments from regulating vegetable gardens on residential properties except as otherwise provided by law, etc. CA 02/06/2018 Favorable RC 02/15/2018 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 15, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	CS/SB 8 Health Policy / Benacquisto (Similar CS/H 21, Compare H 1159, S 458)	Controlled Substances; Prohibiting managed care plans and their fiscal agents or intermediaries from imposing certain requirements or conditions on recipients as a prerequisite to receiving medication-assisted treatment (MAT) services to treat substance abuse disorders; authorizing certain boards to require practitioners to complete a specified board-approved continuing education course to obtain authorization to prescribe controlled substances as part of biennial license renewal; authorizing disciplinary action against practitioners for violating specified provisions relating to controlled substances; prohibiting the dispensing of certain controlled substances in an amount that exceeds a 3-day supply or a medically necessary 7-day supply if certain criteria are met, etc. HP 01/10/2018 Workshop-Discussed HP 01/16/2018 Fav/CS AP 01/24/2018 Favorable RC 02/01/2018 Temporarily Postponed RC 02/07/2018 Temporarily Postponed RC 02/15/2018 Favorable	Favorable Yeas 11 Nays 0

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 Rules

BILL: CS/CS/SB 164

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Mammography

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Lloyd</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 164 requires facilities that perform mammography to send a patient a summary report that includes specific information describing the patient's mammogram and to include a statutorily prescribed notice if the patient has heterogeneously or extremely dense breasts. The prescribed notice must inform the patient that dense breast tissue can make it more difficult to determine some abnormalities and may be associated with an increased risk of breast cancer. The notice must also include a statement that puts the patient on notice that additional screenings may not be covered by insurance.

The bill provides that a standard of care or duty has not been created beyond the duty to provide the notice and that the notice is not inconsistent with federal law. These mammography notice provisions sunset June 30, 2023.

The bill is effective July 1, 2018.

II. Present Situation:

Breast cancer is one of the most common cancers in women, second only to skin cancer.¹ Although breast cancer can occur in both men and women, it is rare in men. In 2014, Florida

¹ National Cancer Institute, *Breast Cancer-Patient Version (Overview)*, <https://www.cancer.gov/types/breast> (last visited Jan. 18, 2018).

recorded 2,845 breast cancer deaths out of 42,551 total cancer deaths.² Additionally, 15,570 new breast cancer cases were reported out of 110,602 total new cancer cases.³ No cases for men are recorded in the Florida Cancer Statewide Registry.

Some risk factors for breast cancer are related to life-style and others may include factors that individuals have no control over. Lifestyle or behavioral risk factors that may increase an individual's chances of developing breast cancer include:

- Drinking alcohol: Compared with non-drinkers, women who have two to five drinks daily, have about 1.5 times the risk of women who do not drink alcohol;
- Being overweight or obese after menopause: Having more fat tissue after menopause can raise estrogen levels and increase a woman's chances of getting breast cancer;
- Lacking physical activity: To reduce the risk, adults should get at least 150 minutes of moderate intensity or 75 minutes of vigorous intensity activity per week;
- Not having children: Women who have not had children or who had their first child after age 30 have a slightly higher breast cancer risk overall;
- Using birth control: Women using oral contraceptives have a slightly higher risk than women that never used them;
- Using hormone therapy after menopause: Use of combined hormone therapy after menopause increases the risk of breast cancer while the use of estrogen alone does not seem to increase the risk much; but if used long-term (more than 10 years), estrogen therapy has been found in some studies to increase the risk of ovarian and breast cancer; and
- Breastfeeding: May slightly lower breast cancer risk, especially if it is continued for one and a half years to two years.⁴

Along with these lifestyle or behavioral risk factors, there are some risk factors that are out of a person's control, such as:

- Being a woman;
- Getting older;
- Inheriting certain genes, BRCA1 and BRCA2;
- Having changes in other genes;
- Having a family history of breast cancer;
- Having a personal history of breast cancer;
- Being certain races and ethnicities;
- Having dense breast tissue;
- Having certain benign breast conditions;
- Starting menstruation before age 12;

² Department of Health, Florida Cancer Statewide Registry, *Florida Annual Cancer Report: 2014 Incidence and Mortality (Table 16 – Number of Cancer Death by County, Florida 2014)*, [https://fcds.med.miami.edu/downloads/FloridaAnnualCancerReport/2014/Table_No_T16_\(2014\).pdf](https://fcds.med.miami.edu/downloads/FloridaAnnualCancerReport/2014/Table_No_T16_(2014).pdf), (last visited Jan. 18, 2018).

³ Department of Health, Florida Cancer Statewide Registry, *Florida Annual Cancer Report: 2014 Incidence and Mortality (Table 2 – Number of New Cancer Cases by County, Florida 2014)*, [https://fcds.med.miami.edu/downloads/FloridaAnnualCancerReport/2014/Table_No_T2_\(2014\).pdf](https://fcds.med.miami.edu/downloads/FloridaAnnualCancerReport/2014/Table_No_T2_(2014).pdf), (last visited Jan. 18, 2018).

⁴ American Cancer Society, *Lifestyle-related Breast Cancer Risk Factors*, <https://www.cancer.org/cancer/breast-cancer/risk-and-prevention/lifestyle-related-breast-cancer-risk-factors.html>, (last visited Jan. 18, 2018).

- Going through menopause after age 55;
- Having radiation to your chest; and
- Having exposure to diethylstilbestrol (DES).⁵

As to the risk factor for dense breasts, almost half of all women between the ages of 40 and 74 (about 25 million nationally) are identified as having dense breasts.⁶ Having “dense” breasts makes it more difficult to find and accurately identify breast cancers on a mammogram.⁷ Breast density refers to ratio of fatty tissue to glandular tissue (milk ducts, milk glands, and supportive tissue) on a mammogram.⁸ A dense breast has less fat than glandular and connective tissue.

Besides making a mammogram hard to read, dense breasts are also a risk factor for breast cancer.⁹

Mammography

A mammogram is an X-ray picture of the breast. Federal law and regulations specifically define mammography as a radiographic image of the breast produced through mammography.^{10,11} Mammography serves as an important screening tool in the early detection of breast cancer and has the potential benefit to reduce the chance that a woman will die from breast cancer.

The United States Preventive Services Task Force (USPSTF)¹² recommends that women age 50 to 74 with no signs of breast cancer have a screening mammogram every two years and that women prior to age 50 should talk with their health care providers about the risks and benefits of whether to have mammograms and when to have them.¹³ Approximately 74 percent of female Floridians age 40-plus and 78 percent from age 50 to 74 report having had a mammogram within the past two years, both percentages that either meet or exceed the national averages.¹⁴ Current

⁵ American Cancer Society, *Breast Cancer Risk Factors You Cannot Change*, <https://www.cancer.org/cancer/breast-cancer/risk-and-prevention/breast-cancer-risk-factors-you-cannot-change.html>, (last visited Jan. 18, 2018).

⁶ U.S. Preventive Services Task Force, *U.S. Preventive Services Task Force Issues Final Recommendations on Screening for Breast Cancer* (January 12, 2016), www.uspreventiveservicestaskforce.org/Home/GetFile/6/250/breastcanfinalrsbulletin/pdf, (last visited Jan. 18, 2018).

⁷ *Id.*

⁸ The American Society of Breast Surgeons Foundation, *Breast Density Legislation*, <https://breast360.org/en/topics/2017/01/01/breast-density-legislation/> (last visited Jan. 19, 2018).

⁹ *Supra* note 5.

¹⁰ 42 U.S.C. s. 263b(5) and (6).

¹¹ 21 C.F.R. s. 900.2(y).

¹² The United States Preventive Services Task Force (USPSTF) is an independent, volunteer group of national experts in prevention and evidence-based medicine. The Task Force makes evidence-based recommendations about clinical preventive services, such as screenings, counseling services, and preventive medicines. Each recommendation receives a letter grade (A, B, C, or D or an I statement) based on the strength of the evidence and the balance of the benefits and harms of the preventive service. The recommendation applies only to people who have no signs or symptoms of the specific disease or condition, and address only services offered in the primary care setting or services referred by a primary care physician. The USPSTF is administratively supported by the Agency for Healthcare Research and Quality (AHRQ) and must make an annual report to Congress. See <https://www.uspreventiveservicestaskforce.org/Page/Name/about-the-uspstf>, (last visited Jan. 18, 2018).

¹³ U.S. Preventive Services Task Force, *U.S. Preventive Services Task Force Issues Final Recommendations on Screening for Breast Cancer* (January 12, 2016), www.uspreventiveservicestaskforce.org/Home/GetFile/6/250/breastcanfinalrsbulletin/pdf, (last visited Jan. 18, 2018).

¹⁴ National Cancer Institute, Florida State Profile, <https://statecancerprofiles.cancer.gov/quick-profiles/index.php?statename=florida#t=1>, (last visited Jan. 18, 2018).

evidence is insufficient to assess the benefits and harms of mammograms for women age 75 and older.¹⁵

The most serious harms to having a mammogram are either an over-diagnosis or a false diagnosis. With an over-diagnosis, a woman is diagnosed with a breast cancer that would not have been a harm to her health during her lifetime.¹⁶ The over-diagnosed patient is still treated and may receive over-treatment, including surgery, chemotherapy, and radiation which can have serious side effects.¹⁷ A false diagnosis of breast cancer can have a similar result to an over-diagnosis with unnecessary tests, follow-up procedures, anxiety, and the side effects of any treatments.¹⁸

Types of Mammograms

There are two types of mammograms. A screening mammogram is used to check for breast cancer in individuals who have no signs of cancer or symptoms of the disease.¹⁹ With a screening mammogram, usually two or more X-ray pictures are taken of each breast. The second type of mammogram is a diagnostic mammogram which is used to check for breast cancer after a lump or another sign or symptom of cancer has been identified.²⁰ Besides a lump, other signs of breast cancer can include breast pain, thickening of the skin of the breast, nipple discharge, or a change in breast size or shape; however, these may also be signs of benign conditions.²¹ Early detection of breast cancer with screening mammography means that treatment can be started earlier in the course of the disease, possibly before it has spread.

Other Detection Methods

Magnetic Resonance Imaging (MRI) is technology that uses magnets and radio waves to produce detailed cross-sectional images of breast tissue and other internal body structure. For breast MRIs, a special MRI machine is required which uses dedicated breast coils. Finding a facility with a dedicated breast MRI equipment may be difficult and if a biopsy is needed later, the patient may be required to find a different facility for that procedure.

The American Cancer Society (ACS) does not recommend the use of an MRI for routine breast cancer screenings, but if one is used it should be used in addition to, not instead of a screening mammogram.²² The ACS suggests that women who are at high risk for breast cancer based on certain factors get both an MRI and a mammogram every year, including women who:

- Have a lifetime risk of breast cancer of about 20 to 25 percent greater, according to risk assessment tools that are based primarily on family history;
- Have a known BRCA1 or BRCA2 gene mutation;

¹⁵ *Supra* note 13, at 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ National Cancer Institute, *Breast Cancer Screening (Patient Version)*, <https://www.cancer.gov/types/breast/patient/breast-screening-pdq>, (last visited Jan. 18, 2018).

²⁰ *Id.*

²¹ *Id.*

²² American Cancer Society, *Breast Cancer Early Detection and Diagnosis*, <https://www.cancer.org/cancer/breast-cancer/screening-tests-and-early-detection/american-cancer-society-recommendations-for-the-early-detection-of-breast-cancer.html>, (last visited Jan. 19, 2018).

- Have a first degree relative (parent, brother, sister, or child) with a BRCA1 or BRCA2 gene mutation, and have not had genetic testing themselves;
- Had radiation therapy to the chest when they were between the ages of 10 and 30 years; or
- Have Li-Fraumeni Syndrome, Cowden Syndrome, or Bannayan-Riley-Ruvalcaba Syndrome, or have first-degree relatives with one of these syndromes.²³

A breast ultrasound is often used to examine a breast change that has been viewed on a mammogram. It is also useful for viewing breast changes that cannot be seen on a mammogram, but can be felt; or for changes in women with dense breast tissue.²⁴ Breast ultrasound uses soundwaves to make a computer picture of the inside of the breast. A gel that is put on the skin and a transducer which is moved across the skin is used to show the underlying tissue structure. The sound waves and echoes make a black and white picture on the screen.²⁵ An automated ultrasound is also an option as is the use of a second handheld transducer in order to get more pictures.

A newer technology for mammography are 3D screenings. The USPSTF has not made a recommendation on the use of 3D screening as a primary tool saying that it is not clear whether the technology will result in improved health, quality of life, or fewer deaths among women screened.²⁶

The other methods, ultrasound and MRI, were also reviewed specifically by the USPSTF for how they could assist with screening women with dense breasts.²⁷ For all three alternative methods, the USPSTF graded the practices an “I” which means the Task Force concluded that the current evidence is inconclusive to assess the balance of benefits and harms of the service. The evidence is lacking, of poor quality, or conflicting, and the balance of benefits and harms cannot be determined.²⁸

Federal Regulations

The federal Mammography Quality Standards Act (MQSA)²⁹ contains requirements related to the accreditation and operation of mammography facilities. Such a facility is defined as a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including operating equipment to produce a mammogram, processing the mammogram, interpreting the initial mammogram, and maintaining the viewing conditions for that mammogram. The term does not include any facilities of the Department of Veteran Affairs.³⁰

²³ American Cancer Society, *Breast MRI Scans*, <https://www.cancer.org/cancer/breast-cancer/screening-tests-and-early-detection/breast-mri-scans.html> (last visited Jan. 19, 2018).

²⁴ American Cancer Society, *Breast Ultrasound*, <https://www.cancer.org/cancer/breast-cancer/screening-tests-and-early-detection/breast-ultrasound.html> (last viewed Jan. 19, 2018).

²⁵ *Id.*

²⁶ *Supra* note 13, at 3.

²⁷ *Supra* note 13, at 3.

²⁸ U.S. Preventive Services Task Force, *Grade Definitions* <https://www.uspreventiveservicestaskforce.org/Page/Name/grade-definitions>, (Jan. 18, 2018).

²⁹ 42 U.S.C. s. 263b.

³⁰ 21 C.F.R. s. 900.1.

A certificate issued by the Food and Drug Administration is required for all mammography facilities, subject to the provisions of the MQSA. To obtain a certificate, facilities must meet various quality standards set forth in federal law and regulations, including the requirement to communicate mammography results to patients and health care providers.³¹

Mammogram facilities are required to send each patient a summary of the mammogram report written in lay term within 30 days of the mammographic examination. However, if the assessment is found to be “suspicious” or “highly suggestive” of malignancy, the facility is required to make reasonable attempts to reach the patient and the referring physician, if there is one, as soon as possible.³² Neither the federal law nor the regulation requires the facility to include specific information about breast tissue density in the report summary sent to the patient or the referring physician.

Breast Density Notification in Other States

As of January 2018, there are 31 states with laws requiring that women be notified of their breast density and there are four additional states that recommend but do not require notification.³³ The components of those notification laws vary, but the intent of the notification is to give women who have dense breasts the necessary information to assist them with further action.³⁴ Most states’ prescribed notices encourage women to talk with their health care providers about their results and to discuss the possible options available. Six states also require insurance coverage for comprehensive ultrasound screenings or other supplemental screenings for women identified with dense breasts.³⁵

The map below shows which states currently require some density notification to patients and which states also require insurance coverage for supplemental screenings for dense breasts.³⁶

³¹ 21 C.F.R. s. 900.12(c)(2) and (3).

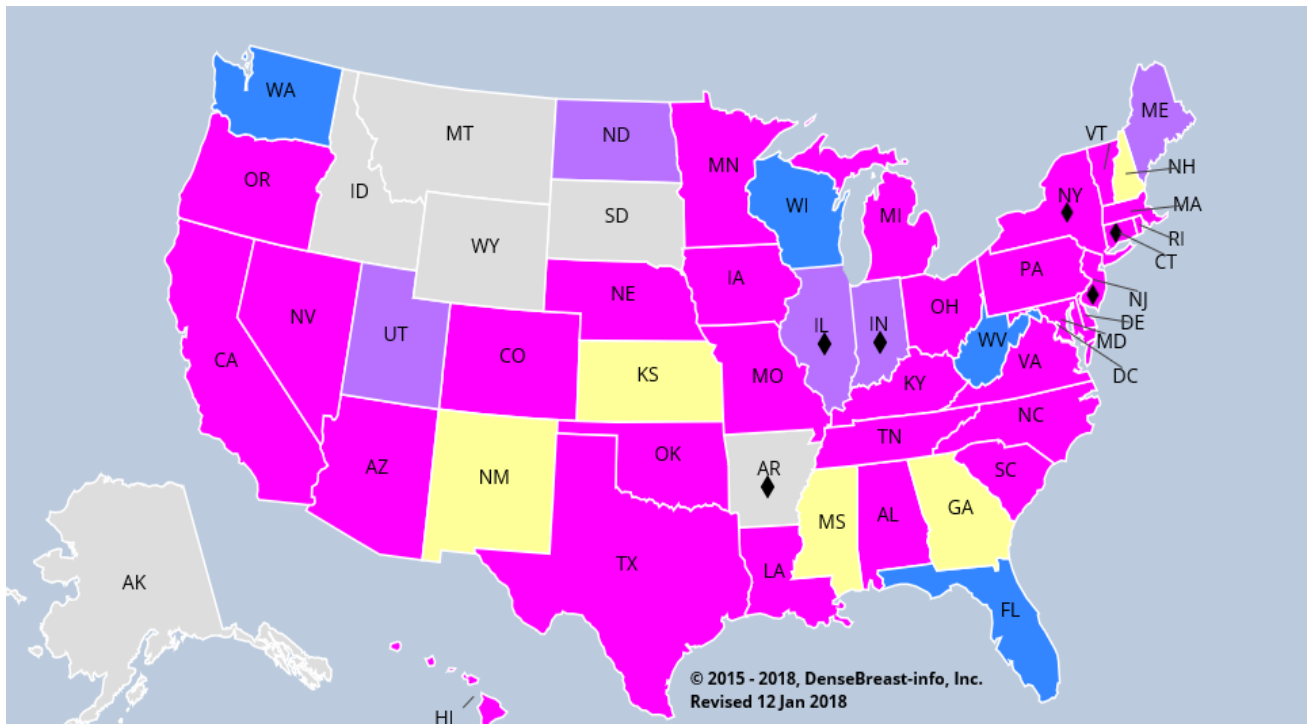
³² *Id.*

³³ *Supra* note 8.

³⁴ Marijke Vroomen Durning, Diagnostic Imaging, *Breast Density Notification Laws by State – Interactive Map* (June 12, 2017), <http://www.diagnosticimaging.com/breast-imaging/breast-density-notification-laws-state-interactive-map>, (last visited Jan. 19, 2018).

³⁵ Dense-breasts-info.org, *Legislation and Regulations – What is required*, <http://densebreast-info.org/legislation.aspx>, (Jan. 19, 2018).

³⁶ *Id.*



Map Legend

- Some density notification required (30 states)
- Effort for inform/education; notification not required
- Active bill
- Inactive bill/no notification enacted
- ◆ State with insurance coverage (6 states)

Florida Insurance Mandates

Sections 627.6418, 627.6613, and 641.31095, F.S., contain mandates for accident or health insurance policies, group, blanket, or franchise accident or health insurance policies, and HMOs, respectively, to cover mammograms under certain parameters and requirements. Those parameters and requirements include coverage of a baseline mammogram and coverage of mammograms performed annually, biennially, or on a more frequent basis, depending on the age of the patient, recommendation of the patient's physician, and the patient's risk of breast cancer as determined by personal or family history.

These statutes also allow copayments and deductibles to be applied to mammogram services while requiring health insurers and HMOs to make mammogram coverage available, as part of the application for coverage and for an appropriate additional premium, without mammogram services being subject to copayments and deductibles.

All plans offered under the federal Marketplace and many other plans must offer breast cancer mammography screenings every one to two years for women over to age of 40 without charging a copayment or coinsurance, even if the patient has not met her yearly deductible.³⁷

³⁷ See 45 C.F.R. s. 147.130, for the definition of coverage of preventive services by a group health plan, or a health insurance issuer offering group health insurance or individual insurance under the federal Patient Protection and Affordable Care Act (act). The act requires coverage of those preventive services rated as an A or B in the current recommendations of the U.S.

III. Effect of Proposed Changes:

Sections 1 and 2 re-locate the definition of mammography from s. 404.22, F.S., to s. 404.031, F.S.

Section 3 creates s. 404.221, F.S., to require each facility that performs mammography to send a summary of a patient's mammography report which meets federal requirements to each patient. The patient report must also include the following specific notice if the patient has heterogeneously or extremely dense breasts:

Your mammogram shows that your breast tissue is dense. Dense breast tissue is relatively common and is found in approximately 50 percent of women. The presence of dense breast tissue can make it more difficult to detect some abnormalities in the breast and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness. A report of your results was sent to your health care provider. Further recommendations may be added at the discretion of the interpreting radiologist. Please be aware that additional screening studies may not be covered by your insurance.

The bill specifies that no specific duty, standard of care, or other legal obligation is created beyond the duty to provide the notice required under this section. The notice that is required under this section is not inconsistent with the notice requirements of the federal Mammography Quality Standards Act or any regulations that are promulgated pursuant to that act.

If enacted, the provisions of this section of law are repealed effective June 30, 2023.

Section 4 provides an effective date of the act of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The health care providers and screening facilities would likely incur one-time costs to modify the format of existing mammography reports to comply with the new requirements.

The demand for additional screenings may also put pressure on the health care delivery system for expanded access by those patients who receive a notice which alerts them to seek additional services or to contact their provider.³⁸

C. Government Sector Impact:

Women with dense breast tissue who were unaware of this fact until receiving the proposed notice may seek additional health care screenings. To the extent that such patients are in the Medicaid program, these additional screenings could have a state and federal fiscal impact for the cost of the additional mammograms, the reading of those mammograms, and the follow-up health care visits, including biopsies and surgery.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 404.031 of the Florida Statutes.

This bill creates section 404.221 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on February 15, 2018:**

The CS/CS modifies the placement of the new provisions relating to the mammography

³⁸ The bill does not require insurers and health plans to pay for any follow-up screenings or services from the mammogram screenings.

reports in a more appropriate statutory subsection which regulates mammography facilities.

CS by Health Policy on January 23, 2018:

The CS deletes the requirement for the patient's summary report to include information describing the Breast Imaging-Reporting and Data System (BI-RADS) categories and the patient's individual BI-RADS score. The CS modifies the patient notice for dense breasts, including informing the patient that additional screenings may not be covered by the patient's insurance. The CS also specifies that the bill creates no additional standards, duties of care, or legal obligations beyond the required notice and finds the state notice is not inconsistent with a specific federal law. The CS adds a sunset date for these provisions of June 30, 2023.

B. Amendments:

None.



278860

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 44

and insert:

Section 3. Section 404.221, Florida Statutes, is created to read:

404.221 Mammography reports.—Each facility that performs

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

And the title is amended as follows:

Delete line 5

and insert:



278860

12

creating s. 404.221, F.S.; requiring facilities

By the Committee on Health Policy; and Senator Grimsley

588-02377-18

2018164c1

A bill to be entitled

An act relating to mammography; amending s. 404.031, F.S.; defining the term "mammography"; amending s. 404.22, F.S.; conforming a change made by the act; creating s. 402.221, F.S.; requiring facilities performing mammography to include certain information in a summary of the mammography report which must be provided to each patient; providing applicability; providing for future repeal; providing an effective date.

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

Section 1. Present subsections (10) through (20) of section 404.031, Florida Statutes, are redesignated as subsections (11) through (21), respectively, and a new subsection (10) is added to that section, to read:

404.031 Definitions.—As used in this chapter, unless the context clearly indicates otherwise, the term:

(10) "Mammography" means radiography of the breast for the purpose of enabling a physician to determine the presence, size, location, and extent of cancerous or potentially cancerous tissue in the breast.

Section 2. Subsection (6) of section 404.22, Florida Statutes, is amended to read:

404.22 Radiation machines and components; inspection.—

(6) ~~(a) For purposes of this subsection, "mammography" means radiography of the breast for the purpose of enabling a physician to determine the presence, size, location, and extent~~

588-02377-18

2018164c1

~~of cancerous or potentially cancerous tissue in the breast.~~

~~(b)~~ All radiation machines used for mammography must:

(a) ~~shall~~ Meet the accreditation criteria of the American College of Radiology or similar criteria established by the department.

~~(b)(c)~~ All radiation machines used for mammography shall Be specifically designed to perform mammography.

~~(c)(d)~~ All radiation machines used for mammography shall Be used exclusively to perform mammography.

The department shall adopt rules to implement ~~the provisions of~~ this subsection.

Section 3. Section 402.221, Florida Statutes, is created to read:

402.221 Mammography reports.—Each facility that performs mammography shall send a summary of a patient's mammography report to each patient in accordance with 21 C.F.R. s. 900.12(c). If a facility determines that a patient has heterogeneously or extremely dense breasts, the summary must include the following notice:

"Your mammogram shows that your breast tissue is dense. Dense breast tissue is relatively common and is found in approximately 50 percent of women. The presence of dense breast tissue can make it more difficult to detect some abnormalities in the breast and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness. A report of your results was sent to your health care provider. Further

588-02377-18

2018164c1

59 recommendations may be added at the discretion of the
60 interpreting radiologist. Please be aware that additional
61 screening studies may not be covered by your insurance."

62
63 (1) This section does not create a duty, a standard of
64 care, or another legal obligation beyond the duty to provide
65 notice as required in this section.

66 (2) This section does not require a notice that is
67 inconsistent with the federal Mammography Quality Standards Act
68 or any regulation promulgated pursuant to that act.

69 (3) This section is repealed June 30, 2023.

70 Section 4. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 31, 2018

I respectfully request that **Senate Bill #164**, relating to Mammography, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/2018

Meeting Date

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

CS/SB 164

Bill Number (if applicable)

Topic MAMMOGRAPHY

Amendment Barcode (if applicable)

Name SLATER BAILIS

Job Title

Address 204 S. MONROE ST

Street

Phone 850-222-8900

TAMMISSEE

City

State

Zip

Email subcardman@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing HOLOGIC

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)

2/15/18

Meeting Date

CS/SB 164

Bill Number (if applicable)

Topic Mammography

Amendment Barcode (if applicable)

Name Alison B Dudley

Job Title President

Address P.O. Box 428

Street

Phone 850/559-1139

Tell. Fla 32302

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Radiological Society

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
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 Rules

BILL: CS/SR 398

INTRODUCER: Rules Committee and Senators Bracy and Campbell

SUBJECT: Taiwan

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Anderson</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 398 recognizes the commercial and cultural relationship between the United States and Taiwan. This resolution also marks the 39th anniversary of the Taiwan Relations Act on April 10, 2018.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Taiwan is located roughly 100 miles off of the southeastern China coast. The capital of Taiwan is Taipei, which is located on the northern side of Taiwan Island.¹ The population of Taiwan is roughly 23.5 million. According to the 2010 census, Florida is one of the top ten states with the largest Taiwanese population.² The Taiwanese population in Florida grew considerably from 2,403 in 2000 to 4,218 in 2010.³

While the United States and Taiwan have a strong economic and cultural relationship, it is an unofficial relationship. Since the 1979 U.S. – PRC Joint Communique, the United States has recognized Beijing as the capital of China and no longer recognized Taipei. It is official U.S.

¹ Britannica, *Taiwan*, <https://www.britannica.com/place/Taiwan#ref30004> (last visited February 15, 2018).

² Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited February 15, 2018).

³ Asia Matters for America, *Taiwan Matters for America*, <http://asiamattersforamerica.org/taiwan/data/population> (last visited February 15, 2018).

policy that Taiwan is part of China, and not an independent state. The Joint Communiqué detailed that the United States would continue to have unofficial diplomatic relations with Taiwan.⁴

The United States is Taiwan's second largest trading partner. The U.S. maintains an economic relationship with Taiwan through the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT).⁵ Taiwan is Florida's seventh largest trading partner. The U.S. supports Taiwan's participation in international organizations that do not require statehood for membership.⁶

III. Effect of Proposed Changes:

CS/SR 398 recognizes the commercial and cultural relationship between the United States and Taiwan. This resolution also marks the 39th anniversary of the Taiwan Relations Act on April 10, 2018.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴ U.S. Department of State, *U.S. Relations with Taiwan*, <https://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited February 15, 2018).

⁵ U.S. Department of State, *U.S. Relations with Taiwan*, <https://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited February 15, 2018).

⁶ U.S. Department of State, *U.S. Relations with Taiwan*, <https://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited February 15, 2018).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Rules on February 15, 2018:

The committee substitute adds language regarding Taiwan's participation in the United States' Global Entry program since November 1, 2017.

B. Amendments:

None.



776388

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Bracy) recommended the following:

Senate Amendment

In title, delete lines 51 - 53
and insert:
Visa Waiver Program since November 1, 2012, and Taiwan passport
holders are eligible to participate in the United States' Global
Entry Program as of November 1, 2017, becoming the third
location in East Asia and the 12th worldwide to hold this
privilege, reflecting the cooperation between the United States
and Taiwan and making travel for business and tourism between
the two more convenient, and

By Senator Bracy

11-00650-18

2018398__

Senate Resolution

A resolution recognizing the relationship between and shared interests of the people of Taiwan and the United States and supporting these interests, as well as future opportunities for international trade between the two nations.

WHEREAS, the people of Taiwan, officially known as the Republic of China, elected their first female president, Dr. Tsai Ing-wen, on January 16, 2016, by popular vote, and in June 2016 Florida welcomed her as she visited the state, further enhancing the bilateral relationship between the United States and Taiwan and strengthening the common value of democracy it shares with the United States, and

WHEREAS, Taiwan is one of the allies of the United States in East Asia, and the United States continues to provide defensive weaponry, including sales of naval vessels, equipment, and munitions to Taiwan, as well as delivery of 60 Sikorsky UH60M Black Hawk helicopters, and

WHEREAS, most of the post-sale training on these Black Hawk helicopters was conducted in Florida, which created jobs in this state and helped Taiwan maintain its defense capabilities, and

WHEREAS, these transactions are consistent with the security and economic interests of the United States in East and Southeast Asia, and

WHEREAS, Taiwan's meaningful participation in international organizations, including its bid for observer status in the International Criminal Police Organization, known as INTERPOL, is significant, as is its participation in the International

11-00650-18

2018398__

Civil Aviation Organization, the World Health Organization, the Asia-Pacific Economic Cooperation, and the World Trade Organization, and

WHEREAS, as the world's 18th largest trading economy and the 11th freest economy, Taiwan is devoted to bringing its regulations into alignment with United Nations conventions, including the organization's Sustainable Development Goals, and has become a model of democratization for developing countries, and

WHEREAS, while the people of Taiwan have consistently supported meaningful participation and involvement in the United Nations in the pursuit of world peace, they have been treated unjustly for political reasons, and

WHEREAS, given Taiwan's support for the humanitarian principles and goals of the United Nations, the voices of the people of Taiwan deserve to be heard by the organization and the international community, in keeping with Taiwan's affirmation of faith in fundamental human rights, in the dignity and worth of each person, and in the equal rights of men and women in all nations, and

WHEREAS, Taiwan has been a member of the United States' Visa Waiver Program since November 1, 2012, reflecting the cooperation between the United States and Taiwan and making two-way travel for business and tourism more convenient, and

WHEREAS, with respect to Taiwan's contributions in the global marketplace in both traditional and innovative industries, support for continued bilateral dialogue under the Trade and Investment Framework Agreement, including efforts to explore the possibility for a future bilateral investment

11-00650-18 2018398__
59 agreement and a free trade agreement with the United States,
60 will globalize Taiwan's economy and eliminate barriers to trade,
61 thus solidifying Taiwan's status as a robust and trustworthy
62 partner of the United States for trade and security in East
63 Asia, and

64 WHEREAS, the State of Florida maintains and values its
65 sister state relationship with Taiwan, which in 2016 was
66 Florida's seventh largest export market in Asia, and

67 WHEREAS, in addition to the sister state relationship that
68 exists between the State of Florida and Taiwan, sister city
69 relationships are maintained between Miami-Dade County and New
70 Taipei City, formerly Taipei County; Orlando and Tainan City;
71 Fort Lauderdale, the City of Miami, and Pensacola, respectively,
72 and Kaohsiung City; and between PortMiami and Port Kaohsiung,
73 and

74 WHEREAS, April 10, 2018, marks the 39th anniversary of the
75 enactment of the Taiwan Relations Act, which codified in law the
76 basis for continued commercial and cultural relations between
77 the United States and Taiwan, NOW, THEREFORE,

78
79 Be It Resolved by the Senate of the State of Florida:

80
81 That the Florida Senate recognizes the relationship between
82 and shared interests of the people of Taiwan and the United
83 States and supports these interests, as well as future
84 opportunities for international trade between the two nations.

85 BE IT FURTHER RESOLVED that a copy of this resolution, with
86 the Seal of the Senate affixed, be presented to the Taipei
87 Economic and Cultural Office in Miami and the Executive Office

11-00650-18 2018398__
88 of the Governor as a tangible token of the sentiments of the
89 Florida Senate.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Rules Committee

Subject: Committee Agenda Request

Date: January 31, 2018

I respectfully request that **Senate Bill #398**, relating to Taiwan, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script, reading "Randolph Bracy".

Senator Randolph Bracy
Florida Senate, District 11

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 Rules

BILL: CS/CS/SB 618

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Baxley and others

SUBJECT: Subpoenas in Investigations of Sexual Offenses

DATE: February 14, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Tulloch	Cibula	JU	Fav/CS
3. Erickson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 618 addresses the use of an investigatory subpoena to obtain a customer's information from an electronic communications or remote computing service in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes. Of particular significance, the bill extends the period of time in certain sex crime investigations during which notice of the existence of a subpoena to the customer may be delayed, but only if the subpoena is used to obtain the contents of a communication that has been in electronic storage for more than 180 days.

Specifically, the bill provides that in investigations involving sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain information pertaining to the subscriber or customer, excluding contents of a communication; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

Limited disclosure of the subpoena, however, is authorized. A court may grant an extension of the nondisclosure period or the delay of notification.

The bill also: authorizes a petition to modify or set aside a subpoena or disclosure prohibition; permits the retention of subpoenaed information for specific uses; specifies what notice is required; specifies procedures for retention of records; provides for compensation of a subpoenaed witness and others; provides legal protections for subpoena compliance; and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply.

II. Present Situation:

Subpoenas and Criminal Investigations

Subpoenas Generally

A “subpoena,” which literally means “under penalty,”¹ is a “process or a writ of a judicial nature” used by a court or, when authorized, by an investigative or administrative body, to compel compliance in a proceeding, usually after the proceeding has been initiated.² There are two types of subpoenas used in both the civil and criminal context. The subpoena ad testificandum is used to compel the attendance and testimony of witnesses.³ The subpoena duces tecum is used to compel production of documents, materials, or other tangible information.⁴

Subpoenas may generally be used by any party in a legal action as an investigative tool. For example, after a civil lawsuit alleging a breach of contract is filed, either side may obtain a subpoena to compel discovery of evidence pertaining to the alleged breach. In a criminal case, after the defendant is officially charged by an information or indicted, the defendant has a constitutional right to subpoena defense witnesses to testify during trial.⁵

Criminal Investigations Generally

A criminal investigation “begins when a victim, or one having knowledge of a crime, files a sworn statement . . . known as a complaint” with the proper authority.⁶ “Once a complaint has been investigated, and the complaint is found to have probable cause, a crime can be charged either by information or indictment.”⁷ “An information is a sworn document signed by the prosecuting authority . . . which charges a person with [a] violation of the law.”⁸ In Florida,

¹ Webster’s New World College Dictionary, 5th Ed. (2014).

² Op. Att’y Gen. Fla. 81-65 (1981) (citations omitted), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/6515E4FA246990B085256587004F3F07> (last visited on Jan. 12, 2018).

³ “What is a Subpoena?,” FindLaw, available at <http://litigation.findlaw.com/going-to-court/what-is-a-subpoena.html> (last visited on Jan. 12, 2018).

⁴ *Id.* Information may include data, such as “non-content information, connected to our Internet transactions (e.g., websites visited, to/from and time/date stamps on emails).” Richard M. Thompson II & Jared P. Cole, *Stored Communications Act: Reform of the Electronic Communications Privacy Act (ECPA)*, CRS Report 44036 (May 19, 2015) p. 2 (summary), Congressional Research Service (on file with the Senate Committee on the Judiciary).

⁵ Trial Handbook for Florida Lawyers, s. 12:7 *Subpoena duces tecum* (3d ed.).

⁶ Florida Office of the Attorney General, Office of Statewide Prosecution, *A Guide for Victims*, <http://myfloridalegal.com/pages.nsf/Main/e99f7f48df3b5d7485256cca0052aa0f> (last visited Jan. 18, 2018).

⁷ *Id.*

⁸ *Id.*

“[a]n information may charge any crime except a crime punishable by death.”⁹ On the other hand, “[a]n indictment is a charging document filed by a grand jury and may indict on any crime.”¹⁰ “A grand jury consists of 18 citizens who hear allegations and evidence brought before them by the prosecuting authority and decide who, if anyone, should be charged with what crime(s).”¹¹

Investigative Subpoena Powers

An investigative subpoena is used by the proper authority to investigate a crime after a crime is reported or a complaint is filed. “The purpose of an investigative subpoena is to allow the State to obtain the information necessary to determine whether criminal activity has occurred or is occurring.”¹² “[T]he State cannot be required to prove that a crime has occurred before it can issue an investigative subpoena because the entire purpose of the investigative subpoena is to determine whether a crime occurred.”¹³ “To require the State to prove that a crime occurred before it can issue an investigative subpoena puts the State in an impossible catch-22.”¹⁴

Thus, to carry out its investigative duties, the State has “the authority to issue an investigative subpoena duces tecum.”¹⁵ As Florida courts have often recognized, the “the state attorney acts as a one-person grand jury in carrying out investigations into noncapital criminal conduct”¹⁶ where the state attorney must investigate to determine if there is probable cause to charge someone with a crime, and then charge that person by information (the sworn document noted above). Because “the state attorney must be granted reasonable latitude” in its investigative role, “section 27.04, Florida Statutes . . . , allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation.”¹⁷

Under s. 27.04, F.S. the state attorney’s authority to “use the process of court” includes both compelling witness testimony and production of records and other information.¹⁸ Section 16.56(3), F.S., provides the same authority to the statewide prosecutor. When the Department of Law Enforcement is involved in the investigation, the Department of Legal Affairs (Attorney General’s Office) is the legal adviser and attorney to the department.¹⁹

“The decision to charge and prosecute criminal offenses is an executive responsibility over which the state attorney has complete discretion[.]”²⁰ “The State clearly has a strong interest in

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *State v. Investigation*, 802 So. 2d 1141, 1143–44 (Fla. 2d DCA 2001).

¹⁶ *Id.* at 144 (citing *Doe v. State*, 634 So. 2d 613, 615 (Fla. 1994); *Imparato v. Spicola*, 238 So. 2d 503, 506 (Fla. 2d DCA 1970); *State v. Nat’l Research Sys., Inc.*, 459 So.2d 1134, 1135 (Fla. 3d DCA 1984); Op. Att’y Gen. Fla. 94-86 (1994)). See also *State v. Gibson*, 935 So. 2d 611, 613 (Fla. 3d DCA 2006).

¹⁷ *Id.*

¹⁸ *State v. Jett*, 358 So.2d 875, 876-77 (Fla. 3d DCA 1978).

¹⁹ Section 943.03(8), F.S.

²⁰ *Gibson*, 935 So. 2d at 613 (quoting *State v. Bloom*, 497 So. 2d 2, 3 (Fla.1986) (internal quotations omitted)).

gathering information relevant to an initial inquiry into suspected criminal activity[.]”²¹ However, the State’s investigative powers are not unlimited. Rather, “[a] judicial limit to this discretion arises where constitutional constraints are implicated.”²²

Investigative Subpoenas and the Fourth Amendment

Under both the United States and Florida Constitution, people have a right to be free from *unreasonable* searches and seizures.²³ The United States Supreme Court has explained that “[t]he Fourth Amendment protects people, not places,’ . . . and wherever an individual may harbor a reasonable ‘expectation of privacy,’ . . . he is entitled to be free from unreasonable governmental intrusion.”²⁴ “Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted.”²⁵ “For ‘what the Constitution forbids is not all searches and seizures, but *unreasonable* searches and seizures.’”²⁶

In applying the foregoing Fourth Amendment principles to investigative subpoenas in *State v. Tsavaris*, the Florida Supreme Court held that “a properly limited” investigative subpoena “does not constitute an unreasonable search and seizure” so long as it is “not overly broad” but “properly limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.”²⁷ The Florida Supreme Court has also explained that “[s]ubpoenas duces tecum are different from search warrants and are indisputably less intrusive” in two major ways:

[1] While there is no opportunity to challenge a search warrant, a subpoena duces tecum is subject to a motion to quash *prior to the production* of the requested materials. [2] While a search warrant may involve the police rummaging through one’s belongings and may involve the threat or actual use of force, a subpoena duces tecum requires the subpoenaed person to *bring the materials sought* at a time and place described in the subpoena.²⁸

Thus, while “[a]n investigative subpoena has the potential to violate the Constitution of the United States or the Florida Constitution,”²⁹ a properly limited subpoena does not give rise to Fourth Amendment concerns. And when there is some concern over an investigative subpoena, a motion may be filed so that a court can “determine the reasonableness of the subpoena”³⁰ and ensure that “an unlawful warrantless search and seizure” is not “sanctioned under the guise of a subpoena duces tecum.”³¹

²¹ *Id.* (quoting *Doe v. State*, 634 So.2d 613, 615 (Fla.1994) (internal quotations omitted)).

²² *State v. J.M.*, 718 So.2d 316, 317 (Fla. 2d DCA 1998).

²³ *Terry v. Ohio*, 392 U.S. 1, 8 (1968) (“The Fourth Amendment provides that ‘the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.’”).

²⁴ *Id.* (quoting *Elkins v. United States*, 364 U.S. 206, 222 (1960), accord *Katz v. United States*, 389 U.S. 347, 351, 361 (1967)).

²⁵ *Id.*

²⁶ *Id.* (emphasis added).

²⁷ *State v. Tsavaris*, 394 So. 2d 418, 426–27 (Fla. 1981) (receded from by *Dean v. State*, 478 So. 2d 38, 41 (Fla. 1985), on other grounds (standing issue)).

²⁸ *Id.* (emphasis added).

²⁹ *State v. Investigation*, 802 So. 2d at 1146.

³⁰ *Id.* (citations omitted).

³¹ *Dean v. State*, 478 So. 2d 38, 41 (Fla. 1985).

While the court acts as a gatekeeper on the back end, some of the proper limitations of an investigatory subpoena are determined on the front end by statutes aimed at protecting the privacy of individuals. The federal Stored Communications Act, for example, limits what information an investigative body may obtain from a remote computing service or an electronic communication service. These services generally maintain information generated by a person's use of a computer service or an electronic device, such as a cell phone. For instance, an electronic communication service providing cell phone service maintains business records on subscribers for billing purposes which may be pertinent to a criminal investigation.³²

As explained in more detail below, the federal Stored Communications Act delineates when an investigatory subpoena may be used and when a search warrant or a court order must be obtained based on the type of information sought.

Section 92.605, F.S., and the Stored Communications Act

The provisions of s. 92.605, F.S., apply to a search warrant, court order, or subpoena issued in compliance with the federal Stored Communications Act (SCA).³³ Section 92.605, F.S., allows a search for records that are in the actual or constructive possession of an out-of-state corporation that provides electronic communication services or remote computing services to the public, when those records would reveal:

- The identity of the customers using those services;
- Data stored by, or on behalf of, the customers;
- The customers' usage of those services; or
- The recipients or destinations of communications sent to or from those customers.³⁴

Under s. 92.605, F.S., when an out-of-state corporation subject to this section is properly served³⁵ by an applicant³⁶ for the subpoena, court order, or search warrant, the out-of-state corporation must provide to the applicant all records sought pursuant to the process within 20 business days after receipt, or the date indicated within the subpoena, if later, including those records maintained or located outside the state.³⁷ If the records cannot be produced within the 20-day time period, the out-of-state corporation must notify the applicant within the 20-day time

³² The "Stored Communications Act" is a term used to describe Title II of the Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (1986), though the term "appears nowhere in the language of the statute." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (July 2009), p. 115, n. 1, U.S. Department of Justice, available at <http://www.justice.gov/criminal/cybercrime/docs/ssmanual2009.pdf> (last visited on Jan. 13, 2018). Title II of the ECPA is codified at 18 U.S.C. ss. 2701-2712.

³³ *Id.*

³⁴ Section 92.605(2), F.S.

³⁵ "'Properly served' means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service must be effected on the corporation's registered agent." Section 92.605(1)(h), F.S.

³⁶ "'Applicant' means a law enforcement officer who is seeking a court order or subpoena under s. 16.56, [F.S.], s. 27.04, [F.S.], s. 905.185, [F.S.], or s. 914.04, [F.S.], or who is issued a search warrant under s. 933.01, [F.S.], or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure." Section 92.605(1)(b), F.S.

³⁷ Section 92.605(2)(b), F.S. In any criminal case, the content of any electronic communication may be obtained under s. 92.605, F.S., only by court order or by the issuance of a search warrant, unless otherwise provided under the ECPA or other provision of law. Section 92.605(9), F.S.

period and agree to produce the documents at the earliest possible time. The applicant must pay the out-of-state corporation the reasonable expenses associated with compliance.³⁸

When the applicant makes a showing and the court finds that failure to produce records within 20 business days would cause an adverse result, the subpoena, court order, or warrant may require production of records within less than 20 business days. A court may reasonably extend the time required for production of the records upon finding that the out-of-state corporation needs the extension and that the extension would not cause an adverse result.³⁹

Additionally, s. 92.605, F.S.:

- Requires that an out-of-state corporation seeking to quash or object to the subpoena, court order, or warrant seek relief from the court issuing such subpoena, court order, or warrant in accordance with s. 92.605, F.S.;⁴⁰
- Requires verification of the authenticity of produced records upon written request from the applicant or if ordered by the court;⁴¹
- Provides that a cause of action does not arise against any out-of-state corporation or Florida business for providing records, information, facilities, or assistance in accordance with the terms of a subpoena, court order, or warrant subject to s. 92.605, F.S.;⁴² and
- Provides for admissibility in evidence in a criminal proceeding of records produced in compliance with s. 92.605, F.S.⁴³

Section 934.23, F.S., and the Stored Communications Act

Major Features of Section 934.23, F.S.

Section 934.23, F.S., is patterned after the federal SCA. It closely tracks 18 U.S.C. s. 2703. “The SCA protects communications held by two defined classes of network service providers[.]”⁴⁴ Those classes are electronic communication service (ECS) providers and remote computing service (RCS) providers.⁴⁵

Section 934.23, F.S., specifies how an investigative or law enforcement officer may obtain the content of a wire or electronic communication that has been in electronic storage in an electronic communications system, a wire or electronic communication held or maintained on a remote computing service, and a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication.

³⁸ Section 92.605(2)(b), F.S.

³⁹ Section 92.605(2)(c), F.S. Section 92.605(1)(a), F.S., contains a definition of “adverse result” that is identical to the definitions of that term in s. 934.25(2) and (6), F.S. See, *infra*, n. 46.

⁴⁰ Section 92.605(2)(d), F.S.

⁴¹ Section 92.605(2)(e), F.S.

⁴² Section 92.605(4), F.S.

⁴³ Section 92.605(5)-(8), F.S. A Florida electronic communication service provider or remote computing service provider is required to produce the same records previously described when served with a subpoena, court order, or warrant issued by another state. Section 92.605(3), F.S.

⁴⁴ *Supra*, n. 9, at p. 117.

⁴⁵ *Id.*

Section 934.23, F.S., also provides procedures for retention of records and other evidence pending issuance of process⁴⁶ and provides legal protections⁴⁷ and reasonable compensation for those providing assistance.⁴⁸

Terminology Relevant to Section 934.23, F.S.

Essential to an understanding of s. 934.23, F.S., is an understanding of the following terminology used in the section, most of which is patterned on terminology used in the SCA:

- “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.⁴⁹
- “Electronic communication” means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁵⁰
- “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.⁵¹
- “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.⁵²
- “Electronic storage” means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.⁵³

⁴⁶ An ECS provider or RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by such officer. Section 934.23(7), F.S.

⁴⁷ No cause of action lies in any court against an ECS provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28, F.S. Section 934.23(6), F.S. Further, an ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., is held harmless from any claim and civil liability resulting from the disclosure of information pursuant to that section. Section 934.23(8), F.S.

⁴⁸ An ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., must be reasonably compensated for reasonable expenses incurred in providing such assistance. Section 934.23(8), F.S.

⁴⁹ Section 934.02(7), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(8). “The contents of a network account are the actual files (including email) stored in the account.... For example, stored emails or voice mails are ‘contents,’ as are word processing files stored in employee network accounts. The subject lines of emails are also contents.” *Supra*, n. 9, at p. 122-123.

⁵⁰ Section 934.02(12), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(12).

⁵¹ Section 934.02(15), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(15).

⁵² Section 934.02(14), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(14). Telephone companies and electronic mail companies are examples of “electronic communications service” providers. *Supra*, n. 9, at p. 117.

⁵³ Section 934.02(17), F.S. This definition is identical to the definition in 18 U.S.C. s. 2510(17). According to the U.S. Department of Justice (DOJ), “‘electronic storage’ refers only to temporary storage made in the course of transmission by a service provider and to backups of such intermediate communications made by the service provider to ensure system

- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.⁵⁴
- “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.⁵⁵
- “Subpoena” means any administrative subpoena authorized by federal or Florida law, federal or Florida grand jury subpoena, or any criminal investigative subpoena as authorized by Florida statute which may be utilized on behalf of the government by an investigative or law enforcement officer.⁵⁶
- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.⁵⁷

Disclosure of Records or Information under Section 934.23, F.S.

The SCA (specifically, 18 U.S.C. s. 2703) “provides for different means of obtaining evidence, and different levels of privacy protection, depending on the type of evidence sought and the type of provider possessing it.”⁵⁸ Section 934.23, F.S., mirrors this approach. The types of evidence obtainable by different means are discussed in detail below.⁵⁹

No Process – Consent of the Subscriber or Customer

An investigative or law enforcement officer may require an ECS provider or RCS provider to disclose a record or other information pertaining to a subscriber or customer of such service, not

integrity. It does not include post-transmission storage of communications.” *Supra*, n. 9, at p. 123. Under the DOJ interpretation, an e-mail is only in “electronic storage” if not accessed by the recipient. *Id.* However, the federal Ninth Circuit in *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004), rejected this interpretation and “held that email messages were in ‘electronic storage’ regardless of whether they had been previously accessed[.]” *Supra*, n. 9, at p. 124-25, citing *Theofel*, 359 F.3d at 1075-77.

⁵⁴ Section 934.02(6), F.S. The definition in 18 U.S.C. 2510(7) refers to federal law enforcement officers and prosecutors.

⁵⁵ Section 934.02(19), F.S. This definition is identical to the definition in 18 U.S.C. s. 2711(2). “Roughly speaking, a remote computing service is provided by an off-site computer that stores or processes data for a customer.” *Supra*, n. 9, at p. 119.

⁵⁶ Section 934.02(23), F.S.

⁵⁷ Section 934.02(1), F.S. This definition is very similar to the definition in 18 U.S.C. s. 2510(1).

⁵⁸ *Matter of Search Warrant for [redacted].com*, 248 F.Supp. 3d 970, 975 (C.D. Cal. 2017). “The structure of the SCA reflects a series of classifications that indicate the drafters’ judgments about what kinds of information implicate greater or lesser privacy interests.” *Supra*, n. 9, at p. 115. “Some information can be obtained from providers with a subpoena, other information requires a special court order; and still other information requires a search warrant. In addition, some types of legal process require notice to the subscriber, while other types do not.” *Id.* at 116.

⁵⁹ This analysis follows the format provided by the DOJ in its discussion of the SCA. *Supra*, n. 9.

including the contents of a communication, if the officer has the consent of the subscriber or customer to such disclosure.⁶⁰

Subpoena

An investigative or law enforcement officer who obtains a subpoena may obtain from the ECS provider or RCS provider basic information, including session information, regarding a subscriber or customer of the provider.⁶¹ This information includes:

- Name and address;
- Local and long-distance telephone connection records or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.⁶²

Subpoena with Prior Notice to the Subscriber or Customer

An investigative or law enforcement officer who obtains a subpoena and provides prior notice to the subscriber or customer or with delayed notice pursuant to s. 934.25, F.S., may obtain:

- Whatever can be obtained by subpoena without prior notice;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;⁶³
- An electronic communication that is held or maintained on a RCS:
 - On behalf of a subscriber or customer of the RCS and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service; and
 - Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.⁶⁴

⁶⁰ Section 934.23(4)(a)3., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(C)).

⁶¹ Section 934.23(4)(a)4. and (4)(b), F.S.

⁶² Section 934.23(4)(b), F.S. (similar to 18 U.S.C. s. 2703(c)(2)). “In general, the items in this list relate to the identity of a subscriber, his relationship with his service provider, and his basic session connection records. In the Internet context, ‘any temporarily assigned network address’ includes the IP address used by a customer for a particular session. For example, for a webmail service, the IP address used by a customer accessing her email account constitutes a ‘temporarily assigned network address.’ This list does not include other, more extensive transaction-related records, such as logging information revealing the email addresses of persons with whom a customer corresponded.” *Supra*, n. 9, at p. 121.

⁶³ Section 934.23(1) and (2)(b)1., F.S. (similar to 18 U.S.C. s. 2703(a) and (b)(1)(B)(i)).

⁶⁴ Section 934.23(2)(b)1. and (3), F.S. (similar to 18 U.S.C. s. 2703(b)(1)(B)(i) and (2)). According to the DOJ, “[o]utside the Ninth Circuit ..., this third category will include opened and sent e-mail.” *Supra*, n. 9, at p. 129.

Court Order for Disclosure without Prior Notice

Pursuant to s. 934.23(5), F.S., a court may issue an order for disclosure only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation.⁶⁵

An investigative or law enforcement officer who obtains a court order for disclosure may obtain:

- Whatever can be obtained by subpoena without prior notice; and
- From an ECS provider or RCS provider, a record or other information pertaining to the subscriber or customer of such service, not including contents of communications.⁶⁶

Court Order for Disclosure with Prior Notice

An investigative or law enforcement officer who obtains a court order for disclosure without prior notice, and either gives prior notice to the subscriber or customer or complies with delayed notice provisions of s. 934.25, F.S., may obtain:

- Whatever can be obtained by a court order for disclosure;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;⁶⁷ and
- Contents of an electronic communication that is held or maintained on a RCS as described in s. 934.23(3), F.S.⁶⁸

Search Warrant

An investigative or law enforcement officer who obtains a search warrant may obtain:

- Whatever can be obtained pursuant to a court order for disclosure with notice; and
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for 180 days or less.⁶⁹

Section 934.25, F.S. (Delayed Notice)

Section 934.25, F.S., is also patterned after the SCA. It closely tracks 18 U.S.C. s. 2705.

Pursuant to s. 934.25(1), F.S., if an investigative or law enforcement officer seeks to obtain evidence from an RCS provider under s. 934.23(2), F.S. (contents of communications in a RCS)

⁶⁵ According to the DOJ, the equivalent federal court order for disclosure (under 18 U.S.C. s. 2703(d)) is needed “to obtain most account logs and most transactional records.” *Supra*, n. 9, at p. 130.

⁶⁶ Section 934.23(4)(a)2., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(B)). “This is a catch-all category that includes all records that are not contents, including basic subscriber and session information.... As one court explained, ‘a record means something stored or archived. The term information is synonymous with data.’ *In re United States*, 509 F. Supp. 2d 76, 80 (D. Mass. 2007).” *Supra*, n. 9, at p. 122.

⁶⁷ Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)).

⁶⁸ Section 934.23(2)(b)2. and (3), F.S. According to the DOJ, except in the federal Ninth Circuit, the federal government can obtain with a court order for disclosure with prior notice “the full contents of a subscriber’s account except unopened email and voicemail that have been in the account for 180 days or less.” *Supra*, n. 9, at p. 132.

⁶⁹ Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)). “Investigators can obtain everything associated with an account with a search warrant. The SCA does not require the government to notify the customer or subscriber when it obtains information from a provider using a search warrant.” *Supra*, n. 9, at p. 133.

pursuant to a court order for disclosure or subpoena, the officer may delay required notice under s. 934.23(2), F.S., for a period not exceeding 90 days as provided:

- Where a court order is sought, the officer includes in the application a request for an order delaying the notification for a period not to exceed 90 days, which request the court must grant if it determines that there is reason to believe that notification of the existence of the court order *may* have an “adverse result.”⁷⁰
- Where a subpoena is obtained, the officer may delay the notification for a period not to exceed 90 days upon the execution of a written certification of a supervisory official⁷¹ that there is reason to believe that notification of the existence of the subpoena may have an “adverse result”⁷² described in subsection (2).⁷³

Section 934.25(4), F.S., provides that the 90-day period may be extended by court order, but only in 90-day increments and only in accordance with s. 934.25(6), F.S., which effectively requires the officer to demonstrate to the court or certify that there is reason to believe notification *will* result in any act specified in that subsection (acts identical to those acts that constitute an “adverse result”⁷⁴ under subsection (2)).⁷⁵

Section 934.25(5), F.S., provides that, upon the expiration of the period of delay of notification under s. 934.25(1), F.S., or s. 934.25(4), F.S., the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

- States with reasonable specificity the nature of the law enforcement inquiry, and
- Informs the subscriber or customer:
 - That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested;
 - That notification of such subscriber or customer was delayed;
 - What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made; and
 - Which provision of ss. 934.21-934.28, F.S., allowed such delay.⁷⁶

⁷⁰ Section 934.25(1)(a), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(A)). An “adverse result” is defined in s. 934.25(2) and (6), F.S., as any of the following acts: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial. This definition is identical to the definition of the term in 18 U.S.C. s. 2705(a)(2).

⁷¹ A “supervisory official” is “the person in charge of an investigating or law enforcement agency’s or entity’s headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification. Section 934.25(7), F.S. (similar to 18 U.S.C. s. 2705(a)(6)).

⁷² See n. 46, *supra*.

⁷³ Section 934.25(1)(b), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(B)). The investigative or law enforcement officer has to maintain a true copy of a certification obtained under paragraph (1)(b). Section 934.25(3), F.S. (similar to 18 U.S.C. s. 2705(a)(3)).

⁷⁴ See n. 46, *supra*.

⁷⁵ Similar to 18 U.S.C. s. 2705(a)(4).

⁷⁶ Similar to 18 U.S.C. s. 2705(a)(5) and (b).

Section 934.25(6), F.S., also authorizes an investigative or law enforcement officer acting under s. 934.23, F.S., when not required to notify the subscriber or customer under s. 934.23(2)(a), F.S. (warrant), or to the extent such notice may be delayed pursuant to s. 934.25(1), F.S. (subpoena or court order for disclosure), to apply to a court for an order commanding an ECS provider or RCS provider to whom a warrant, subpoena, or court order is directed not to notify any other person of the existence of the warrant, subpoena, or court order. The order of nondisclosure is “for such period as the court deems appropriate” and can only be entered if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order *will* result in any act specified in that subsection (acts identical to those acts that constitute an “adverse result”).⁷⁷

III. Effect of Proposed Changes:

The bill creates s. 934.255, F.S., which relates to subpoenas obtained by an investigative or law enforcement officer conducting an investigation into allegations of the sexual abuse of a child or an individual’s suspected commission of any of a list of specified sex crimes. Of particular significance, the bill enlarges the period of delayed notification to the customer of the existence of the subpoena from 90 days under ss. 934.23 and 934.25, F.S., to 180 days. This extension of delayed notification applies only when the subpoena is used to obtain the *contents* of a communication that has been in electronic storage for more than 180 days during the investigation of certain sex crimes.

Definitions

The bill provides the following definitions of terms relevant to the provisions of the bill:

- “Child” means a person under 18 years of age.
- “Deliver” is construed in accordance with completed delivery, as provided for in Rule 1.080(b) of the Florida Rules of Civil Procedure.
- “Sexual abuse of a child” means a criminal offense based on any conduct described in s. 39.01(71), F.S.
- “Supervisory official” means the person in charge of an investigating or law enforcement agency’s or entity’s headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

Investigative Subpoena for Records or Other Information

The bill authorizes use of a subpoena in an investigation into allegations of the sexual abuse of a child or an individual’s suspected commission of any of a list of specified sex crimes⁷⁸ to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such information. This investigative subpoena does not apply

⁷⁷ See n. 46, *supra*. Similar to 18 U.S.C. s. 2705(b).

⁷⁸ The crimes are listed in s. 943.0435(1)(h)1.a.(I), F.S., and include but are not limited to: various sex trafficking crimes under s. 787.06, F.S.; sexual battery offenses under ch. 794, F.S.; lewd offenses under ss. 800.04 and 825.1025, F.S.; sexual performance by a child under s. 827.071, F.S.; various computer pornography crimes under ch. 847, F.S.; and selling or buying a minor to engage in sexually explicit conduct under s. 847.0145, F.S.

to information held or maintained by an electronic communication service (ECS) provider or remote computing service (RCS) provider, which is addressed separately in the bill.

Investigative Subpoena Directed to ECS Provider or RCS Provider

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, without notice to the subscriber or customer of an ECS provider or RCS provider, obtain records or other information pertaining to the subscriber or customer, not including the contents of a communication. This information consists of the basic subscriber identity and session information described in s. 934.23(4)(b), F.S.:

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may, with notice to the subscriber or customer of a RCS provider or with delayed notice (see discussion, *infra*), obtain the contents of any wire or electronic communication that has been in electronic storage in an electronic communication system for more than 180 days. This information, which is the same information obtainable with a subpoena and prior notice as provided in s. 934.23(2)(b) and (3), F.S., consists of any electronic communication that is held or maintained on a remote computing service:

- On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.
- Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

Requirements Relating to Subpoena and Production of Subpoenaed Information

The bill requires that a subpoena describe the records, documents, or other tangible objects required to be produced, and prescribe a date by which such information must be produced.

Petition for an Order Modifying or Setting Aside a Subpoena or Disclosure Prohibition

At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure.

Retention of Subpoenaed Records or Other Information for Use in an Investigation

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

Nondisclosure of the Existence of a Subpoena

The bill authorizes an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing the existence of the subpoena to any person for 180 days if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result.⁷⁹ However, a subpoena recipient may disclose information otherwise subject to any applicable nondisclosure requirement to:

- Persons as is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding compliance with the subpoena; or
- Any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification.

The subpoena recipient must notify any person to whom disclosure of the subpoena is made of the existence of, and length of time associated with, the nondisclosure requirement. A person to whom disclosure of the subpoena is made cannot disclose the existence of the subpoena during the nondisclosure period.

At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient must identify to the officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made. If the officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

Delay of Required Notification

For the contents of a communication that has been in electronic storage in an electronic communications system for more than 180 days, the bill authorizes an investigative or law enforcement officer to delay giving the notification required for a subpoena to obtain such content for 180 days, if the subpoena is accompanied by a written certification of a supervisory official stating that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result. The investigator or law enforcement officer must maintain a true copy of the written certification.

⁷⁹ The bill defines an "adverse result" in conformity with section 934.25(2) and (6), F.S., as any of the following acts by a subpoena recipient: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial.

Extension of the Nondisclosure Period or Delay of Notification

A court may grant extensions of the nondisclosure period or period of delay of notification for up to 90 days each. An extension must be consistent with another provision of the bill authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting an ECS provider or RCS provider from notifying anyone of the existence of the subpoena for such period as the court deems appropriate. Under this provision, the court must enter the order if it determines that there is reason to believe that notification of the existence of the subpoena *will* result in an adverse result.

Compelling Compliance with a Subpoena and Sanctioning Noncompliance

In the case of contumacy⁸⁰ by a person served a subpoena, i.e., his or her refusal to comply with the subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure.

Any prohibited disclosure of a subpoena during an initial or extended period of prohibition of disclosure or delay of notification is in effect is punishable as provided in s. 934.43, F.S. As applicable to a subpoena, s. 934.43, F.S., provides that it is a third degree felony for a person having knowledge of a subpoena issued or obtained by an investigative or law enforcement officer to give notice or attempt to give notice of the subpoena with the intent to obstruct, impede or prevent:

- A criminal investigation or prosecution; or
- The officer from obtaining by the officer of the information or materials sought pursuant to the subpoena.

Records Retention by a Provider

An ECS provider or a RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

Protection from Claims and Civil Liability

No cause of action lies in any court against a provider of wire or electronic communication service for providing information, facilities, or assistance in accordance with the terms of a subpoena. An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) is held harmless from any claim and civil liability resulting from the disclosure of information (as provided in the bill).

⁸⁰ Merriam-Webster's online dictionary defines "contumacy" as "stubborn resistance to authority; *specifically*: willful contempt of court." See <https://www.merriam-webster.com/dictionary/contumacy> (last visited on Jan. 13, 2018).

Compensation

An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) must be reasonably compensated for reasonable expenses incurred in providing such assistance.

A witness who is subpoenaed to appear and provide testimony to authenticate subpoenaed records or other information must be paid the same fees and mileage rate paid to a witness appearing before a court in this state.

Effective Date

The effective date of the bill is October 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill is substantially patterned after current law and does not appear to obligate the recipient of a subpoena to provide records or information beyond what the recipient is required to provide under current law. However, there may be some indeterminate litigation costs to the subpoena recipient if the recipient elects to challenge provisions of the bill in court.

C. Government Sector Impact:

The bill is substantially patterned after current law and does not appear to authorize an investigative or law enforcement officer to obtain records or information beyond what may be obtained under current law. However, there may be a workload impact in regard to preparing and submitting written certifications relevant to nondisclosure or delay of notification, but that impact, if any, is indeterminate. There may also be some

indeterminate litigation costs associated with defending provisions of the bill if challenged in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.255 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on January 18, 2018:

The Committee Substitute:

- Corrects a grammatical error in the bill's title; and
- Removes wording in subsection (7) to clarify that the customer or subscriber, not the subpoena recipient, causes the enumerated adverse results.

CS by Criminal Justice on January 9, 2018:

The Committee Substitute:

- Makes technical changes to correct referencing errors and remove inapplicable language.
- Removes references and terminology relating to investigations involving a child sexual offender's failure to register as a sexual predator or sexual offender.
- Makes conforming changes to further model the bill after provisions of ss. 943.23 and 934.25, F.S., which include: authorizing multiple 90-day court-ordered extensions of delay of notification and the nondisclosure period; incorporating procedures for retention of records and other evidence pending issuance of a court order or other process; and providing legal protections and reasonable compensation for those providing assistance with subpoena compliance.
- Removes a provision relating to service of process.
- Removes a provision that states that a subpoena may not compel the production of a record, etc., that would otherwise be protected from production.

- B. **Amendments:**

None.

By the Committees on Judiciary; and Criminal Justice; and
Senators Baxley, Steube, Book, Rouson, and Mayfield

590-02183-18

2018618c2

1 A bill to be entitled
2 An act relating to subpoenas in investigations of
3 sexual offenses; creating s. 934.255, F.S.; defining
4 terms; authorizing an investigative or law enforcement
5 officer conducting an investigation into specified
6 matters to subpoena certain persons or entities for
7 the production of records, documents, or other
8 tangible things and testimony; specifying requirements
9 for the issuance of a subpoena; authorizing a
10 subpoenaed person to petition a court for an order
11 modifying or setting aside the subpoena or a
12 prohibition on disclosure; authorizing an
13 investigative or law enforcement officer to retain
14 subpoenaed records, documents, or other tangible
15 objects under certain circumstances; prohibiting the
16 disclosure of a subpoena for a specified period if the
17 disclosure might result in an adverse result;
18 providing exceptions; specifying the acts that
19 constitute an adverse result; requiring the
20 investigative or law enforcement officer to maintain a
21 true copy of a written certification; authorizing a
22 court to grant extension of certain periods under
23 certain circumstances; requiring an investigative or
24 law enforcement officer to serve or deliver a copy of
25 the process along with specified information upon the
26 expiration of a nondisclosure period or delay of
27 notification; authorizing an investigative or law
28 enforcement officer to apply to a court for an order
29 prohibiting certain entities from notifying any person

Page 1 of 9

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

590-02183-18

2018618c2

30 of the existence of a subpoena under certain
31 circumstances; authorizing an investigative or law
32 enforcement officer to petition a court to compel
33 compliance; authorizing a court to punish a person who
34 does not comply with a subpoena as indirect criminal
35 contempt; providing criminal penalties; precluding a
36 cause of action against certain entities or persons
37 for providing information, facilities, or assistance
38 in accordance with terms of a subpoena; providing for
39 preservation of evidence pending issuance of process;
40 providing that certain entities or persons shall be
41 held harmless from any claim and civil liability
42 resulting from disclosure of specified information;
43 providing for reasonable compensation for reasonable
44 expenses incurred in providing assistance; requiring
45 that a subpoenaed witness be paid certain fees and
46 mileage; providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 934.255, Florida Statutes, is created to
51 read:

52 934.255 Subpoenas in investigations of sexual offenses.—

53 (1) As used in this section, the term:

54 (a) "Child" means a person under 18 years of age.

55 (b) "Deliver" is construed in accordance with completed
56 delivery, as provided for in Rule 1.080(b) of the Florida Rules
57 of Civil Procedure.

58 (c) "Sexual abuse of a child" means a criminal offense

Page 2 of 9

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590-02183-18

2018618c2

based on any conduct described in s. 39.01(71).

(d) "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

(2) An investigative or law enforcement officer who is conducting an investigation into:

(a) Allegations of the sexual abuse of a child or an individual's suspected commission of a crime listed in s. 943.0435(1)(h)1.a.(I) may use a subpoena to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient concerning the production and authenticity of such records, documents, or objects, except as provided in paragraphs (b) and (c).

(b) Allegations of the sexual abuse of a child may use a subpoena to require a provider of electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service as described in 934.23(4)(b), not including the contents of a communication. An investigative or law enforcement officer who receives records or information from a provider of electronic communication services or remote computing services under this paragraph is not required to provide notice to a subscriber or customer of that provider.

(c) Allegations of the sexual abuse of a child may use a

590-02183-18

2018618c2

subpoena to require a provider of remote computing services to disclose the contents of any wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days and to which this paragraph is made applicable by paragraph (d), with prior notice, or with delayed notice pursuant to subsection (6), from the investigative or law enforcement officer to the subscriber or customer.

(d) Paragraph (c) applies to any electronic communication that is held or maintained on a remote computing service:

1. On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.

2. Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

A subpoena issued under this subsection must describe the records, documents, or other tangible objects required to be produced, and must prescribe a date by which such records, documents, or other tangible objects must be produced.

(3) At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena issued pursuant to subsection (2) may, before a judge of competent

590-02183-18

2018618c2

jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure issued under subsection (5) or subsection (9).

(4) An investigative or law enforcement officer who uses a subpoena issued under subsection (2) to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

(5) If a subpoena issued under subsection (2) is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, as described in subsection (7), the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

(a) A recipient of a subpoena issued under subsection (2) that is accompanied by a written certification issued pursuant to this subsection is authorized to disclose information otherwise subject to any applicable nondisclosure requirement to persons as is necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification. The subpoena recipient shall notify any person to whom disclosure of the subpoena is made pursuant to this paragraph of the existence of, and length of time associated with, the nondisclosure requirement.

590-02183-18

2018618c2

(b) A person to whom disclosure of the subpoena is made under paragraph (a) is subject to the nondisclosure requirements of this subsection in the same manner as the subpoena recipient.

(c) At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient shall identify to the investigative or law enforcement officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made under paragraph (a). If the investigative or law enforcement officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

(6) An investigative or law enforcement officer who obtains a subpoena pursuant to paragraph (2) (c) may delay the notification required under that paragraph for a period not to exceed 180 days upon the execution of a written certification of a supervisory official that there is reason to believe that that notification of the existence of the subpoena may have an adverse result described in subsection (7).

(7) Any of the following acts constitute an adverse result:

(a) Endangering the life or physical safety of an individual.

(b) Fleeing from prosecution.

(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

(e) Seriously jeopardizing an investigation or unduly delaying a trial.

590-02183-18

2018618c2

175 (8) The investigative or law enforcement officer shall
 176 maintain a true copy of a written certification obtained under
 177 subsection (5) or subsection (6).

178 (9) The court may grant extensions of the nondisclosure
 179 period provided in subsection (5) or the delay of notification
 180 provided in subsection (6) of up to 90 days each upon
 181 application by an investigative or law enforcement officer, but
 182 only in accordance with subsection (11).

183 (10) Upon the expiration of the period of delay of
 184 notification in subsection (6) or subsection (9), an
 185 investigative or law enforcement officer who receives records or
 186 information pursuant to a subpoena issued under paragraph (2)(c)
 187 must serve upon or deliver by registered or first-class mail to
 188 the subscriber or customer a copy of the process or request,
 189 together with notice that:

190 (a) States with reasonable specificity the nature of the
 191 law enforcement inquiry; and

192 (b) Informs the subscriber or customer of all of the
 193 following:

194 1. That information maintained for such subscriber or
 195 customer by the service provider named in the process or request
 196 was supplied to or requested by the investigative or law
 197 enforcement officer and the date on which such information was
 198 so supplied or requested.

199 2. That notification of such subscriber or customer was
 200 delayed.

201 3. What investigative or law enforcement officer or what
 202 court made the written certification or determination pursuant
 203 to which that delay was made.

590-02183-18

2018618c2

204 4. Which provision of ss. 934.21-934.28 allowed such a
 205 delay.

206 (11) An investigative or law enforcement officer acting
 207 under paragraph (2)(b), when not required to notify the
 208 subscriber or customer, or to the extent that such notice may be
 209 delayed pursuant to subsection (6), may apply to a court for an
 210 order prohibiting a provider of electronic communication
 211 services or remote computing services to whom the subpoena is
 212 directed, for such period as the court deems appropriate, from
 213 notifying any other person of the existence of such subpoena
 214 except as specifically authorized in subsection (5). The court
 215 shall enter such order if it determines that there is reason to
 216 believe that notification of the existence of the subpoena will
 217 result in an adverse result, as specified under subsection (7).

218 (12) In the case of contumacy by a person served a subpoena
 219 issued under subsection (2), or his or her refusal to comply
 220 with such a subpoena, the investigative or law enforcement
 221 officer who sought the subpoena may petition a court of
 222 competent jurisdiction to compel compliance. The court may
 223 address the matter as indirect criminal contempt pursuant to
 224 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
 225 prohibited disclosure of a subpoena issued under subsection (2)
 226 for which a period of prohibition of disclosure provided in
 227 subsection (5), a delay of notification in subsection (6), or an
 228 extension thereof under subsection (9) is in effect is
 229 punishable as provided in s. 934.43.

230 (13) No cause of action shall lie in any court against any
 231 provider of wire or electronic communication service, its
 232 officers, employees, agents, or other specified persons for

590-02183-18

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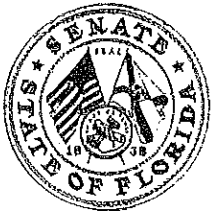
233 providing information, facilities, or assistance in accordance
234 with the terms of a subpoena under this section.

235 (14) (a) A provider of wire or electronic communication
236 services or a remote computing service, upon the request of an
237 investigative or law enforcement officer, shall take all
238 necessary steps to preserve records and other evidence in its
239 possession pending the issuance of a court order or other
240 process.

241 (b) Records referred to in paragraph (a) shall be retained
242 for a period of 90 days, which shall be extended for an
243 additional 90 days upon a renewed request by an investigative or
244 law enforcement officer.

245 (15) A provider of electronic communication service, a
246 remote computing service, or any other person who furnished
247 assistance pursuant to this section shall be held harmless from
248 any claim and civil liability resulting from the disclosure of
249 information pursuant to this section and shall be reasonably
250 compensated for reasonable expenses incurred in providing such
251 assistance. A witness who is subpoenaed to appear to testify
252 under subsection (2) and who complies with the subpoena must be
253 paid the same fees and mileage rate paid to a witness appearing
254 before a court of competent jurisdiction in this state.

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



THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

January 24, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Benacquisto,

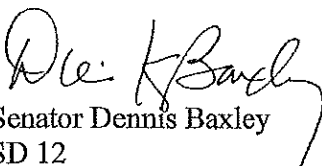
I respectfully request that you place SB 618 Subpoena Investigations of Sexual Offenses on your next available agenda.

This bill will assist law enforcement officers investigating sexual abuse on a child access to electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service. An investigative or law enforcement officer who receives records or information from a provider of electronic communication services or remote computing services is not required to provide notice to a subscriber or customer of that provider.

If a subpoena issued is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
SD 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/14

Meeting Date

SB 618

Bill Number (if applicable)

Topic

SUBPOENAS

Amendment Barcode (if applicable)

Name

Jay Sawicki

Job Title

Computer Forensics

Address

Po Box 16652

Phone

850-688

Street

TALLAHASSEE

State

FL

Zip

32311

Email

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

SELF

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)

2/15/18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoena

Amendment Barcode (if applicable)

Name Sheriff Wayne J. JeyJob Title Brevard SheriffAddress 700 S. PARK AVE

Phone _____

Street

City

Titusville

State

FL

Zip

32780

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Brevard CountyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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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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)

2/15/18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoenas in Investigations of Sexual Offenses

Amendment Barcode (if applicable)

Name Kendra Briscoe

Job Title Assistant

Address 3631 Mitcham Drive

Phone ~~850~~ 850-219-3631

Street

Tallahassee

City

FL

State

32308

Zip

Email kbriscoe@fpca.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs 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.

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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)

2.15.18

Meeting Date

618

Bill Number (if applicable)

Topic SUBPOENAS IN INVESTIGATION SEXUAL OFFENSES Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO Box 341644

Phone 813.264.2977

Street

TAMPA FL 33694

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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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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)

2/15/18

Meeting Date

618

Bill Number (if applicable)

Topic SUBPOENAS

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address PO BOX 1489

Street

Phone 880 410 7676

TALLAHASSEE

City

FL

State

32302

Zip

Email JASON.JONES@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

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

618

Meeting Date

Bill Number (if applicable)

Topic Subpoenas in Investigations of Sexual Offenses

Amendment Barcode (if applicable)

Name Roger BeaubienJob Title Special CounselAddress PL-01 The Capitol

Street

Phone _____

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Office of the Attorney GeneralAppearing at request of Chair: ☐ Yes ☐ NoLobbyist 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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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)

2-15-18

Meeting Date

618

Bill Number (if applicable)

Topic 618 Subpoenas in Sexual Offenses

Amendment Barcode (if applicable)

Name MIKE SPADAFORAJob Title AGENT BREVARD COUNTY SHERIFF OFFICEAddress 340 GOS HILL BLVD, ROCKLEDGE

Street

Phone 321-805-2909ROCKLEDGE

City

FL

State

32955

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing BREVARD COUNTY SHERIFF'S OFFICEAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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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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)

Meeting Date _____

618
 Bill Number (if applicable)

Topic Subpoena

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

FPAA

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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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)

2-15-18

Meeting Date

618

Bill Number (if applicable)

Topic Subpoenas in Sexual Offenses Investigations

Amendment Barcode (if applicable)

Name CJ Johnson

Job Title General Counsel

Address 2725 Center Place

Phone 321-501-9903

Street

Malbourne

City

FL

State

32946

Zip

Email CJohnson@ccchampions.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Businesses Against Child Exploitation / Community Champions

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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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)

2.15.18

Meeting Date

618

Bill Number (if applicable)

Topic 618 Subpoenas

Amendment Barcode (if applicable)

Name WAYNE TVEYJob Title SHERIFFAddress 340 Gus Hipp Blvd
StreetPhone 321-633-8418Rockledge FL 32955
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing BREVARD COUNTY SHERIFF'S OFFICEAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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
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 Rules

BILL: SB 674

INTRODUCER: Senator Young

SUBJECT: Steroid Use in Racing Greyhounds

DATE: February 14, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	McSwain	RI	Favorable
2. Akhavein	Becker	AG	Favorable
3. Kraemer	Phelps	RC	Favorable

I. Summary:

SB 674 amends s. 550.2415, F.S., to provide that a positive test result for anabolic steroids¹ in a racing greyhound based on samples taken from the greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Under current law and the current rules of the Division of Pari-Mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR), testosterone, an anabolic steroid, is permitted to be used for the control of the reproductive cycle in female greyhounds.

SB 674 has an indeterminate fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

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

II. Present Situation:

The racing of an animal (horse or greyhound) that has been impermissibly medicated or determined to have a prohibited substance present, is a violation of s. 550.2415, F.S. However, the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (DBPR), may adopt rules specifying acceptable levels of naturally occurring substances in untreated animals, acceptable levels of environmental contaminants, and trace levels of substances in test samples.²

¹ Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. *See* <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Jan. 31, 2018).

² *See* s. 550.2415(1)(b), F.S., and Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018). An administrative proceeding

Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, or is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.³

Certain medications may be administered to racing greyhounds in certain dosages under limited conditions, including the administration of:

- Testosterone or testosterone-like substances, when used for the control of estrus in female racing greyhounds, subject to certain conditions;⁴ and
- Sulfa drugs (antibiotics)⁵ under certain conditions.⁶

challenging Rule 61D-6.007 as an invalid exercise of delegated legislative authority and on the basis that the rule arbitrarily fails to address environmental contamination of urine samples is pending before the Florida Division of Administrative Hearings. See *McClellan and Nemeth v. Dep't of Bus. and Prof. Reg.*, Case No. 17-005238RU at <https://www.doah.state.fl.us/ALJ/searchDOAH/detail.asp> (last visited Jan. 31, 2018) (*McClellan*). In a Partial Summary Final Order issued December 22, 2017, Administrative Law Judge Lawrence Stevenson, found the **method** of collecting, handling, and testing urine samples from racing greyhounds trained by the petitioners was invalid, because the DBPR, in violation of Florida law, continued to rely on a portion of a 2010 procedural training manual relating to urine sampling “even after being ordered to cease all reliance on [the training manual’s sampling procedure]” in a prior administrative proceeding. *Id.* at page 9, citing *Dawson v. Dep't of Bus. and Prof. Reg.*, Case No. 14-5276RU (Fla. DOAH Jan. 29, 2015) (*Dawson*). In the *Dawson* case, the portion of the training manual relating to urine sampling was found to be an unadopted rule, and the DBPR was ordered to immediately discontinue all reliance on it, or any substantially similar statement. See *Dawson* at page 32. The DBPR has appealed the *McClellan* ruling to the First District Court of Appeal. See *Dep't of Bus. and Prof. Reg., Div. of Pari-Mutuel Wagering v. McClellan*, Case No. 18-0128 (Fla. 1st DCA) at http://jweb.flcourts.org/pls/ds/ds_docket (last visited Jan. 31, 2018).

³ See Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

⁴ Pursuant to Fla. Admin. Code R. 61D-6.007(1)(d) (2017), track veterinarians may administer injectable testosterone to female racing greyhounds to control their reproductive cycle (estrus control) (limited to administration that occurs on the ground of the pari-mutuel permit holder). Kennel owners may use their regular Florida licensed veterinarian or may enter into a collective agreement for the services of a Florida licensed veterinarian to administer injectable testosterone as permitted. The administration of oral testosterone is permitted if it is validly prescribed and properly labeled. Veterinarians that administer injectable or oral testosterone are responsible for maintaining security, inventory, and a retrievable records/log in accordance with the Drug Enforcement Agency (DEA) regulations.

Until December 2017, the ARCI Model Rules of Racing (Model Rules) completely prohibited the use of anabolic steroids in racing greyhounds at any stage of their training and racing careers; the Model Rules were amended in December 2017 to provide an exception that allows the use of the anabolic steroid, testosterone, so long as it is prescribed by a licensed veterinarian for the control of estrus in female racing greyhounds. See ARCI-018-020 (16) *Medications and Drugs*, Model Rules at pp. 345-347 (pp. 342-344 of the printed document), and the footnote therein relating to “added ‘estrus control language’” at http://arci.blob.core.windows.net/webdocs/2017%20Model%20Rules_V8.2.pdf (last visited Jan. 31, 2018).

⁵ A “sulfa drug” is an antibiotic used to treat bacterial and some fungal infections. See <http://www.medicinenet.com/script/main/art.asp?articlekey=14498> (last visited Jan. 31, 2018).

⁶ Under Fla. Admin. Code R. 61D-6.007(2) (2017), the racing greyhound must be under the care of a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S. The sulfa drug must be prescribed by a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S., and the sulfa drug may not be administered within 24 hours prior to the officially scheduled post time of the race.

Certain medications at certain urinary concentrations are not reportable by the state laboratory as violations.⁷

All prescription medication, regardless of method of administration, must be safeguarded under lock and key when not being actively administered.⁸

Each racetrack permit holder must maintain a detention enclosure for securing urine, blood, or other samples from racing animals.⁹ The trainer of record for each animal is responsible for the condition of the animals he or she enters to race,¹⁰ and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.¹¹

Samples of blood, urine, saliva, or any other bodily fluid may be collected from a race animal immediately before and immediately after it has raced.¹² If racing officials find, through reasonably reliable evidence, that substances other than permissible substances have been administered, or that otherwise permissible substances have been administered during prohibited periods before the time of a race, evidence of illegal or impermissible substances may be confiscated and the racing animal may be prohibited from racing in the race (scratched).¹³

The winner of every race is sent to the detention enclosure for examination by an authorized representative of the division and the taking of samples to monitor and detect both permissible and impermissible substances.¹⁴ Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.¹⁵

⁷ See Fla. Admin. Code R. 61D-6.007(3) (2017). These include the detection of: (i) caffeine at a urinary concentration less than or equal to 200 nanograms per milliliter; (ii) theophylline and theobromine at a urinary concentration less than or equal to 400 nanograms per milliliter; (iii) procaine at a urinary concentration less than or equal to 2 micrograms per milliliter; and (iv) flunixin at a urinary concentration less than or equal to 250 nanograms per milliliter. A nanogram is one billionth of a gram and a microgram is one millionth of a gram; a milliliter is one thousandth of a liter, or .03381 fluid ounces. See <https://www.thefreedictionary.com/nanogram>, <https://www.thefreedictionary.com/microgram>, <https://www.thefreedictionary.com/milliliter>, and <http://www.metric-conversions.org/volume/milliliters-to-ounces.htm> (last visited Jan. 31, 2018).

⁸ See Fla. Admin. Code R. 61D-6.007(4) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

⁹ See Fla. Admin. Code R. 61D-6.002(2) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.002> (last visited Jan. 31, 2018).

¹⁰ See Fla. Admin. Code R. 61D-6.002(1) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.002> (last visited Jan. 31, 2018).

¹¹ See Fla. Admin. Code R. 61D-6.003 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.003> (last visited Jan. 31, 2018). Prescription drugs must be prescribed by a licensed veterinarian who has a current veterinarian-patient relationship, and all substances must have a proper label.

¹² Section 550.2415(1)(a), F.S.

¹³ See s. 550.2415(7) and (8), F.S., and Fla. Admin. Code R. 61D-6.005 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.005> (last visited Jan. 31, 2018).

¹⁴ See Fla. Admin. Code R. 61D-6.005(1) (2017).

¹⁵ *Id.*

All samples are collected by staff of the Office of Operations of the division and sent to the University of Florida College of Medicine Racing Laboratory (state laboratory) for analysis.¹⁶

Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.¹⁷

The division, in its 85th Annual Report, noted that during Fiscal Year 2015-2016, the state laboratory processed 76,219 samples and performed 313,600 analyses.¹⁸

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	16,945	58,274	2
Samples Analyzed	17,001	39,031	2
Number of Analyses	77,268	236,332	2
Positive Results	343	18	n/a

If a prohibited substance is found in a race-day specimen, it is evidence that the substance was administered to, and was in the racing animal while racing.¹⁹ Test results are confidential and exempt from public records for 10 days after the testing of all samples collected on a particular day have been completed and any positive results have been reported to the director of the division.²⁰ A prosecution by the division against a licensee for a violation must begin within ninety days after the violation.²¹

The division must notify the owner or trainer, the stewards, and the appropriate horsemen's association of all drug test results.²² At the request of either the affected owner or trainer, the division must send the sample to an independent laboratory for analysis.

If the positive result found by the state laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.²³ If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.²⁴ There must be a good faith attempt by the division to obtain a sufficient quantity of fluid specimens to allow both a primary test to be made by the state laboratory and a secondary test to be made by an independent laboratory.²⁵

¹⁶ See 85th Annual Report, Fiscal Year 2015-2016, (85th Annual Report) at page 31, at <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf> (last visited Jan. 31, 2018). The division annually contracts with the state laboratory for these services. The DBPR has not yet issued its 86th Annual Report for Fiscal Year 2016-2017.

¹⁷ See Fla. Admin. Code R. 61D-6.005 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.005> (last visited Jan. 31, 2018).

¹⁸ See 85th Annual Report, *supra* note 16, at page 31.

¹⁹ Section 550.2415(1)(c), F.S.

²⁰ See ss. 550.2415(1)(a), F.S.

²¹ See s. 550.2415(4), F.S.

²² Section 550.2415(5)(a), F.S.

²³ Section 550.2415(5)(b), F.S.

²⁴ Section 550.2415(5)(c), F.S.

²⁵ *Id.*

The mere presence of a prohibited substance in a racing animal is evidence of the violation.²⁶ The fine for violations may be up to \$10,000 or the race winnings (purse or sweepstakes amount), whichever is greater.²⁷ Prosecutions must be started within ninety days of the race date.²⁸

The penalty schedule for violations incorporates the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014 (Uniform Classification Guidelines), by ARCI.²⁹ Pursuant to Florida Administrative Code Rule 61D-6.012, relating to penalty guidelines for drug violations in greyhounds, penalties are imposed when the division finds certain substances have been identified by the state laboratory in a urine sample or blood sample collected from a greyhound participating in a pari-mutuel event, which substances include any drug or medication (unapproved drugs or medications) that:

- Is not approved for veterinary use in the United States by the Food and Drug Administration;
- Cannot be detected by the state laboratory in a urine or blood sample unless the medication was administered within 24 hours of the race; or
- Is detected in urine or blood concentrations that indicate a dosage level that would constitute a threat to the health and safety of the greyhound.³⁰

A first violation may result in a fine between \$1,000 and \$2,500, and a license suspension up to one year or a license revocation. Any subsequent violation may result in a fine between \$2,500 and \$5,000 and a license revocation.³¹

Penalties for the presence of other medications or drugs, other than unapproved drugs or medications described above, are based upon the classification of the medication or drug found in the Uniform Classification Guidelines.³²

III. Effect of Proposed Changes:

Section 1 amends s. 550.2415, F.S., to provide that a positive test result for anabolic steroids³³ in a racing greyhound before or after a race is a violation of s. 550.2415, F.S. That statute prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a

²⁶ See s. 550.2415(1)(c), F.S.

²⁷ See s. 550.2415(3)(a), F.S.

²⁸ See s. 550.2415(4), F.S.

²⁹ See s. 550.2415(7)(c), F.S.

³⁰ See Fla. Admin. Code R. 61D-6.012(1)(a) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.012> (last visited Jan. 31, 2018). An administrative proceeding challenging Rule 61D-6.012 as an invalid exercise of delegated legislative authority and on the basis that the rule arbitrarily fails to address environmental contamination of urine samples is pending before the Florida Division of Administrative Hearings. See *McClellan and Nemeth v. Dep't of Bus. and Prof. Reg.*, Case No. 17-005238RU at <https://www.doah.state.fl.us/ALJ/searchDOAH/detail.asp> (last visited Jan. 31, 2018) and the summary of the proceeding at footnote 2 *infra*.

³¹ *Id.*

³² See Fla. Admin. Code R. 61D-6.012(2) (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.012> (last visited Jan. 31, 2018).

³³ Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. See <http://www.medicinenet.com/script/main/art.asp?articlekey=5556> (last visited Jan. 31, 2018).

race. Anabolic steroids (testosterone) are drugs whose uses include the control of the reproductive cycle in female greyhounds.³⁴

The administration of testosterone or testosterone-like substances for the control of estrus in female racing greyhounds, is permitted by rule of the division, subject to certain conditions.³⁵ Under the bill, no such use of those substances will be permissible.

The bill does not modify the existing procedures for determining violations. Any affected licensee would have the same due process rights, including the opportunity for a hearing, which law currently affords for alleged violations under s. 550.2415, F.S.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 674 will have an indeterminate impact on greyhound tracks, and the owners and trainers of greyhounds. The impact will depend on the frequency that anabolic steroids are found to be present in greyhounds engaged in racing in Florida as a result of testing of samples taken from greyhounds before or immediately after a race.

C. Government Sector Impact:

The DBPR estimates the fiscal impact to state government to be minimal but indeterminate. The fiscal impact will depend upon the extent that violations and

³⁴ See Fla. Admin. Code R. 61D-6.007 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61D-6.007> (last visited Jan. 31, 2018).

³⁵ *Id.*

associated fines occur as a result of a greyhounds testing positive for the presence of anabolic steroids.³⁶

The DBPR reports that additional expenditures may be needed for the necessary testing for anabolic steroids. At present, the division contracts with the University of Florida, College of Medicine Racing Laboratory (state laboratory) to provide testing services. The current appropriation for that testing is \$2,266,000.³⁷ The state laboratory has indicated to the division that its testing procedures must be amended to include detection of anabolic steroids, and it must purchase a liquid chromatography-mass spectrometer to test approximately 37,000 greyhound racing samples annually (a cost of approximately \$400,000).³⁸

Further, the state laboratory may require building upgrades (a cost of approximately \$50,000) including electrical services, a nitrogen supply system, installation of a new venting system to accommodate additional fumes, and the purchase of a supporting bench to accommodate the additional equipment, to perform the additional testing the bill would require.³⁹ Additional state laboratory personnel will be required to process samples, review data, develop methodology, and maintain equipment (a cost of approximately \$100,000), and the state laboratory may need to amend the existing contract with the division to cover the additional costs (totaling approximately \$550,000).⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 provides that s. 550.2415, F.S., is violated if a sample from a greyhound reflects the presence of anabolic steroids, resulting in a positive test. The term “greyhound” used in the bill is more expansive than the term “racing greyhounds,” defined in s. 550.002(29), F.S., to mean greyhounds used, or bred, raised, or trained to be used, in racing at a pari-mutuel facility and registered with the National Greyhound Association.

According to the DBPR, the testing of samples from male greyhounds may also result in positive tests if levels of naturally occurring anabolic steroids (e.g., testosterone) are not considered and addressed.⁴¹

VIII. Statutes Affected:

This bill substantially amends section 550.2415 of the Florida Statutes.

³⁶ See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 674, dated Nov. 27, 2017 (on file with Senate Committee on Agriculture) at page 4.

³⁷ *Id.*

³⁸ *Id.* At page 5.

³⁹ *Id.*

⁴⁰ *Id.* at pages 4-5.

⁴¹ *Id.* at page 5.

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 Young

18-00087-18

2018674__

A bill to be entitled

An act relating to steroid use in racing greyhounds; amending s. 550.2415, F.S.; providing that a positive test result for anabolic steroids in certain samples taken from a greyhound violates the prohibition on the racing of animals that are impermissibly medicated or determined to have a prohibited substance present; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(1) (a) The racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present is prohibited. It is a violation of this section for a person to impermissibly medicate an animal or for an animal to have a prohibited substance present resulting in a positive test for such medications or substances based on samples taken from the animal before or immediately after the racing of that animal. It is a violation of this section for a greyhound to have anabolic steroids present resulting in a positive test for such steroids based on samples taken from the greyhound before or immediately after the racing of that greyhound. Test results and the identities of the animals being tested and of their trainers and owners of record are confidential and exempt from s. 119.07(1) and from s. 24(a), Art. I of the State Constitution for 10 days

Page 1 of 2

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

18-00087-18

2018674__

after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the division or administrative action has been commenced.

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

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

February 7, 2018

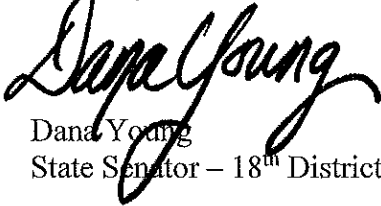
Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 674 relating to Steroid Use in Racing Greyhounds has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

<u>Meeting Date</u>		<u>674</u> Bill Number (if applicable)	
Topic <u>Steroid Use (Greyhounds)</u>		Amendment Barcode (if applicable)	
Name <u>Tony Glover</u>			
Job Title <u>Attorney@ Glover Law</u>			
Address <u>PO Box 6716</u>		Phone <u>850-895-1278</u>	
<u>Tallahassee</u> <u>FL</u> <u>32314</u>		Email <u>tony@gloverlaw.net</u>	
City State Zip			
Speaking: <input checked="" type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> Information		Waive Speaking: <input type="checkbox"/> In Support <input type="checkbox"/> Against (The Chair will read this information into the record.)	
Representing <u>→ GREY2K</u>			
Appearing at request of Chair: <input type="checkbox"/> Yes <input type="checkbox"/> No		Lobbyist registered with Legislature: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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)

2/15/18

Meeting Date

674

Bill Number (if applicable)

Topic Greyhounds Steroids

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address 1424 Metropolitan Circle

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850 508-1001

Email kmacfall@hsos.org

Speaking: ☒ For ☐ Against ☐ InformationWaive 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 ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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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)

674

Meeting Date _____

Bill Number (if applicable) _____

Topic Steroid Use (Greyhounds)

Amendment Barcode (if applicable) _____

Name Carey Theil

Job Title Executive Director - GREY 2K

Address PO BOX F

Phone 781-488-3526

Street

Arlington

MA

02476

City

State

Zip

Email Carey@grey2kusa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GREY 2K

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2/15/18
Meeting Date674
Bill Number (if applicable)Topic Greyhound Racing - Steroids

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD, PHDJob Title DIRECTOR, STATE LEGISLATION, SOUTHEAST REGIONAddress P O BOX 20534
StreetPhone 445 5245TALLAHASSEE FL 32301
City State ZipEmail jenhobgood@aspra.orgSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing ASPCAAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2/15/18

Meeting Date

674

Bill Number (if applicable)

Topic GREYHOUNDS Racing

Amendment Barcode (if applicable)

Name Ramon MAURY

Job Title _____

Address PO Box 10245

Street

Phone 222 1568

City

TALL, FL 32302

State

Zip

Email mmggroup@aol

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA GREYHOUNDS ASSOC

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
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 Rules

BILL: CS/CS/CS/SB 1020

INTRODUCER: Rules Committee; Commerce and Tourism Committee; Regulated Industries Committee;
and Senator Young and others

SUBJECT: Alcohol Deliveries

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Swift</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1020 permits an alcoholic beverage vendor to make deliveries away from the licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business. Current law permits only telephone or mail orders received at a vendor's licensed place of business to be construed as a sale actually made at the vendor's licensed place of business.

Additionally, the bill permits an alcoholic beverage vendor to make deliveries away from its licensed place of business in vehicles authorized by the vendor to make deliveries by a third party with whom the licensee has contracted to make deliveries, including, but not limited to, a common carrier. Current law permits an alcoholic beverage manufacturer, distributor, or a vendor to make deliveries away from its place of business only in vehicles that are owned or leased by the vendor.

The bill also requires the identity and age of the recipient to be confirmed upon delivery of an alcoholic beverage.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.² The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.³ Current law does not address orders received via the Internet or other electronic forms of communication.

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁴

Common carriers⁵ may transport alcoholic beverages.⁶ However, current law does not authorize manufacturers, distributors, and vendors to use common carriers to make deliveries.

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.⁷

III. Effect of Proposed Changes:

The bill amends s. 561.57(1), F.S., to permit an alcoholic beverage vendor to make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business. An electronic order received at the licensed place of business is construed as a sale actually made at the vendor's licensed place of business.

¹ Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

³ Section 561.57(1), F.S.

⁴ Section 561.57(2), F.S.

⁵ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

⁶ Section 561.57(5), F.S.

⁷ Section 561.01(20), F.S.

The delivery limitation in s. 561.57(2), F.S., is revised by the bill to permit a vendor to make deliveries away from its licensed place of business in vehicles that are authorized by the vendor to make deliveries by a third party with whom the vendor has contracted for deliveries, including, but not limited to, a common carrier. The bill also requires the identity and age of the recipient to be confirmed upon delivery of an alcoholic beverage.

Additionally, the vehicle of a third-party with whom the vendor has contracted to make deliveries may be inspected or searched without a search warrant to ascertain compliance with the Beverage Law by authorized employees of the division or by law enforcement, when the vehicle is used to transport or deliver alcoholic beverages. This provision is comparable to the provision in current law authorizing warrantless searches of vehicles owned or leased by a manufacturer, distributor, or vendor when used to make a delivery. The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An alcoholic beverage vendor could make deliveries away from its licensed place of business for electronic orders received at the vendor's licensed place of business.

A vendor will be permitted to contract with a third party, including common carriers, to make deliveries in vehicles of a third party with whom the vendor has contracted for deliveries.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.57 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on February 15, 2018:

The committee substitute:

- Separates into separate paragraphs the restrictions for deliveries by a vendor and the restrictions for deliveries by a manufacturer or distributor.
- Limits to vendors the bill's authorization for deliveries by a third party under contract with the vendor.
- Includes within the paragraph on deliveries by vendors the bill's authorization for deliveries by a third party under contract with the vendor.
- Duplicates the current law regarding the warrantless search of an alcoholic beverage licensee's vehicle when the vehicle is used to make deliveries to apply that provision to the vendor's vehicles and to the vehicles of a contracted third-party.

CS/CS by Commerce and Tourism on January 22, 2018:

The committee substitute requires the identity and age of the recipient to be confirmed upon delivery of an alcoholic beverage. The committee substitute also removes from the bill the requirement for third-party vehicles to be under a licensee's control and direction.

CS by Regulated Industries on January 10, 2018:

The committee substitute revises the bill to add the condition that the vehicles used by a third party, including common carriers, to make deliveries for the vendor must be under the control and direction of the vendor pursuant to a contract with the third party with whom the vendor has contracted to make deliveries.

B. Amendments:

None.



359082

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 25 - 40
and insert:

(2) (a) Deliveries made by a manufacturer or distributor, ~~or vendor~~ away from his or her place of business may be made only in vehicles that ~~which~~ are owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of such vehicles, the licensee agrees that such vehicle is ~~shall~~ ~~always be~~ subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of



359082

the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

(b) Deliveries made by a vendor away from the vendor's place of business may be made only in vehicles that are owned or leased by the vendor or which are authorized to be used for such deliveries by a third party, including, but not limited to, common carriers with whom the vendor has contracted for delivery. By acceptance of an alcoholic beverage license and the use of such vehicles, including contracted third-party vehicles, the vendor agrees that such vehicles are subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicles are being used to transport or deliver alcoholic beverages.

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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

vendor to make certain deliveries in a third-party vehicle under certain circumstances; providing that the vehicles used to make such deliveries are subject to certain inspections and searches under certain circumstances; requiring that the recipient's identity



823640

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Substitute for Amendment (359082) (with title amendment)

Delete lines 25 - 40

and insert:

(2) (a) Deliveries made by a manufacturer or distributor ~~or vendor~~ away from his or her place of business may be made only in vehicles that ~~which~~ are owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of such vehicles, the licensee agrees that such vehicle is ~~shall~~ ~~always be~~ subject to be inspected and searched without a search



823640

warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

(b) Deliveries made by a vendor away from the vendor's place of business may be made only in vehicles that are owned or leased by the vendor or which are authorized to be used for such deliveries by a third party with whom the vendor has contracted for delivery, including, but not limited to, common carriers. By acceptance of an alcoholic beverage license, or by contracting to make deliveries, and the use of such vehicles, including contracted third-party vehicles, the vendor or a third party with whom the vendor has contracted to make deliveries agree that such vehicles are subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers when the vehicles are being used to transport or deliver alcoholic beverages.

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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

vendor to make certain deliveries in a third-party vehicle under certain circumstances; providing that the vehicles used to make such deliveries are subject



823640

41 to certain inspections and searches under certain
42 circumstances; requiring that the recipient's identity

By the Committees on Commerce and Tourism; and Regulated Industries; and Senators Young, Hutson, and Brandes

577-02324-18

20181020c2

A bill to be entitled

An act relating to alcohol deliveries; amending s. 561.57, F.S.; including an electronic order as a type of order construed as a sale made at a vendor's licensed place of business; authorizing a manufacturer, distributor, or vendor to make certain deliveries in a third-party vehicle under certain circumstances; requiring that the recipient's identity and age be verified and documented at the time of delivery; requiring that deliveries comply with s. 562.11, F.S.; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 561.57, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

561.57 Deliveries by licensees.—

(1) Vendors shall be permitted to make deliveries away from their places of business of sales actually made at the licensed place of business; provided, telephone, electronic, or mail orders received at a vendor's licensed place of business shall be construed as a sale actually made at the vendor's licensed place of business.

(2) Deliveries made by a manufacturer, distributor, or vendor away from his or her place of business may be made only in vehicles that which are owned or leased by the licensee. Alternatively, such deliveries may be made in a third-party vehicle pursuant to a contract with a third party with whom the

577-02324-18

20181020c2

licensee has contracted to make deliveries, including, but not limited to, common carriers. Any ~~By acceptance of an alcoholic beverage license and the use of such vehicles, The licensee agrees that such vehicle used to make such deliveries is shall always be~~ subject to inspections and searches ~~be inspected and searched~~ without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers when ~~during business hours or other times~~ the vehicle is being used to transport or deliver alcoholic beverages.

(6) Valid proof of the recipient's identity and age shall be verified and documented at the time of delivery. Deliveries made pursuant to this section must comply with s. 562.11.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

January 22, 2018

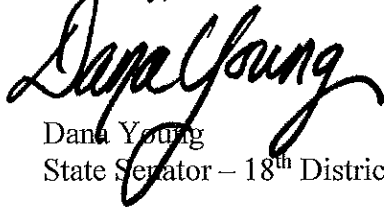
Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 1020 regarding Alcohol Deliveries has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

If you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15

Meeting Date

1020

Bill Number (if applicable)

823640 SA

Amendment Barcode (if applicable)

Topic Retail Deliveries of alcohol

Name Eric Criss

Job Title President

Address 110 S. Monroe St

Street

Tallahassee FL 32309

City

State

Zip

Phone 850.491.3903

Email eric@floridabeer.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Beer Industry of 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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-15-18

Meeting Date

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

1020

Bill Number (if applicable)

Topic Alcohol Deliveries

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College Ave.

Street

Tallahassee 1 FL

City

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2/15/18

Meeting Date

SB 1020

Bill Number (if applicable)

Topic Alcohol Delivery

Amendment Barcode (if applicable)

Name Stephanie Smith

Job Title Senior Public Policy Manager

Address 80 SW 8th St Miami FL 33130

Street

Phone 813 300 4901

City

State

Zip

Email smiths@uber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing UBER

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)

APPEARANCE RECORD

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

08/15/18

Meeting Date

1080

Bill Number (if applicable)

Topic Alcohol Deliveries

Amendment Barcode (if applicable)

Name Richard TurnerJob Title Senior VP Legal & Legislative AffairsAddress 230 S. Adams St. Phone 850-224-2250

Street

Tallahassee

City

FL

State

32301

Zip

Email rturner@fla.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Restaurant & Lodging AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/15/18
Meeting Date1020
Bill Number (if applicable)

Topic Alcohol

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP

Address 227 S Adams Street

Phone 850-570-0269

Street

Tallahassee

City

State

32311

Zip

Email Melissa@FRF.org

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FRF

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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
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 Rules

BILL: PCS/CS/SB 826 (487372)

INTRODUCER: Rules Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Governmental Oversight and Accountability Committee; and Senator Hukill

SUBJECT: Taxpayers' Rights Advocate

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Fav/CS
2.	Babin	Diez-Arguelles	AFT	Recommend: Fav/CS
3.	Peacock	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 826 requires the Chief Inspector General to appoint the taxpayers' rights advocate within the Department of Revenue and provides that such advocate may be removed from office only by the Chief Inspector General.

The bill requires the taxpayers' rights advocate to furnish a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on or before January 1, annually. The report must provide specific information about the work of the taxpayers' rights advocate during the previous year and the upcoming year.

The bill authorizes the Department of Revenue to share confidential taxpayer information with the taxpayers' rights advocate or his or her authorized agent.

The bill will increase the workload of the staff of the taxpayers' rights advocate. The costs of such workload may be absorbed within the department's existing resources.

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

II. Present Situation:

Taxpayers' Rights Advocate

The taxpayers' rights advocate located within the Department of Revenue¹ (department) is appointed by and reports to the executive director of the department.² The taxpayers' rights advocate facilitates the resolution of taxpayer complaints and problems that have not been resolved through normal administrative channels within the department, including taxpayer complaints regarding unsatisfactory treatment of taxpayers by department employees.³ The taxpayers' rights advocate may also issue a stay of action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by the department.⁴

Section 213.015, F.S., sets out a Florida Taxpayers' Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessments, collection, and enforcement processes administered under the revenue laws of this state.⁵ Twenty-one rights are compiled in the Taxpayers' Bill of Rights, including the right of assistance from a taxpayers' rights advocate of the department.⁶ The department's executive director is required to designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.⁷

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.⁸ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.⁹ Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act¹⁰ and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and

¹ Section 20.21, F.S. The head of the Department is the Governor and the Cabinet. Section 20.21(1), F.S.

² Sections 20.21(3) and 213.018(1), F.S.

³ Sections 20.21(3)(a), 213.015(2) and 213.018, F.S.

⁴ Sections 20.21(3)(b) and 213.018(2), F.S.

⁵ See FLA. CONST., ART I, s. 25.

⁶ Section 213.015, F.S. See also http://floridarevenue.com/Pages/taxpayers_bill_of_rights.aspx (last visited on Jan. 18, 2018).

⁷ Section 213.018(1), F.S.

⁸ Section 14.32(1), F.S.

⁹ *Id.*

¹⁰ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

- Conducting special investigations and management reviews at the request of the Governor.¹¹

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.¹²

Department of Revenue Information Sharing

Taxpayer information received by the department is generally confidential and exempt from public records requirements.¹³ This confidential treatment and exemption from public records requirements extends to all information contained in returns, reports, accounts, declarations, investigative reports, and letters of technical advice.¹⁴

The department is authorized to make confidential information available to certain government officials in performance of their official duties.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 20.21, F.S., to require the Chief Inspector General to appoint the taxpayers' rights advocate within the department. The taxpayers' rights advocate remains under the general supervision of the executive director of the department for administrative purposes, but reports to the Chief Inspector General. The bill provides that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General.

The bill further requires the taxpayers' rights advocate to furnish an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Inspector General by January 1 of each year. Such report must include the following:

- The objectives of the taxpayers' rights advocate for the upcoming fiscal year;
- The number of complaints filed in the previous fiscal year;
- A summary of resolutions or outstanding issues from the previous fiscal year report;
- A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each serious problem;
- The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness;
- Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers; and
- Other information as the taxpayers' rights advocate may deem advisable.

This report must contain a complete and substantive analysis in addition to statistical information.

¹¹ Section 14.32(2), F.S.

¹² Section 14.32(3), F.S.

¹³ Section 213.053(2)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 213.053(7), F.S.

Section 2 amends s. 213.018, F.S., to require the Chief Inspector General to appoint a taxpayers' rights advocate within the department.

Section 3 amends s. 213.053, F.S., to authorize the department to make confidential information available to the taxpayers' rights advocate or his or her agent in performance of his or her official duties.

Section 4 provides that the person serving as the taxpayers' rights advocate as of the effective date of the bill shall continue to serve in that capacity until such person voluntarily leaves the position or is removed by the Chief Inspector General.

Section 5 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The staff of the taxpayers' rights advocate will have additional workload in completing the report required by the bill. The costs of such workload may be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 20.21, 213.018, and 213.053.

The bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on February 5, 2018:

The Proposed Committee Substitute:

- Provides that the taxpayer's rights advocate is supervised by the executive director of the department rather than the agency head.
- Provides that the taxpayers' rights advocate's annual report must include the "most common problems" encountered by taxpayers rather than the "most serious problems...."
- Provides that the department may make confidential taxpayer information available to the taxpayers' rights advocate or his or her agent.
- Provides that the person serving as the taxpayers' rights advocate on the effective date of the bill may continue in the position until he or she leaves voluntarily or is removed by the Chief Inspector General.

CS by Governmental Oversight and Accountability on January 10, 2018:

The Committee Substitute requires the Chief Inspector General to appoint the taxpayers' rights advocate within the department.

B. Amendments:

None.



487372

595-03206-18

Proposed Committee Substitute by the Committee on Rules
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to the taxpayers' rights advocate;
amending s. 20.21, F.S.; providing for the appointment
of the taxpayers' rights advocate within the
Department of Revenue by the Chief Inspector General
rather than by the department's executive director;
revising the supervisory authority over the taxpayers'
rights advocate; providing that the taxpayers' rights
advocate may be removed from office only by the Chief
Inspector General; requiring the taxpayers' rights
advocate to furnish an annual report to the Governor,
the Legislature, and the Chief Inspector General by a
specified date; providing requirements for the report;
amending s. 213.018, F.S.; conforming a provision to
changes made by the act; amending s. 213.053, F.S.;
requiring that information received by the department
in connection with the administration of taxes be made
available to the taxpayers' rights advocate or his or
her authorized agent in the performance of their
official duties; providing that the person who serves
as the taxpayers' rights advocate as of a certain date
shall continue to serve in such capacity until he or
she voluntarily leaves the position or is removed by
the Chief Inspector General; providing an effective
date.

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



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595-03206-18

Section 1. Subsection (3) of section 20.21, Florida
Statutes, is amended to read:

20.21 Department of Revenue.—There is created a Department
of Revenue.

(3) The position of taxpayers' rights advocate is created
within the Department of Revenue. The taxpayers' rights advocate
shall be appointed by the Chief Inspector General but is under
the general supervision of the executive director for
administrative purposes. The taxpayers' rights advocate must
report to the Chief Inspector General and may be removed from
office only by the Chief Inspector General ~~shall be appointed by~~
~~and report to the executive director of the department.~~ The
responsibilities of the taxpayers' rights advocate include, but
are not limited to, the following:

(a) Facilitating the resolution of taxpayer complaints and
problems which have not been resolved through normal
administrative channels within the department, including any
taxpayer complaints regarding unsatisfactory treatment of
taxpayers by employees of the department.

(b) Issuing a stay action on behalf of a taxpayer who has
suffered or is about to suffer irreparable loss as a result of
action by the department.

(c) On or before January 1 of each year, the taxpayers'
rights advocate shall furnish to the Governor, the President of
the Senate, the Speaker of the House of Representatives, and the
Chief Inspector General a report that must include the
following:

1. The objectives of the taxpayers' rights advocate for the



487372

595-03206-18

upcoming fiscal year.

2. The number of complaints filed in the previous fiscal year.

3. A summary of resolutions or outstanding issues from the previous fiscal year report.

4. A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each such problem.

5. The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness.

6. Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers.

7. Other information as the taxpayers' rights advocate may deem advisable.

The report must contain a complete and substantive analysis in addition to statistical information.

Section 2. Subsection (1) of section 213.018, Florida Statutes, is amended to read:

213.018 Taxpayer problem resolution program; taxpayer assistance orders.—A taxpayer problem resolution program shall be available to taxpayers to facilitate the prompt review and resolution of taxpayer complaints and problems which have not been addressed or remedied through normal administrative proceedings or operational procedures and to assure that taxpayer rights are safeguarded and protected during tax determination and collection processes.

(1) The Chief Inspector General shall appoint a taxpayers'



487372

595-03206-18

rights advocate, and the executive director of the Department of Revenue shall designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.

Section 3. Paragraph (a) of subsection (7) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(7) (a) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax, shall be made available to the following in performance of their official duties:

1. The Auditor General or his or her authorized agent;

2. The director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent;

3. The Chief Financial Officer or his or her authorized agent;

4. The Director of the Office of Insurance Regulation of the Financial Services Commission or his or her authorized agent;

5. A property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1);

6. Designated employees of the Department of Education solely for determination of each school district's price level index pursuant to s. 1011.62(2); ~~and~~

7. The executive director of the Department of Economic Opportunity or his or her authorized agent; and

8. The taxpayers' rights advocate or his or her authorized



487372

595-03206-18

115 agent pursuant to s. 20.21(3).

116 Section 4. The person who serves as the taxpayers' rights
117 advocate as of the effective date of this act shall continue to
118 serve in that capacity until such person voluntarily leaves the
119 position or is removed by the Chief Inspector General.

120 Section 5. This act shall take effect July 1, 2018.

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 Rules

BILL: CS/CS/SB 826

INTRODUCER: Rules Committee (Appropriations Subcommittee on Finance and Tax); Governmental Oversight and Accountability Committee; and Senator Hukill

SUBJECT: Taxpayers' Rights Advocate

DATE: February 15, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Caldwell	GO	Fav/CS
2. Babin	Diez-Arguelles	AFT	Recommend: Fav/CS
3. Peacock	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 826 requires the Chief Inspector General to appoint the taxpayers' rights advocate within the Department of Revenue and provides that such advocate may be removed from office only by the Chief Inspector General.

The bill requires the taxpayers' rights advocate to furnish a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on or before January 1, annually. The report must provide specific information about the work of the taxpayers' rights advocate during the previous year and the upcoming year.

The bill authorizes the Department of Revenue to share confidential taxpayer information with the taxpayers' rights advocate or his or her authorized agent.

The bill will increase the workload of the staff of the taxpayers' rights advocate. The costs of such workload may be absorbed within the department's existing resources.

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

II. Present Situation:

Taxpayers' Rights Advocate

The taxpayers' rights advocate located within the Department of Revenue¹ (department) is appointed by and reports to the executive director of the department.² The taxpayers' rights advocate facilitates the resolution of taxpayer complaints and problems that have not been resolved through normal administrative channels within the department, including taxpayer complaints regarding unsatisfactory treatment of taxpayers by department employees.³ The taxpayers' rights advocate may also issue a stay of action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by the department.⁴

Section 213.015, F.S., sets out a Florida Taxpayers' Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessments, collection, and enforcement processes administered under the revenue laws of this state.⁵ Twenty-one rights are compiled in the Taxpayers' Bill of Rights, including the right of assistance from a taxpayers' rights advocate of the department.⁶ The department's executive director is required to designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.⁷

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.⁸ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.⁹ Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act¹⁰ and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and

¹ Section 20.21, F.S. The head of the Department is the Governor and the Cabinet. Section 20.21(1), F.S.

² Sections 20.21(3) and 213.018(1), F.S.

³ Sections 20.21(3)(a), 213.015(2) and 213.018, F.S.

⁴ Sections 20.21(3)(b) and 213.018(2), F.S.

⁵ See FLA. CONST., ART I, s. 25.

⁶ Section 213.015, F.S. See also http://floridarevenue.com/Pages/taxpayers_bill_of_rights.aspx (last visited on Jan. 18, 2018).

⁷ Section 213.018(1), F.S.

⁸ Section 14.32(1), F.S.

⁹ *Id.*

¹⁰ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

- Conducting special investigations and management reviews at the request of the Governor.¹¹

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.¹²

Department of Revenue Information Sharing

Taxpayer information received by the department is generally confidential and exempt from public records requirements.¹³ This confidential treatment and exemption from public records requirements extends to all information contained in returns, reports, accounts, declarations, investigative reports, and letters of technical advice.¹⁴

The department is authorized to make confidential information available to certain government officials in performance of their official duties.¹⁵

III. Effect of Proposed Changes:

Section 1 amends s. 20.21, F.S., to require the Chief Inspector General to appoint the taxpayers' rights advocate within the department. The taxpayers' rights advocate remains under the general supervision of the executive director of the department for administrative purposes, but reports to the Chief Inspector General. The bill provides that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General.

The bill further requires the taxpayers' rights advocate to furnish an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Inspector General by January 1 of each year. Such report must include the following:

- The objectives of the taxpayers' rights advocate for the upcoming fiscal year;
- The number of complaints filed in the previous fiscal year;
- A summary of resolutions or outstanding issues from the previous fiscal year report;
- A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each serious problem;
- The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness;
- Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers; and
- Other information as the taxpayers' rights advocate may deem advisable.

This report must contain a complete and substantive analysis in addition to statistical information.

¹¹ Section 14.32(2), F.S.

¹² Section 14.32(3), F.S.

¹³ Section 213.053(2)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 213.053(7), F.S.

Section 2 amends s. 213.018, F.S., to require the Chief Inspector General to appoint a taxpayers' rights advocate within the department.

Section 3 amends s. 213.053, F.S., to authorize the department to make confidential information available to the taxpayers' rights advocate or his or her agent in performance of his or her official duties.

Section 4 provides that the person serving as the taxpayers' rights advocate as of the effective date of the bill shall continue to serve in that capacity until such person voluntarily leaves the position or is removed by the Chief Inspector General.

Section 5 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The staff of the taxpayers' rights advocate will have additional workload in completing the report required by the bill. The costs of such workload may be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 20.21, 213.018, and 213.053.

The bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 15, 2018:

As recommended by the Appropriations Subcommittee on Finance and Tax, the committee substitute:

- Provides that the taxpayer's rights advocate is supervised by the executive director of the department rather than the agency head.
- Provides that the taxpayers' rights advocate's annual report must include the "most common problems" encountered by taxpayers rather than the "most serious problems...."
- Provides that the department may make confidential taxpayer information available to the taxpayers' rights advocate or his or her agent.
- Provides that the person serving as the taxpayers' rights advocate on the effective date of the bill may continue in the position until he or she leaves voluntarily or is removed by the Chief Inspector General.

CS by Governmental Oversight and Accountability on January 10, 2018:

The Committee Substitute requires the Chief Inspector General to appoint the taxpayers' rights advocate within the department.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Hukill

585-01961-18

2018826c1

A bill to be entitled

An act relating to the taxpayers' rights advocate;
amending s. 20.21, F.S.; providing for the appointment
of the taxpayers' rights advocate within the
Department of Revenue by the Chief Inspector General
rather than by the department's executive director;
revising the supervisory authority over the taxpayers'
rights advocate; providing that the taxpayers' rights
advocate may be removed from office only by the Chief
Inspector General; requiring the taxpayers' rights
advocate to furnish an annual report to the Governor,
the Legislature, and the Chief Inspector General by a
specified date; providing requirements for the report;
amending s. 213.018, F.S.; conforming a provision to
changes made by the act; providing an effective date.

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

Section 1. Subsection (3) of section 20.21, Florida
Statutes, is amended to read:

20.21 Department of Revenue.—There is created a Department
of Revenue.

(3) The position of taxpayers' rights advocate is created
within the Department of Revenue. The taxpayers' rights advocate
shall be appointed by the Chief Inspector General but is under
the general supervision of the agency head for administrative
purposes. The taxpayers' rights advocate must report to the
Chief Inspector General and may be removed from office only by
the Chief Inspector General ~~shall be appointed by and report to~~

Page 1 of 3

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

585-01961-18

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~~the executive director of the department.~~ The responsibilities
of the taxpayers' rights advocate include, but are not limited
to, the following:

(a) Facilitating the resolution of taxpayer complaints and
problems which have not been resolved through normal
administrative channels within the department, including any
taxpayer complaints regarding unsatisfactory treatment of
taxpayers by employees of the department.

(b) Issuing a stay action on behalf of a taxpayer who has
suffered or is about to suffer irreparable loss as a result of
action by the department.

(c) On or before January 1 of each year, the taxpayers'
rights advocate shall furnish to the Governor, the President of
the Senate, the Speaker of the House of Representatives, and the
Chief Inspector General a report that must include the
following:

1. The objectives of the taxpayers' rights advocate for the
upcoming fiscal year.

2. The number of complaints filed in the previous fiscal
year.

3. A summary of resolutions or outstanding issues from the
previous fiscal year report.

4. A summary of the most serious problems encountered by
taxpayers, including a description of the nature of the
problems, and the number of complaints for each such serious
problem.

5. The initiatives the taxpayers' rights advocate has taken
or is planning to take to improve taxpayer services and the
department's responsiveness.

Page 2 of 3

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

585-01961-18

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59 6. Recommendations for administrative or legislative action
60 as appropriate to resolve problems encountered by taxpayers.

61 7. Other information as the taxpayers' rights advocate may
62 deem advisable.

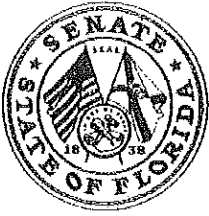
63
64 The report must contain a complete and substantive analysis in
65 addition to statistical information.

66 Section 2. Subsection (1) of section 213.018, Florida
67 Statutes, is amended to read:

68 213.018 Taxpayer problem resolution program; taxpayer
69 assistance orders.—A taxpayer problem resolution program shall
70 be available to taxpayers to facilitate the prompt review and
71 resolution of taxpayer complaints and problems which have not
72 been addressed or remedied through normal administrative
73 proceedings or operational procedures and to assure that
74 taxpayer rights are safeguarded and protected during tax
75 determination and collection processes.

76 (1) The Chief Inspector General shall appoint a taxpayers'
77 rights advocate, and the executive director of the Department of
78 Revenue shall designate ~~a taxpayers' rights advocate and~~
79 adequate staff to administer the taxpayer problem resolution
80 program.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
14th District

COMMITTEES:
Education, *Chair*
Appropriations Subcommittee on the
Environment and Natural Resources, *Vice Chair*
Regulated Industries, *Vice Chair*
Agriculture
Environmental Preservation and Conservation
Health Policy
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 5, 2018

The Honorable Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 826; Taxpayers' Rights Advocate

Dear Chairman Benacquisto:

Senate Bill 826, relating to Taxpayers' Rights Advocate, has been referred to the Senate Committee on Rules. I respectfully request that SB 826 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 14

Cc: John B. Phelps, Staff Director, Senate Committee on Rules
Cynthia Futch, Committee Administrative Assistant, Senate Committee on Rules

REPLY TO:

- ☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- ☐ 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/18

Meeting Date

SB 826

Bill Number (if applicable)

Topic Taxpayers' Rights Advocate

Amendment Barcode (if applicable)

Name Sara Cucchi

Job Title

Address

Street

Phone

Email cucchi.vab@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2-15-18

Meeting Date

826

Bill Number (if applicable)

Topic Taxpayers' Rights Advocate

Amendment Barcode (if applicable)

Name Kurt Wenner

Job Title Vice President

Address 106 N Bronough

Phone 222-5052

Street

Tallahassee

FL

32301

Email kwenner@floridataxwatch.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida TaxWatch

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)

2/15/18

Meeting Date

826

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

Email tim.nungesser@nfib.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

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
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 Rules

BILL: CS/SB 894

INTRODUCER: Rules Committee and Senator Garcia

SUBJECT: Mortgage Regulation

DATE: February 15, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Favorable
2. Little	McKay	CM	Favorable
3. Johnson	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 894 revises ch. 494, F.S., governing non-depository loan originators, mortgage brokers, and mortgage lender businesses subject to regulation by the Office of Financial Regulation (OFR) to provide greater consumer protections. The bill provides that it is unlawful for any person to misrepresent a residential mortgage loan as a business purpose loan, and defines the term, “business purpose loan.” Further, the bill provides a definition of the term “hold himself or herself out to the public as being in the mortgage lending business,” as that term currently exists under two licensing exemption provisions.

In recent years, private lenders and representatives of a South Florida building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.

The bill has no fiscal impact on the Office of Financial Regulation.

II. Present Situation:

Shadow Real Estate Transactions

The federal Financial Crimes Enforcement Network (FinCEN)¹ recently announced the renewal of an existing Geographic Targeting Order (GTO) in 2017. This GTO temporarily extends the requirement that U.S. title insurance companies in six metropolitan areas in the U.S., including Miami-Dade County, Florida, identify the natural persons behind shell companies used to pay “all cash” for high-end residential real estate.² FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. The GTOs are one of the tools that FinCEN uses to combat money laundering. According to FinCEN, this corroborates their concerns about the use of shell companies to buy luxury real estate in “all-cash” transactions. In an earlier GTO issued in January 2016, FinCEN indicated that it was prioritizing anti-money laundering protections on real estate transactions involving lending.

In recent years, private lenders and representatives of a local building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.³ In another example described by the private lenders and local building association, an offshore shell company buys a parcel of real estate. Shortly thereafter, a Florida corporation, which is formed to participate in the scheme, obtains a mortgage loan on the property through an unlicensed mortgage lender. Next, the shell company pays the Florida corporation’s monthly mortgage payments and ultimately pays off the mortgage. As a result, the perpetrator successfully launders money in the United States.

Federal Oversight of Mortgage Brokerage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.⁴ Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or the “S.A.F.E. Mortgage Licensing Act of 2008” (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting

¹ Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury, serves as the nation’s financial intelligence unit, and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crime. FinCEN administers the federal Bank Secrecy Act. FinCEN analyzes and shares financial intelligence with law enforcement and regulatory agencies. In addition, FinCEN works with the financial industry to deter, detect, investigate, and prosecute money laundering, terrorist financing, and other crimes.

² FinCEN Press Release (Feb. 23, 2017) available at <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash> (last viewed Feb. 5, 2018).

³ Latin Builders Association, Letter to Governor Rick Scott (Dec. 19, 2013) (on file with the Senate Committee on Banking and Insurance.).

⁴ Pub. L. No. 110-289.

minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.⁵

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.⁶ The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)⁷ and the Real Estate Settlement Procedures Act (RESPA).⁸ The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made “primarily for a business, commercial or agricultural purpose.”⁹ Therefore, TILA and RESPA do not cover “business purpose” mortgage loans but rather only “consumer purpose” mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower’s total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,¹⁰ and the

⁵ NLMS Resource Center, available at <http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx> (last viewed Feb. 5, 2018).

⁶ Pub. L. No. 111-203.

⁷ 15 U.S.C. 1601, *et. seq.*

⁸ 15 U.S.C. 2601, *et. seq.*

⁹ Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/> (last viewed Feb. 5, 2018).

¹⁰ 12 U.S.C. ss. 5532(f), 2603; 15 U.S.C. s. 1604(b).

CFPB issued final rules in 2015.¹¹ The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule. However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.¹²

State Regulation of Mortgage Loans

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.¹³

Section 494.001(24), F.S., defines the term “mortgage loan” to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,¹⁴ or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders

An individual who acts as a loan originator must obtain a loan originator license.¹⁵ A “loan originator” means an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.¹⁶

The term “loan originator” includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or

¹¹ 78 Fed Reg 79730.

¹² See CFPB, *Small Entity Compliance Guide*, available at http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf (last viewed Feb. 5, 2018).

¹³ Chapter 2009-241, Laws of Fla.

¹⁴ The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of “material disclosure” under s. 103(v), rather than the term “dwelling,” which is defined under s. 103(w). See 15 U.S.C. 1602.

¹⁵ Section 494.00312, F.S.

¹⁶ Section 494.001(17), F.S.

mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.¹⁷

A “mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker¹⁸ and such persons are required to be licensed as mortgage brokers.¹⁹

A “mortgage lender” means any person making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor,²⁰ and such persons are required to be licensed as mortgage lenders.²¹ “Making a mortgage loan” means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.²²

The following persons are exempt from regulation as a mortgage lender under part III of ch. 494, F.S.:

- A person acting in a fiduciary capacity conferred by the authority of a court;
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction;
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans;
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors;
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business; and
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²³

The OFR’s Examination Authority, Administrative Penalties, and Fines

The OFR may conduct investigations, examinations, and investigate complaints.²⁴ The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.²⁵

In recent years, the OFR has closed cases relating to information pertaining to approximately 24 entities allegedly making residential mortgage loans for business purposes. Of these cases, the OFR imposed administrative fines on three entities engaging in unlicensed mortgage lending.

¹⁷ *Id.*

¹⁸ Section 494.001(22), F.S.

¹⁹ Section 494.00321, F.S.

²⁰ Section 494.001(23), F.S.

²¹ Section 494.00611, F.S.

²² Section 494.001(20), F.S.

²³ Section 494.00115(2), F.S.

²⁴ Section 494.0012, F.S.

²⁵ *See* s. 494.00255, F.S.

The OFR was unable to take disciplinary action on 15 other cases because the residential loans were determined to be for business purposes, which is currently outside of the jurisdiction of the OFR.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 494.001, F.S. to create a definition of the term, “business purpose loan.” A business purpose loan is a mortgage loan, the proceeds of which the borrower intends to use primarily for a business purpose and not primarily for personal, family, or household purposes. In determining if a loan is for a business purpose, a person must refer to the official interpretation by the Consumer Financial Protection Bureau of 12 C.F.R. s. 1026.3.

Section 2 amends s. 494.00115, F.S., to clarify a term currently used under two licensure exemptions provisions for mortgage lender. The bill defines “hold himself or herself out to the public as being in the mortgage lending business” as any of the following:

- Representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or promotional items), by any medium whatsoever, that such individual can or will perform the activities described in s. 494.001(24), F.S., as a mortgage lender;
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(24), F.S.;
- Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(24), F.S., or regularly meets with current or prospective borrowers; or
- Advertising, soliciting, or conducting business through use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies that the business being advertised, solicited, or conducted is the kind or character of business transacted or conducted by a licensed mortgage lender or which is likely to lead any person to believe that such business is that of a licensed mortgage lender.

The exemptions from mortgage lender licensure affected by this section are those for:

- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual’s funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.²⁷

Section 3 amends s. 494.0025, F.S., relating to prohibited practices, to provide that it is unlawful for any person to misrepresent a residential mortgage, as defined in s. 494.001(25)(a), F.S., as a business purpose loan.

Section 4 amends s. 494.0018, F.S., relating to penalties, to incorporate the amendment made to s. 494.0025, F.S., which references s. 494.0018, F.S.

²⁶ OFR Mortgage Lender Referrals (Nov. 3, 2016) (on file with Senate Banking and Insurance Committee).

²⁷ See s. 494.00115(2)(e) and (f), F.S.

Section 5 provides the 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill affords borrowers obtaining residential mortgage loans with greater consumer protections under ch. 494, F.S., by providing that it is a prohibited practice to misrepresent such a loan as business purpose loan to avoid the licensure requirements of ch. 494, F.S.

C. Government Sector Impact:

The bill has no fiscal impact on the OFR.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.00115, 494.0018, and 494.0025.

²⁸ Office of Financial Regulation correspondence, (Feb. 14, 2018) (on file with Senate Banking and Insurance Committee).

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 Rules on February 15, 2018:

The CS provides that it is unlawful for any person to misrepresent a residential mortgage loan as a business purpose loan. The CS defines the term, “business purpose loan.” Further, the amendment provides a definition of the term “hold himself or herself out to the public as being in the mortgage lending business,” as that term currently exists under two licensing exemption provisions. The CS provides technical, conforming changes and revises the effective date of the bill from January 1, 2019 to July 1, 2018.

- B. **Amendments:**

None.



101422

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (4) through (37) of section
494.001, Florida Statutes, are redesignated as subsections (5)
through (38), respectively, and a new subsection (4) is added to
that section, to read:

494.001 Definitions.—As used in this chapter, the term:

(4) "Business purpose loan" means a mortgage loan, the
proceeds of which the borrower intends to use primarily for a



101422

business purpose and not primarily for a personal, family, or household purpose. In determining if the loan is for a business purpose, a person must refer to the official interpretation by the Consumer Financial Protection Bureau of 12 C.F.R. s. 1026.3(a).

Section 2. Subsection (4) is added to section 494.00115, Florida Statutes, to read:

494.00115 Exemptions.—

(4) As used in this section, the term “hold himself or herself out to the public as being in the mortgage lending business” includes any of the following:

(a) Representing to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or promotional items, by any method, that such individual can or will perform the activities described in s. 494.001(24).

(b) Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(24).

(c) Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(24) or regularly meets with current or prospective mortgage borrowers.

(d) Advertising, soliciting, or conducting business through the use of a name, trademark, service mark, trade name, Internet address, or logo that indicates or reasonably implies that the business being advertised, solicited, or conducted is of the kind or character of business transacted or conducted by a



101422

licensed mortgage lender or is likely to lead any person to believe that such business is that of a licensed mortgage lender.

Section 3. Subsection (4) of section 494.0025, Florida Statutes, is amended to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(4) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage loan transactions, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud;

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan; ~~or~~

(c) To obtain property by fraud, willful misrepresentation of a future act, or false promise; or

(d) To misrepresent a residential mortgage loan, as described in s. 494.001(25)(a), as a business purpose loan.

Section 4. For the purpose of incorporating the amendment made by this act to section 494.0025, Florida Statutes, in a reference thereto, section 494.0018, Florida Statutes, is reenacted to read:

494.0018 Penalties.—

(1) Whoever knowingly violates any provision of s. 494.0025(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4), or (5), except as provided in subsection (2) of this section, commits a felony of the third degree, punishable as provided in



101422

s. 775.082, s. 775.083, or s. 775.084. Each such violation constitutes a separate offense.

(2) Any person who violates any provision of this chapter, in which the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to mortgage regulation; amending s. 494.001, F.S.; defining the term "business purpose loan"; amending s. 494.00115, F.S.; defining the term "hold himself or herself out to the public as being in the mortgage lending business"; amending s. 494.0025, F.S.; prohibiting the misrepresentation of a residential mortgage loan as a business purpose loan; reenacting s. 494.0018, F.S., relating to penalties, to incorporate the amendment made to s. 494.0025, F.S., in a reference thereto; providing an effective date.

By Senator Garcia

36-01122-18

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A bill to be entitled

An act relating to mortgage lending; amending s.

494.001, F.S.; revising the definition of the term

"mortgage loan"; amending s. 494.00115, F.S.; defining

the term "hold himself or herself out to the public as

being in the mortgage lending business"; providing an

effective date.

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

Section 1. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

494.001 Definitions.—As used in this chapter, the term:

(24) "Mortgage loan" means any:

(a) Residential loan that primarily for personal, family,
~~or household use which~~ is secured by a mortgage, deed of trust,
or other equivalent consensual security interest on a dwelling,
as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in
Lending Act, or for the purchase of residential real estate upon
which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an
individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or
more dwelling units if the borrower is an individual or the
lender is a noninstitutional investor.

Section 2. Subsection (4) is added to section 494.00115,
Florida Statutes, to read:

494.00115 Exemptions.—

(4) As used in this section, the term "hold himself or

36-01122-18

2018894__

herself out to the public as being in the mortgage lending

business" includes any of the following:

(a) Representing to the public, through advertising or
other means of communicating or providing information, and by
any medium whatsoever, including the use of business cards,
stationery, brochures, signs, rate lists, or promotional items,
that such individual can or will perform the activities
described in s. 494.001(23).

(b) Soliciting in a manner that would lead the intended
audience to reasonably believe that such individual is in the
business of performing the activities described in s.
494.001(23).

(c) Maintaining a commercial business establishment at
which, or premises from which, such individual regularly
performs the activities described in s. 494.001(23) or regularly
meets with current or prospective borrowers.

(d) Advertising, soliciting, or conducting business through
use of a name, trademark, service mark, trade name, Internet
address, or logo that indicates or reasonably implies that the
business being advertised, solicited, or conducted is the kind
or character of business transacted or conducted by a licensed
mortgage lender or that is likely to lead any person to believe
that such business is that of a licensed mortgage lender.

Section 3. This act shall take effect January 1, 2019.



The Florida Senate
State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

February 6th, 2018

The Honorable Lizbeth Benacquisto
Chair, Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

Please have this letter serve as my formal request to have **SB 894: Mortgage Lending** be heard during the next scheduled Rules Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 36

CC: John B. Phelps
Cynthia Futch

Committees: Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.

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 Rules

BILL: CS/SB 1316

INTRODUCER: Rules Committee and Senator Simmons

SUBJECT: Uniform Voidable Transactions Act

DATE: February 16, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Favorable
2. Stallard	Cibula	JU	Favorable
3. Billmeier	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1316 amends Florida's version of the Uniform Fraudulent Transfer Act (UFTA). The UFTA, codified as ch. 726, F.S., provides a creditor with the means to reach assets that a debtor has transferred to another person to prevent the assets from being used to satisfy a debt. In 2014, the Uniform Law Commission adopted amendments and renamed the UFTA as the Uniform Voidable Transactions Act (UVTA). This bill adopts the UVTA in Florida. The bill:

- Provides that a creditor making a claim has the burden of proving the elements of its claim by a preponderance of the evidence;
- Changes the criteria used to determine whether partnerships are insolvent and subjects partnerships to the same solvency standard as other debtors; and
- Requires a claim for relief to be governed by the claims law of the jurisdiction in which the debtor is located when a transfer is made or an obligation is incurred.

The bill also specifies that each "protected series" in a "series organization," as well as the organization itself, must be regarded as a separate business for the purpose of the UVTA. A series organization is a limited liability corporation that is divided into several series, or cells, which for many purposes are treated as distinct entities.

The statute of limitations for filing an action to set aside a transfer or obligation is the later of 4 years from the transfer or obligation, or 1 year from when the transfer or obligation was or could have been discovered. The bill changes the 1 year provision to provide that it begins to run

when the wrongful nature of the transfer or obligation was or could reasonably have been discovered.

II. Present Situation:

According to the National Conference of Commissioners on Uniform State Laws, 45 states and the U.S. Virgin Islands have adopted the Uniform Fraudulent Transfer Act (“UFTA”).¹ This state enacted the UFTA in 1987² and codified it as ch. 726, F.S.

Chapter 726, F.S., provides redress to creditors by allowing them to recover assets from debtors who have fraudulently transferred assets to third parties or incurred obligations before or after a creditor’s claim arises. For example, s. 726.105(1), F.S., provides that a transfer is fraudulent as to a creditor if the debtor made the transfer:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, if the debtor also:
 - Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Subsection 726.105(2), F.S., authorizes a court to consider, among other factors, the 11 factors set forth in that subsection to determine whether a transfer of assets or taking on of an obligation was done “with actual intent to hinder, delay, or defraud a creditor.” For example, a court may consider whether the transfer or obligation was to an insider, whether the debtor retained possession or control of the property transferred after the transfer, and whether the transfer or obligation was disclosed or concealed.

Section 726.106, F.S., deems a debtor’s transfer to be fraudulent as to a creditor whose claim arose before the transfer was made if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer, and:

- The debtor was insolvent at that time; or
- The debtor became insolvent as a result of the transfer or obligation.

Similar statutes have led to confusion in some courts in other jurisdictions that have adopted the UFTA. Courts have held that creditors must show intent to hinder, delay, or defraud by “clear and convincing evidence.” Additionally, some courts have shifted the burden to transferees to show a debtor is not insolvent.³

¹ UNIFORM LAW COMMISSION, THE UNIFORM VOIDABLE TRANSACTION ACT (2014 AMENDMENTS), <http://www.uniformlaws.org/shared/docs/fraudulent%20transfer/UVTA%20-%20Summary.pdf> (last visited Feb. 5, 2018).

² Chapter 87-79, Laws of Fla.

³ Gary A. Foster, Eric C. Boughman, American Bar Association, *The Uniform Voidable Transactions Act: An Overview of Refinements to the Uniform Fraudulent Transfer Act*, https://www.americanbar.org/publications/probate_property_magazine_2012/2015/july_august_2015/2015_aba_rpte_pp_v29_3_article_foster_boughman_uniform_voidable_transactions_act.html (last visited Feb. 2, 2018).

The UFTA also specifies the remedies available to a creditor harmed by a wrongful transfer or obligation. The chief remedy is the recovery of the transferred item or its value. Other remedies provided by the law are designed to facilitate this recovery and to cease further fraudulent transfers.⁴

These remedies are generally subject to a 4-year statute of limitations, unless otherwise specified. The UFTA contains some exceptions to the remedy of recovering an asset that was fraudulently transferred, primarily for any “person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”⁵

In 2014, National Conference of Commissioners on Uniform State Laws amended the model version of the UFTA. The amendments included renaming the act as the “Uniform Voidable Transactions Act” (UVTA). A commenter argues that “the UVTA is not a new act; it is the UFTA, renamed and lightly amended.”⁶ The UVTA has been adopted in 16 states and is under consideration in 2018 in five other states, including Florida.⁷

III. Effect of Proposed Changes:

The bill conforms this state’s Uniform Fraudulent Transfer Act (UFTA) to the updated version of the model legislation on which it is based, which is now called the Uniform Voidable Transactions Act (UVTA).

Changes in Title and Style (Sections 1, 2, 5, and 7)

The changes made in **sections 1, 2, 5, and 7** change the name of the “Uniform Fraudulent Transfer Act” to the “Uniform Voidable Transactions Act,” change the chapter title in s. 726.101, F.S., from “Fraudulent Transfers” to “Voidable Transactions,” and replace the word “fraudulent” with “voidable” where applicable in the act.

Definitions (Section 3 and 8)

Section 3 amends s. 726.102, F.S., regarding definitions for the UVTA. The bill adds the following definitions:

- “Claims law” means a fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.
- “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- “Organization” means a person other than an individual.
- “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

⁴ Section 726.108, F.S.

⁵ Section 726.109(1), F.S.

⁶ Kenneth C. Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, *The Business Lawyer*, Volume 70, Summer 2015 at p. 779.

⁷ [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20\(2014\)%20-%20Formerly%20Fraudulent%20Transfer%20Act](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20(2014)%20-%20Formerly%20Fraudulent%20Transfer%20Act) (last visited February 2, 2018).

- “Sign” means to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process, with present intent to authenticate or adopt a record.

Also, the bill amends the definition of “person” to include limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, common law business trust, statutory trust, and association joint venture.

Section 8 amends s. 726.107, F.S., to provide that an obligation is incurred is evidenced by a “record” so that obligations can be evidenced by electronic or other records instead of just written documents.

Insolvency (Section 4)

Section 4 amends s. 726.103, F.S., which sets forth what constitutes “insolvency” under the UVTA and under what circumstances a debtor will be presumed to be insolvent. Current law provides that a debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.⁸ A debtor is presumed to be insolvent if the debtor generally is not paying his or her debts as they become due.⁹ The bill excepts persons who are not paying their debts as a result of a bona fide dispute from this presumption. The bill specifies that the party against whom the presumption of insolvency is directed has the burden to prove that its solvency is more probable than its insolvency.

Under current law, s. 726.103(3), F.S., requires a different analysis to be used to determine whether a partnership is insolvent than it does to determine whether other persons are insolvent. A partnership is considered insolvent if the sum of the partnership’s debts is greater than the combined value of All of the partnership’s assets; and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.

The bill amends s. 726.103, F.S., to treat a partnership like any other person for the purposes of determining insolvency. Thus, under the bill, a partnership is insolvent if, at a fair valuation, the sum of the partnership’s debts is greater than the sum of the partnership’s assets.

Burden and Standard of Proof (Sections 5 and 7)

Sections 5 and 7 amend ss. 726.105 and 726.106, F.S., to expressly state that a creditor has the burden to prove, by preponderance of the evidence, that a transfer is voidable.

Legislative Intent (Section 6)

The UVTA includes numerous “Official Comments” from the drafters for use in interpreting the UVTA. Although this bill does not adopt the comments as Florida law, Florida courts have used

⁸ Section 726.103(1), F.S.

⁹ Section 726.103(2), F.S.

comments from uniform acts as interpretative aids.¹⁰ **Section 6** of the bill provides that it is the intent of the Legislature that the Uniform Law Commission's comments two and eight to section four of the Uniform Voidable Transactions Act, as amended in 2014, may not be persuasive authority in interpreting s. 726.105, F.S. The Legislature intends that the courts look to all relevant and applicable law when interpreting s. 726.105, F.S.

Remedies of Creditors (Section 9)

Section 9 amends s. 726.108, F.S., to provide that s. 605.0503, F.S., does not limit a creditor's ability to obtain relief under the UVTA.

Section 605.0503, F.S., allows judgment creditors of a member or transferee of a transferrable interest of a limited liability company (LLC) to petition the court for a charging order against the transferable interest for payment of the unsatisfied amount of the judgment with interest. The section is generally the exclusive remedy for a judgment creditor a LLC member or member's transferee to satisfy a judgment from the judgment debtor's interest in an LLC or rights to distributions from an LLC. Section 605.0503(7)(b), F.S., provides that the section does not limit principles of law and equity which affect fraudulent transfers.

Defenses and Burdens of Proof (Section 10)

Section 10 amends s. 726.109, F.S., which sets forth defenses for persons who engage in an allegedly voidable transfer and specifies from whom certain voidable transfer judgments may be recovered. Current law states that an allegedly fraudulent transfer cannot be undone if the transferee took what it received in good faith and in exchange for something of a reasonably equivalent value. For this protection to apply, the bill specifies that the item of reasonably equivalent value must be given to the debtor.

Current law provides that a creditor's recovery pursuant to a judgment for the asset transferred or the amount necessary to satisfy the creditor's claim is available against:

- The first transferee of the asset or the person for whose benefit the transfer was made; or
- Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

Under the bill, a judgment may be entered against:

- The first transferee of the asset or the person for whose benefit the transfer was made; or
- Any subsequent transferee other than a good faith transferee that took for value or any good faith transferee that is subsequent to the good faith transferee that took for value.

As such, the bill broadens the possibilities for recovery upon a judgement by authorizing recovery from bad faith transferees, no matter how remote they are from the first transfer. At the same time, the bill specifies that the persons specified are the only ones against whom recovery may be made.

¹⁰ See *Winner v. Cataldo*, 559 So.2d 696 (Fla. 3d DCA 1990)(using commentary to the Model Business Corporation Act to interpret s. 607.147, F.S.).

Another defense provided in chapter 726, F.S., is that a transfer is not voidable if it results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (UCC). The bill revises the defense related to the UCC by specifying that the defense does not include the acceptance of collateral in full or partial satisfaction of the obligation it secures.

The bill outlines who carries the burden of proving the defenses or right to attach judgments against transferees. Anyone seeking to invoke the defenses set forth in the UVTA has the burden of proving the applicability of that defense. A creditor has the burden of proving all the elements of its claim including proving the amount of its claim and the value of assets transferred at the time of their transfer. A good faith transferee has the burden of proving they are a good faith transferee or a mediate good faith transferee. The standard of proof for all matters in this section is preponderance of the evidence.

Statutes of Limitations (Section 11)

Currently, under s. 726.110, F.S., a claim based on a transaction that was allegedly done with the actual intent to hinder, delay, or defraud any creditor of the debtor must be filed within 4 years after the transaction, or if later, within 1 year after the transaction was or could reasonably have been discovered by the claimant. **Section 11** amends s. 726.110, F.S., to provide that this 1-year period does not begin to run until the wrongfulness of the transaction is or reasonably could have been discovered.

Sections 12 and 13 make technical changes to s. 726.111, F.S., and s. 726.112, F.S.

Governing Law for a Voidable Transaction Claim (Section 14)

Section 14 creates s. 726.113, F.S., to specify that a claim for relief is governed by the law of the jurisdiction where the debtor is located when the transaction occurs. Furthermore, the bill provides criteria for determining a debtor's location for purposes of determining which jurisdiction's law governs the claim:

- A debtor that is an individual is located at his or her principal residence.
- A debtor that is an organization and has only one place of business is located at its place of business.
- A debtor that is an organization and has more than one place of business is located at its chief executive office.

The bill does not affect a debtor's entitlement to homestead protections under the Florida Constitution.

Series Organizations (Section 15)

A series organization is a limited liability corporation that is divided into several series, or cells, which for many purposes are treated as distinct entities. A series mechanism "creates an elastic single vehicle for operating multiple businesses or owning multiple properties in a limited

liability environment.”¹¹ It allows, for example, a limited liability company to designate specific assets to a specific series. Once designated, creditors of one series cannot look to the assets of another series even if the series are owned by the same limited liability company. This emulates creating multiple limited liability companies without actually doing so.¹²

Section 15 creates s. 726.114, F.S., to specify how chapter 726, F.S., applies to series organizations. It defines “series organization” as “an organization that, pursuant to the law under which it is organized, has the following characteristics:

- The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.
- Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization.
- Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization.”

The bill provides that a series organization and each protected series of the organization is a separate person for purposes of the UVTA.

Electronic Signatures (Section 16)

The Electronic Signatures in the Global and National Commerce Act of 2000 (E-Sign Act) “allows electronic signatures or documents to satisfy most existing legal requirements for written signatures, disclosures, or records” with respect to transactions of interstate or foreign commerce.¹³ Accordingly, its main provision states:

- Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce;
 - A signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
 - A contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

Section 16 creates s. 726.115, F.S., to provide that the UVTA modifies, limits, and supersedes the E-Sign Act as a general matter but does not modify, limit, or supersede the portion of the Act

¹¹ Adam Hiller, *But Series-ly, Folks – The Series Laws and How They (May) Intersect with Bankruptcy Law*, 20 Am. Bankr. Inst. L. Rev. 353, 354 (2012).

¹² *Id.* at 354-355.

¹³ Reed Smith LLP, *Reed Smith Client Alerts – Electronic Signatures in Global and National Commerce Act* (July 2000) <https://www.reedsmith.com/en/perspectives/2000/07/electronic-signatures-in-global-and-national-comm> (last visited February 3, 2018)

that, in general terms, requires a consumer to consent to the use of electronic records and permits a consumer to withdraw its consent.¹⁴

Effective Date (Section 17)

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill extends the timeframe for filing a lawsuit under the act to 1 year after the date on which the creditor knew or reasonably could have known of the wrongfulness of a transaction. As such, the bill could increase litigation and its associated costs. However, the bill may enable creditors to be made whole for their losses in more circumstances.

C. Government Sector Impact:

The bill extends the timeframe for filing a lawsuit under the act to 1 year after the date on which the creditor knew or reasonably could have known of the wrongfulness of a transaction. As such, the bill could increase litigation, thus increasing costs to the state court system.

VI. Technical Deficiencies:

None.

¹⁴ See 15 U.S.C. § 7003(c)

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 726.101, 726.102, 726.103, 726.105, 726.106, 726.107, 726.108, 726.109, 726.110, 726.111, and 726.112.

This bill creates the following sections of the Florida Statutes: 726.113, 726.114, and 726.115.

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 Rules on February 15, 2018:

The CS provides legislative intent that certain comments by the Uniform Law Commission relating to interpretation of the Uniform Voidable Transactions Act are not to be used as persuasive authority in interpreting s. 726.105, F.S.

B. Amendments:

None.



138372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision and Information is
directed to rename chapter 726, Florida Statutes, entitled
"FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."

Section 2. Section 726.101, Florida Statutes, is amended to
read:

726.101 Short title.—This act may be cited as the "Uniform
Voidable Transactions ~~Fraudulent Transfer~~ Act."



138372

Section 3. Section 726.102, Florida Statutes, is amended to read:

726.102 Definitions.—As used in this chapter ~~ss. 726.101–726.112~~:

(1) "Affiliate" means:

(a) A person that ~~who~~ directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that ~~who~~ directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that ~~who~~ operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.



138372

(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(4) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) "Claims law" means fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.

~~(6)-(5)~~ "Creditor" means a person that ~~who~~ has a claim.

~~(7)-(6)~~ "Debt" means liability on a claim.

~~(8)-(7)~~ "Debtor" means a person that ~~who~~ is liable on a claim.

(9) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or



138372

similar capabilities.

~~(10)(8)~~ "Insider" includes:

(a) If the debtor is an individual:

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership described in subparagraph 2.; or

4. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

1. A director of the debtor;

2. An officer of the debtor;

3. A person in control of the debtor;

4. A partnership in which the debtor is a general partner;

5. A general partner in a partnership described in subparagraph 4.; or

6. A relative of a general partner, director, officer, or person in control of the debtor.

(c) If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general partner;

4. A general partner in a partnership described in this paragraph ~~subparagraph 3.~~; or

5. A person in control of the debtor.

(d) An affiliate, or an insider of an affiliate as if the



138372

affiliate were the debtor.

(e) A managing agent of the debtor.

(11)~~(9)~~ "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(12) "Organization" means a person other than an individual.

(13)~~(10)~~ "Person" means an individual, partnership, limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, ~~organization~~, government or governmental subdivision, instrumentality, or agency, business trust, common law business trust, statutory trust, estate, trust, association, joint venture, or any other legal or commercial entity.

(14)~~(11)~~ "Property" means anything that may be the subject of ownership.

(15)~~(12)~~ "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17)~~(13)~~ "Relative" means an individual related by



138372

consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(18) "Sign" means with present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(19)~~(14)~~ "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(20)~~(15)~~ "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 4. Section 726.103, Florida Statutes, is amended to read:

726.103 Insolvency.—

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum ~~all~~ of the debtor's assets ~~at a fair valuation~~.

(2) A debtor that ~~who~~ is generally not paying their ~~his or her~~ debts as they become due for reasons other than as a result of a bona fide dispute is presumed to be insolvent. The party against which the presumption is directed, has the burden of proving that the nonexistence of insolvency is more probable than its existence.



138372

~~(3) A partnership is insolvent under subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

~~(3)(4)~~ Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter ~~ss. 726.101-726.112~~.

~~(4)(5)~~ Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Section 5. Section 726.105, Florida Statutes, is amended to read:

726.105 Transfers or obligations voidable ~~fraudulent~~ as to present and future creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;



138372

or

2. Intended to incur, or believed or reasonably should have believed that the debtor ~~he or she~~ would incur, debts beyond the debtor's ~~his or her~~ ability to pay as they became due.

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor, including value by way of asset substitution or otherwise, was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that ~~who~~ transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for



138372

relief by a preponderance of the evidence.

Section 6. It is the intent of the Legislature that the Uniform Law Commission's comments two and eight to section four of the Uniform Voidable Transactions Act, as amended in 2014, may not be persuasive authority in interpreting s. 726.105, Florida Statutes. Instead, the courts of this state must look to all relevant and applicable law when interpreting s. 726.105, Florida Statutes.

Section 7. Section 726.106, Florida Statutes, is amended to read:

726.106 Transfers or obligations voidable ~~fraudulent~~ as to present creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or subsection (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.



138372

Section 8. Section 726.107, Florida Statutes, is amended to read:

726.107 When transfer made or obligation incurred.—For the purposes of this chapter ~~ss. 726.101-726.112~~:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which ~~whom~~ applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter ~~ss. 726.101-726.112~~ that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties;



138372

or

(b) If evidenced by a record ~~writing~~, when the record
signed ~~writing executed~~ by the obligor is delivered to or for
the benefit of the obligee.

Section 9. Section 726.108, Florida Statutes, is amended to
read:

726.108 Remedies of creditors.—

(1) In an action for relief against a transfer or
obligation under this chapter ~~ss. 726.101-726.112~~, a creditor,
subject to the limitations in s. 726.109 may obtain:

(a) Avoidance of the transfer or obligation to the extent
necessary to satisfy the creditor's claim, including as
contemplated by s. 605.0503(7)(b);

(b) An attachment or other provisional remedy against the
asset transferred or other property of the transferee if
available under ~~in accordance with~~ applicable law;

(c) Subject to applicable principles of equity and in
accordance with applicable rules of civil procedure:

1. An injunction against further disposition by the debtor
or a transferee, or both, of the asset transferred or of other
property;

2. Appointment of a receiver to take charge of the asset
transferred or of other property of the transferee; or

3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim
against the debtor, the creditor, if the court so orders, may
levy execution on the asset transferred or its proceeds.

Section 10. Section 726.109, Florida Statutes, is amended
to read:



138372

726.109 Defenses, liability, and protection of transferee
or obligee.—

(1) A transfer or obligation is not voidable under s.
726.105(1)(a) against a person that ~~who~~ took in good faith and
for a reasonably equivalent value given the debtor or against
any subsequent transferee or obligee.

(2) ~~(a) Except as otherwise provided in this section,~~ To the
extent a transfer is voidable in an action by a creditor under
s. 726.108(1)(a), the creditor may recover judgment for the
value of the asset transferred, as adjusted under subsection
(3), or the amount necessary to satisfy the creditor's claim,
whichever is less. The judgment may be entered against:

1. ~~(a)~~ The first transferee of the asset or the person for
whose benefit the transfer was made; or

2. ~~(b)~~ An immediate or mediate transferee of the first ~~Any~~
~~subsequent~~ transferee other than:

a. A good faith transferee that ~~who~~ took for value; or

b. An immediate or mediate good faith transferee of a
person described in sub-subparagraph a ~~from any subsequent~~
~~transferee.~~

(b) Recovery pursuant to s. 726.108(1)(a) or (2) of or from
the asset transferred or its proceeds, by levy or otherwise, is
available only against a person described in subparagraph (a)1.
or subparagraph(a)2.

(3) If the judgment under subsection (2) is based upon the
value of the asset transferred, the judgment must be for an
amount equal to the value of the asset at the time of the
transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an



138372

obligation under this chapter ~~ss. 726.101-726.112~~, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an ~~any~~ interest in the asset transferred;

(b) Enforcement of an ~~any~~ obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under s. 726.106(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent ~~unless~~ the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a voidable ~~fraudulent~~ transfer under s. 726.105(1)(b) or s. 726.106(1).



138372

(b) However, a charitable contribution from a natural person is a voidable ~~fraudulent~~ transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

(8)(a) A party that seeks to invoke subsection (1), subsection (4), subsection (5), or subsection (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or subsection (3).

(c) The transferee has the burden of proving the applicability to the transferee under subparagraph (2)(a)2.

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(9) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Section 11. Section 726.110, Florida Statutes, is amended to read:



138372

726.110 Extinguishment of claim for relief ~~cause of~~
~~action.~~—A claim for relief ~~cause of action~~ with respect to a
~~fraudulent~~ transfer or obligation under this chapter ~~ss.~~
~~726.101-726.112~~ is extinguished unless action is brought:

(1) Under s. 726.105(1)(a), within 4 years after the
transfer was made or the obligation was incurred or, if later,
within 1 year after the transfer or obligation and its wrongful
nature was or could reasonably have been discovered by the
claimant;

(2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years
after the transfer was made or the obligation was incurred; or

(3) Under s. 726.106(2), within 1 year after the transfer
was made or the obligation was incurred.

Section 12. Section 726.111, Florida Statutes, is amended
to read:

726.111 Supplementary provisions.—Unless displaced by the
provisions of this chapter ~~ss. 726.101-726.112~~, the principles
of law and equity, including the law merchant and the law
relating to principal and agent, estoppel, laches, fraud,
misrepresentation, duress, coercion, mistake, insolvency, or
other validating or invalidating cause, supplement those
provisions.

Section 13. Section 726.112, Florida Statutes, is amended
to read:

726.112 Uniformity of application and construction.—Chapter
87-79, Laws of Florida, shall be applied and construed to
effectuate its general purpose to make uniform the law with
respect to the subject of the law among states enacting the law
~~it~~.



138372

Section 14. Section 726.113, Florida Statutes, is created to read:

726.113 Governing law.—

(1) For the purposes of this section, the following provisions shall determine a debtor's physical location:

(a) A debtor that is an individual is located at his or her principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(3) This section only applies to determine the claims law governing a claim for relief under this chapter. This section does not affect the governing law for any other claims, issues, or relief between the parties arising outside of this chapter.

(4) If this section requires the application of the claims law of a foreign jurisdiction, such a determination does not affect which jurisdiction's exemption laws apply, the availability of exemptions under applicable law, or the debtor's entitlement to any protections afforded to the debtor's homestead under the Florida Constitution.

Section 15. Section 726.114, Florida Statutes, is created to read:

726.114 Application to series organization.—

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



138372

(a) "Protected series" means an arrangement, however
denominated, created by a series organization that, pursuant to
the law under which the series organization is organized, meets
the criteria set forth in paragraph (b).

(b) "Series organization" means an organization that,
pursuant to the law under which it is organized, has the
following characteristics:

1. The organic record of the organization provides for
creation by the organization of one or more protected series,
however denominated, with respect to specified property of the
organization, and for records to be maintained for each
protected series that identify the property of, or associated
with, the protected series.

2. Debt incurred or existing with respect to the activities
of, or property of or associated with, a particular protected
series is enforceable against the property of or associated with
the protected series only, and not against the property of or
associated with the organization or other protected series of
the organization.

3. Debt incurred or existing with respect to the activities
or property of the organization is enforceable against the
property of the organization only, and not against the property
of or associated with a protected series of the organization.

(2) A series organization and each protected series of the
organization is a separate person for purposes of this chapter,
even if for other purposes a protected series is not a person
separate from the organization or other protected series of the
organization. Provisions of law other than this chapter
determines whether and to what extent a series organization and



138372

each protected series of the organization is a separate person
for purposes other than the purposes of this chapter.

Section 16. Section 726.115, Florida Statutes, is created
to read:

726.115 Relation to Electronic Signatures in Global and
National Commerce Act.—This chapter modifies, limits, and
supersedes the federal Electronic Signatures in Global and
National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not
modify, limit, or supersede section 101(c) of that act, 15
U.S.C. s. 7001(c), or authorize electronic delivery of any of
the notices described in s. 103(b) of that act, 15 U.S.C. s.
7003(b).

Section 17. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the Uniform Voidable Transactions
Act; providing a directive to the Division of Law
Revision and Information; amending s. 726.101, F.S.;
revising a short title; amending s. 726.102, F.S.;
revising and providing definitions; amending s.
726.103, F.S.; removing conditions under which a
partnership is insolvent; imposing the burden of
proving insolvency upon certain debtors; amending ss.
726.105 and 726.106, F.S.; imposing the burden of
proving elements of a claim for relief upon certain



138372

creditors; providing legislative intent regarding certain comments issued by the Uniform Law Commission; amending s. 726.107, F.S.; conforming provisions to changes made by the act; amending s. 726.108, F.S.; providing conditions under which attachments or other provisional remedies are available to creditors; amending s. 726.109, F.S.; revising the parties subject to judgments for recovery of a creditor's claim; revising conditions under which a transfer is not voidable; imposing the burden of proving certain applicability, claim elements, and adjustments; providing requirements for standard of proof; amending ss. 726.110, 726.111, and 726.112, F.S.; conforming provisions to changes made by the act; creating s. 726.113, F.S.; providing that claims for relief are governed by specified claims law; creating s. 726.114, F.S.; providing definitions; providing applicability of specified provisions for series organizations and the protected series of such organizations; creating s. 726.115, F.S.; providing applicability for a specified federal act; creating s. 726.116, F.S.; providing an effective date.

By Senator Simmons

9-00986A-18

20181316__

1 A bill to be entitled
 2 An act relating to the Uniform Voidable Transactions
 3 Act; providing a directive to the Division of Law
 4 Revision and Information; amending s. 726.101, F.S.;
 5 revising a short title; amending s. 726.102, F.S.;
 6 revising and defining terms; amending s. 726.103,
 7 F.S.; removing conditions under which a partnership is
 8 insolvent; imposing upon certain debtors the burden of
 9 proving insolvency; amending ss. 726.105 and 726.106,
 10 F.S.; imposing upon certain creditors the burden of
 11 proving elements of a claim for relief; amending s.
 12 726.107, F.S.; conforming provisions to changes made
 13 by the act; amending s. 726.108, F.S.; providing
 14 conditions under which attachments or other
 15 provisional remedies are available to creditors;
 16 amending s. 726.109, F.S.; revising the parties
 17 subject to judgments for recovery of a creditor's
 18 claim; revising conditions under which a transfer is
 19 not voidable; imposing upon specified persons the
 20 burden of proving certain applicability, claim
 21 elements, and adjustments; providing requirements for
 22 standard of proof; amending ss. 726.110, 726.111, and
 23 726.112, F.S.; conforming provisions to changes made
 24 by the act; creating s. 726.113, F.S.; providing that
 25 claims for relief are governed by specified claims
 26 law; creating s. 726.114, F.S.; defining terms;
 27 providing applicability of specified provisions for
 28 series organizations and the protected series of such
 29 organizations; creating s. 726.115, F.S.; providing

Page 1 of 18

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

9-00986A-18

20181316__

30 applicability of a specified federal act; providing an
 31 effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. The Division of Law Revision and Information is
 36 directed to rename chapter 726, Florida Statutes, entitled
 37 "FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."
 38 Section 2. Section 726.101, Florida Statutes, is amended to
 39 read:
 40 726.101 Short title.—This act may be cited as the "Uniform
 41 Voidable Transactions ~~Fraudulent Transfer~~ Act."
 42 Section 3. Section 726.102, Florida Statutes, is amended to
 43 read:
 44 726.102 Definitions.—As used in this chapter ~~ss. 726.101-~~
 45 ~~726.112~~:
 46 (1) "Affiliate" means:
 47 (a) A person that ~~who~~ directly or indirectly owns,
 48 controls, or holds with power to vote, 20 percent or more of the
 49 outstanding voting securities of the debtor, other than a person
 50 that ~~who~~ holds the securities:
 51 1. As a fiduciary or agent without sole discretionary power
 52 to vote the securities; or
 53 2. Solely to secure a debt, if the person has not in fact
 54 exercised the power to vote;—
 55 (b) A corporation 20 percent or more of whose outstanding
 56 voting securities are directly or indirectly owned, controlled,
 57 or held with power to vote, by the debtor or a person that ~~who~~
 58 directly or indirectly owns, controls, or holds, with power to

Page 2 of 18

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9-00986A-18

20181316__

59 vote, 20 percent or more of the outstanding voting securities of
60 the debtor, other than a person that ~~who~~ holds the securities:

61 1. As a fiduciary or agent without sole discretionary power
62 to vote the securities; or

63 2. Solely to secure a debt, if the person has not in fact
64 exercised the power to vote;-

65 (c) A person whose business is operated by the debtor under
66 a lease or other agreement, or a person substantially all of
67 whose assets are controlled by the debtor; or

68 (d) A person that ~~who~~ operates the debtor's business under
69 a lease or other agreement or controls substantially all of the
70 debtor's assets.

71 (2) "Asset" means property of a debtor, but the term does
72 not include:

73 (a) Property to the extent it is encumbered by a valid
74 lien;

75 (b) Property to the extent it is generally exempt under
76 nonbankruptcy law; or

77 (c) An interest in property held in tenancy by the
78 entireties to the extent it is not subject to process by a
79 creditor holding a claim against only one tenant.

80 (3) "Charitable contribution" means a charitable
81 contribution as that term is defined in s. 170(c) of the
82 Internal Revenue Code of 1986, if that contribution consists of:

83 (a) A financial instrument as defined in s. 731(c)(2)(C) of
84 the Internal Revenue Code of 1986; or

85 (b) Cash.

86 (4) "Claim," except as used in "claim for relief," means a
87 right to payment, whether or not the right is reduced to

9-00986A-18

20181316__

88 judgment, liquidated, unliquidated, fixed, contingent, matured,
89 unmatured, disputed, undisputed, legal, equitable, secured, or
90 unsecured.

91 (5) "Claims law" means fraudulent conveyance, fraudulent
92 transfer, or voidable transfer laws or other laws of similar
93 effect.

94 (6) ~~(5)~~ "Creditor" means a person that ~~who~~ has a claim.

95 (7) ~~(6)~~ "Debt" means liability on a claim.

96 (8) ~~(7)~~ "Debtor" means a person that ~~who~~ is liable on a
97 claim.

98 (9) "Electronic" means technology having electrical,
99 digital, magnetic, wireless, optical, electromagnetic, or
100 similar capabilities.

101 (10) ~~(8)~~ "Insider" includes:

102 (a) If the debtor is an individual:

103 1. A relative of the debtor or of a general partner of the
104 debtor;

105 2. A partnership in which the debtor is a general partner;

106 3. A general partner in a partnership described in
107 subparagraph 2.; or

108 4. A corporation of which the debtor is a director,
109 officer, or person in control;

110 (b) If the debtor is a corporation:

111 1. A director of the debtor;

112 2. An officer of the debtor;

113 3. A person in control of the debtor;

114 4. A partnership in which the debtor is a general partner;

115 5. A general partner in a partnership described in

116 subparagraph 4.; or

9-00986A-18

20181316__

117 6. A relative of a general partner, director, officer, or
 118 person in control of the debtor;~~;~~
 119 (c) If the debtor is a partnership:
 120 1. A general partner in the debtor;
 121 2. A relative of a general partner in, a general partner
 122 of, or a person in control of the debtor;
 123 3. Another partnership in which the debtor is a general
 124 partner;
 125 4. A general partner in a partnership described in this
 126 paragraph ~~subparagraph 3~~; or
 127 5. A person in control of the debtor;~~;~~
 128 (d) An affiliate, or an insider of an affiliate as if the
 129 affiliate were the debtor; ~~and~~
 130 (e) A managing agent of the debtor.
 131 (11)(9) "Lien" means a charge against or an interest in
 132 property to secure payment of a debt or performance of an
 133 obligation, and includes a security interest created by
 134 agreement, a judicial lien obtained by legal or equitable
 135 process or proceedings, a common-law lien, or a statutory lien.
 136 (12) "Organization" means a person other than an
 137 individual.
 138 (13)(10) "Person" means an individual;~~;~~ partnership;
 139 limited partnership; business corporation; nonprofit business
 140 corporation; public~~;~~ corporation;~~;~~ limited liability company;
 141 limited cooperative association; unincorporated nonprofit
 142 association~~;~~ ~~organization~~, government or governmental
 143 subdivision, instrumentality, or agency;~~;~~ business trust; common
 144 law business trust; statutory trust~~;~~ estate;~~;~~ trust;~~;~~
 145 association; joint venture; or any other legal or commercial

9-00986A-18

20181316__

146 entity.
 147 ~~(14)(11)~~ "Property" means anything that may be the subject
 148 of ownership.
 149 ~~(15)(12)~~ "Qualified religious or charitable entity or
 150 organization" means:
 151 (a) An entity described in s. 170(c)(1) of the Internal
 152 Revenue Code of 1986; or
 153 (b) An entity or organization described in s. 170(c)(2) of
 154 the Internal Revenue Code of 1986.
 155 (16) "Record" means information that is inscribed on a
 156 tangible medium or that is stored in an electronic or other
 157 medium and is retrievable in perceivable form.
 158 ~~(17)(13)~~ "Relative" means an individual related by
 159 consanguinity within the third degree as determined by the
 160 common law, a spouse, or an individual related to a spouse
 161 within the third degree as so determined, and includes an
 162 individual in an adoptive relationship within the third degree.
 163 (18) "Sign" or "signed" means, with present intent to
 164 authenticate or adopt a record:
 165 (a) To execute or adopt a tangible symbol; or
 166 (b) To attach to or logically associate with the record an
 167 electronic symbol, sound, or process.
 168 ~~(19)(14)~~ "Transfer" means every mode, direct or indirect,
 169 absolute or conditional, voluntary or involuntary, of disposing
 170 of or parting with an asset or an interest in an asset, and
 171 includes payment of money, release, lease, license, and creation
 172 of a lien or other encumbrance.
 173 (20)(15) "Valid lien" means a lien that is effective
 174 against the holder of a judicial lien subsequently obtained by

9-00986A-18

20181316__

175 legal or equitable process or proceedings.

176 Section 4. Section 726.103, Florida Statutes, is amended to
177 read:

178 726.103 Insolvency.—

179 (1) A debtor is insolvent if, at a fair valuation, the sum
180 of the debtor's debts is greater than the sum ~~all~~ of the
181 debtor's assets ~~at a fair valuation~~.

182 (2) A debtor that ~~who~~ is generally not paying its ~~his or~~
183 ~~her~~ debts as they become due, for reasons other than as a result
184 of a bona fide dispute, is presumed to be insolvent. The party
185 against which the presumption is directed has the burden of
186 proving that the nonexistence of insolvency is more probable
187 than its existence.

188 ~~(3) A partnership is insolvent under subsection (1) if the~~
189 ~~sum of the partnership's debts is greater than the aggregate, at~~
190 ~~a fair valuation, of all of the partnership's assets and the sum~~
191 ~~of the excess of the value of each general partner's~~
192 ~~nonpartnership assets over the partner's nonpartnership debts.~~

193 ~~(3)(4)~~ Assets under this section do not include property
194 that has been transferred, concealed, or removed with intent to
195 hinder, delay, or defraud creditors or that has been transferred
196 in a manner making the transfer voidable under this chapter ~~ss.~~
197 ~~726.101-726.112~~.

198 ~~(4)(5)~~ Debts under this section do not include an
199 obligation to the extent it is secured by a valid lien on
200 property of the debtor not included as an asset.

201 Section 5. Section 726.105, Florida Statutes, is amended to
202 read:

203 726.105 Transfers or obligations voidable ~~fraudulent~~ as to

9-00986A-18

20181316__

204 present and future creditors.—

205 (1) A transfer made or obligation incurred by a debtor is
206 ~~voidable fraudulent~~ as to a creditor, whether the creditor's
207 claim arose before or after the transfer was made or the
208 obligation was incurred, if the debtor made the transfer or
209 incurred the obligation:

210 (a) With actual intent to hinder, delay, or defraud any
211 creditor of the debtor; or

212 (b) Without receiving a reasonably equivalent value in
213 exchange for the transfer or obligation, and the debtor:

214 1. Was engaged or was about to engage in a business or a
215 transaction for which the remaining assets of the debtor were
216 unreasonably small in relation to the business or transaction;
217 or

218 2. Intended to incur, or believed or reasonably should have
219 believed that the debtor ~~he or she~~ would incur, debts beyond the
220 debtor's ~~his or her~~ ability to pay as they became due.

221 (2) In determining actual intent under paragraph (1)(a),
222 consideration may be given, among other factors, to whether:

223 (a) The transfer or obligation was to an insider.

224 (b) The debtor retained possession or control of the
225 property transferred after the transfer.

226 (c) The transfer or obligation was disclosed or concealed.

227 (d) Before the transfer was made or obligation was
228 incurred, the debtor had been sued or threatened with suit.

229 (e) The transfer was of substantially all the debtor's
230 assets.

231 (f) The debtor absconded.

232 (g) The debtor removed or concealed assets.

9-00986A-18

20181316__

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that ~~who~~ transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 6. Section 726.106, Florida Statutes, is amended to read:

726.106 Transfers or obligations voidable ~~fraudulent~~ as to present creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had

9-00986A-18

20181316__

reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or subsection (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 7. Section 726.107, Florida Statutes, is amended to read:

726.107 When transfer made or obligation incurred.—For the purposes of this chapter ~~ss. 726.101-726.112~~:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which ~~whom~~ applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter ~~ss. 726.101-726.112~~ that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made

9-00986A-18

20181316__

when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record writing, when the record signed writing ~~executed~~ by the obligor is delivered to or for the benefit of the obligee.

Section 8. Section 726.108, Florida Statutes, is amended to read:

726.108 Remedies of creditors.—

(1) In an action for relief against a transfer or obligation under this chapter ss. 726.101-726.112, a creditor, subject to the limitations in s. 726.109, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if and to the extent available under in accordance with applicable law; or

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

1. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

2. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim

9-00986A-18

20181316__

against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Section 9. Section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee or obligee.—

(1) A transfer or obligation is not voidable under s. 726.105(1)(a) against a person that ~~who~~ took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) (a) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1. (a) The first transferee of the asset or the person for whose benefit the transfer was made; or

2. (b) An immediate or mediate transferee of the first ~~Any subsequent transferee other than:~~

a. A good faith transferee that ~~who~~ took for value; or

b. An immediate or mediate good faith transferee of a person described in sub-subparagraph a ~~from any subsequent transferee.~~

(b) Recovery pursuant to s. 726.108(1)(a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subparagraph (a)1. or subparagraph (a)2.

(3) If the judgment under subsection (2) is based upon the

9-00986A-18

20181316__

value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter ~~ss. 726.101-726.112~~, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an ~~any~~ interest in the asset transferred;

(b) Enforcement of an ~~any~~ obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under s. 726.106(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent unless the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

9-00986A-18

20181316__

(7) (a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b) or s. 726.106(1).

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

(8) (a) A party that seeks to invoke subsection (1), subsection (4), subsection (5), or subsection (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or subsection (3).

(c) The transferee has the burden of proving the applicability to the transferee under subparagraph (2)(a)2.

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

9-00986A-18

20181316__

(9) The standard of proof required to establish matters referred to in this section is a preponderance of the evidence.

(10) The creditor has the burden of proving the requisite elements of any claim under this chapter, as set forth in ss. 726.105(3) and 726.106(3).

Section 10. Section 726.110, Florida Statutes, is amended to read:

726.110 Extinguishment of claim for relief ~~cause of action~~.—A claim for relief ~~cause of action~~ with respect to a ~~fraudulent~~ transfer or obligation under this chapter ~~ss. 726.101-726.112~~ is extinguished unless action is brought:

(1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation and its wrongful nature was or could reasonably have been discovered by the claimant;

(2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years after the transfer was made or the obligation was incurred; or

(3) Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

Section 11. Section 726.111, Florida Statutes, is amended to read:

726.111 Supplementary provisions.—Unless displaced by the provisions of this chapter ~~ss. 726.101-726.112~~, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement those provisions.

9-00986A-18

20181316__

Section 12. Section 726.112, Florida Statutes, is amended to read:

726.112 Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting the law ~~it~~.

Section 13. Section 726.113, Florida Statutes, is created to read:

726.113 Governing law.—

(1) For the purposes of this section, the following provisions determine a debtor's physical location:

(a) A debtor that is an individual is located at his or her principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(3) This section does not affect the governing law for any other claims or issues between the parties arising outside of this chapter or other claims law. If this section requires the application of the claims law of a foreign jurisdiction, such a determination does not affect which jurisdiction's exemption laws apply, the availability of exemptions under applicable law, or the debtor's entitlement to any protections afforded to the

9-00986A-18

20181316__

debtor's homestead under the Florida Constitution.

Section 14. Section 726.114, Florida Statutes, is created to read:

726.114 Application to series organization.—

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

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, meets the criteria set forth in paragraph (b).

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

1. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.

2. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization.

3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization.

(2) A series organization and each protected series of the

9-00986A-18

20181316__

organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Provisions of law other than this chapter determine whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than the purposes of this chapter.

Section 15. Section 726.115, Florida Statutes, is created to read:

726.115 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 16. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 7, 2018

I respectfully request that **Senate Bill 1316**, relating to Uniform Voidable Transactions Act, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/18
Meeting Date

1316
Bill Number (if applicable)
138372
Amendment Barcode (if applicable)

Topic Support the Simmons Amendment

Name Martha Edenfield

Job Title _____

Address 215 S. Monroe Street
Street
Tallahassee FL 32301
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Phone 850-999-4100

Email medenfield@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property Probate & Trust Law Section of the FL Bar

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

2-15-18

Meeting Date

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

SB 1316

Bill Number (if applicable)

138372

Amendment Barcode (if applicable)

Topic UUTA

Name Stephen Shiver

Job Title _____

Address 204 S Monroe St

Street

City

Tallahassee FL 32301

State

Zip

Phone 850 222 8900

Email SS@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA BAR - Tax Law Section

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)

2/15/18

Meeting Date

SB 1316

Bill Number (if applicable)

Topic UTA

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 119 South Monroe Street #200

Phone 850-205-9000

Street

Tallahassee FL 32301

City

State

Zip

Email aimée.diazlyon@mhdfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Business Law Section of the Florida Bar

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
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 Rules

BILL: SB 738

INTRODUCER: Senator Perry

SUBJECT: Public Records and Public Meetings/Firesafety System Plans

DATE: February 14, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Knudson	BI	Favorable
2. Peacock	Caldwell	GO	Favorable
3. Matiyow	Phelps	RC	Favorable

I. Summary:

SB 738 makes confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. The bill also makes confidential and exempt from public meeting requirements any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements. The exemption is incorporated into the existing public records and public meeting exemptions for security systems.

The exemptions are necessitated because firesafety systems are often integrated with security systems. It is believed that disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the firesafety or security systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

Because the bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has an effective date of upon becoming law and provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ s. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁵ The exemption must explicitly lay out

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁶ *Id.*

²⁷ See *supra* note 11.

²⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.³⁵ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.³⁶

Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Public Records and Public Meeting Exemptions for Security System Plans

Section 119.071(3)(a)1., F.S., defines “security system plan” to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency is confidential and exempt from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.³⁷

An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.³⁸

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency is confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

³⁵ FLA. CONST., art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ Section 119.071(3)(a)2., F.S.

³⁸ Section 119.071(3)(a)3., F.S.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information.

An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

Section 286.0113, F.S., provides any portion of a meeting that would reveal a security system plan or portion thereof is exempt from public meeting requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill specifies that the public record exemption must be given retroactive application because it is remedial in nature. Thus, records of firesafety system plans and records relating to firesafety systems in existence prior to the effective date of the bill will be protected by the exemption.

This section is subject to the OGSF in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 amends s. 281.301, F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill also makes confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

Section 3 amends s. 286.0113, F.S., to make confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

This section is subject to the OGSF in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4 provides a public necessity statement as required by the State Constitution, specifying that as firesafety systems become more integrated with security systems, disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

Section 5 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the public health and safety and economic well-being of the state and to prevent disclosure of sensitive information relating to firesafety systems that could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created or expanded public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

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:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 281.301, and 286.0113.

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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

119.071 General exemptions from inspection or copying of
public records.—

(3) SECURITY AND FIRESAFETY.—

(a)1. As used in this paragraph, the term “security or
firesafety system plan” includes all:



785894

12 a. Records, information, photographs, audio and visual
13 presentations, schematic diagrams, surveys, recommendations, or
14 consultations or portions thereof relating directly to the
15 physical security or firesafety of the facility or revealing
16 security or firesafety systems;

17 b. Threat assessments conducted by any agency or any
18 private entity;

19 c. Threat response plans;

20 d. Emergency evacuation plans;

21 e. Sheltering arrangements; or

22 f. Manuals for security or firesafety personnel, emergency
23 equipment, or security or firesafety training.

24 2. A security or firesafety system plan or portion thereof
25 for:

26 a. Any property owned by or leased to the state or any of
27 its political subdivisions; or

28 b. Any privately owned or leased property
29

30 held by an agency is confidential and exempt from s. 119.07(1)
31 and s. 24(a), Art. I of the State Constitution. This exemption
32 is remedial in nature, and it is the intent of the Legislature
33 that this exemption apply to security or firesafety system plans
34 held by an agency before, on, or after the effective date of
35 this paragraph. This paragraph is subject to the Open Government
36 Sunset Review Act in accordance with s. 119.15 and shall stand
37 repealed on October 2, 2023, unless reviewed and saved from
38 repeal through reenactment by the Legislature.

39 3. Information made confidential and exempt by this
40 paragraph may be disclosed:



785894

- 41 a. To the property owner or leaseholder;
42 b. In furtherance of the official duties and
43 responsibilities of the agency holding the information;
44 c. To another local, state, or federal agency in
45 furtherance of that agency's official duties and
46 responsibilities; or
47 d. Upon a showing of good cause before a court of competent
48 jurisdiction.

49 Section 2. Subsection (1) of section 281.301, Florida
50 Statutes, is amended to read:

51 281.301 Security and firesafety systems; records and
52 meetings exempt from public access or disclosure.—

53 (1) Information relating to the security or firesafety
54 systems for any property owned by or leased to the state or any
55 of its political subdivisions, and information relating to the
56 security or firesafety systems for any privately owned or leased
57 property which is in the possession of any agency as defined in
58 s. 119.011(2), including all records, information, photographs,
59 audio and visual presentations, schematic diagrams, surveys,
60 recommendations, or consultations or portions thereof relating
61 directly to or revealing such systems or information is
62 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
63 of the State Constitution, and any portion of a meeting all
64 ~~meetings~~ relating directly to or that would reveal such systems
65 or information is ~~are confidential and~~ exempt from s. 286.011
66 and s. 24(b), Art. I of the State Constitution, ss. 119.07(1)
67 ~~and 286.011~~ and other laws and rules requiring public access or
68 disclosure. This subsection is subject to the Open Government
69 Sunset Review Act in accordance with s. 119.15 and shall stand



785894

70 repealed on October 2, 2023, unless reviewed and saved from
71 repeal through reenactment by the Legislature.

72 Section 3. Subsection (1) of section 286.0113, Florida
73 Statutes, is amended to read:

74 286.0113 General exemptions from public meetings.—

75 (1) That portion of a meeting that would reveal a security
76 or firesafety system plan or portion thereof made confidential
77 and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s.
78 24(b), Art. I of the State Constitution. This subsection is
79 subject to the Open Government Sunset Review Act in accordance
80 with s. 119.15 and shall stand repealed on October 2, 2023,
81 unless reviewed and saved from repeal through reenactment by the
82 Legislature.

83 Section 4. (1) The Legislature finds that it is a public
84 necessity that:

85 (a) Firesafety system plans held by an agency be made
86 confidential and exempt from s. 119.07(1), Florida Statutes, and
87 s. 24(a), Art. I of the State Constitution.

88 (b) Information relating to firesafety systems for any
89 property owned by or leased to the state or any of its political
90 subdivisions or which is in the possession of an agency be made
91 confidential and exempt from s. 119.07(1), Florida Statutes, and
92 s. 24(a), Art. I of the State Constitution, and any portion of a
93 meeting relating directly to or that would reveal such systems
94 or information be made exempt from s. 286.011, Florida Statutes,
95 and s. 24(b), Art. I of the State Constitution.

96 (c) Any portion of a meeting revealing firesafety system
97 plans held by an agency be made exempt from s. 286.011, Florida
98 Statutes, and s. 24(b), Art. I of the State Constitution.



785894

(2) As firesafety systems become more connected and integrated with security systems, this connectivity and integration exposes such systems to threats intended to disable their operation. Disabling a firesafety system could impact the safety of individuals within the building and the integrity of the building's security system. Maintaining safe and reliable firesafety systems is vital to protecting the public health and safety and ensuring the economic well-being of the state. Disclosure of sensitive information relating to firesafety systems could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation, adversely impacting the public health and safety and economic well-being of the state. Because of the interconnected nature of firesafety and security systems, such a security breach may also impact security systems. As a result, the Legislature finds that the public and private harm in disclosing the information made confidential and exempt by this act outweighs any public benefit derived from the disclosure of such information. The protection of information made confidential and exempt by this act will ensure that firesafety systems are better protected against security threats and will bolster efforts to develop more resilient firesafety systems. Therefore, the Legislature finds that it is a public necessity to make firesafety system plans held by an agency and information relating to firesafety systems for certain properties exempt from public records and public meetings requirements.

(3) The Legislature further finds that these public records exemptions must be given retroactive application because they



785894

are remedial in nature.

Section 5. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public records and public meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for firesafety system
plans held by an agency; providing for future
legislative review and repeal; amending s. 281.301,
F.S.; providing an exemption from public records and
public meetings requirements for information relating
to firesafety systems for certain properties and
meetings relating to such systems and information;
providing for future legislative review and repeal;
amending s. 286.0113, F.S.; providing an exemption
from public meetings requirements for portions of
meetings that would reveal firesafety system plans
held by an agency; providing for future legislative
review and repeal; providing a statement of public
necessity; providing for retroactive application;
providing an effective date.

By Senator Perry

8-00823-18

2018738__

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 amending s. 119.071, F.S.; providing an exemption from
 4 public records requirements for firesafety system
 5 plans held by an agency; amending s. 281.301, F.S.;
 6 providing an exemption from public records and public
 7 meetings requirements for information relating to
 8 firesafety systems for certain properties and meetings
 9 relating to such systems and information; amending s.
 10 286.0113, F.S.; providing an exemption from public
 11 meetings requirements for portions of meetings that
 12 would reveal firesafety system plans held by an
 13 agency; providing for retroactive application;
 14 providing for future legislative review and repeal of
 15 the exemptions; providing a statement of public
 16 necessity; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Paragraph (a) of subsection (3) of section
 21 119.071, Florida Statutes, is amended to read:
 22 119.071 General exemptions from inspection or copying of
 23 public records.—
 24 (3) SECURITY AND FIRESAFETY.—
 25 (a)1. As used in this paragraph, the term "security or
 26 firesafety system plan" includes all:
 27 a. Records, information, photographs, audio and visual
 28 presentations, schematic diagrams, surveys, recommendations, or
 29 consultations or portions thereof relating directly to the

Page 1 of 6

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

8-00823-18

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30 physical security or firesafety of the facility or revealing
 31 security or firesafety systems;
 32 b. Threat assessments conducted by any agency or any
 33 private entity;
 34 c. Threat response plans;
 35 d. Emergency evacuation plans;
 36 e. Sheltering arrangements; or
 37 f. Manuals for security or firesafety personnel, emergency
 38 equipment, or security or firesafety training.
 39 2. A security or firesafety system plan or portion thereof
 40 for:
 41 a. Any property owned by or leased to the state or any of
 42 its political subdivisions; or
 43 b. Any privately owned or leased property
 44
 45 held by an agency is confidential and exempt from s. 119.07(1)
 46 and s. 24(a), Art. I of the State Constitution. This exemption
 47 is remedial in nature, and it is the intent of the Legislature
 48 that this exemption apply to security or firesafety system plans
 49 held by an agency before, on, or after the effective date of
 50 this paragraph. This paragraph is subject to the Open Government
 51 Sunset Review Act in accordance with s. 119.15 and shall stand
 52 repealed on October 2, 2023, unless reviewed and saved from
 53 repeal through reenactment by the Legislature.
 54 3. Information made confidential and exempt by this
 55 paragraph may be disclosed:
 56 a. To the property owner or leaseholder;
 57 b. In furtherance of the official duties and
 58 responsibilities of the agency holding the information;

Page 2 of 6

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8-00823-18

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c. To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or

d. Upon a showing of good cause before a court of competent jurisdiction.

Section 2. Section 281.301, Florida Statutes, is amended to read:

281.301 Security and firesafety systems; records and meetings exempt from public access or disclosure.—

(1) Information relating to the security or firesafety systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security or firesafety systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any portion of a meeting all ~~meetings~~ relating directly to or that would reveal such systems or information is ~~are~~ confidential and exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Information made confidential and exempt by this

8-00823-18

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section may be disclosed:

(a) To the property owner or leaseholder;

(b) In furtherance of the official duties and responsibilities of the agency holding the information;

(c) To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or

(d) Upon a showing of good cause before a court of competent jurisdiction.

Section 3. Subsection (1) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(1) That portion of a meeting that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. (1) The Legislature finds that it is a public necessity that:

(a) Firesafety system plans held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(b) Information relating to firesafety systems for any property owned by or leased to the state or any of its political subdivisions or which is in the possession of an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and

8-00823-18

2018738

s. 24(a), Article I of the State Constitution, and any portion of a meeting relating directly to or that would reveal such systems or information be made confidential and exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(c) Any portion of a meeting revealing firesafety system plans held by an agency be made confidential and exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(2) As firesafety systems become more connected and integrated with security systems, this connectivity and integration exposes such systems to threats intended to disable their operation. Disabling a firesafety system could impact the safety of individuals within the building and the integrity of the building's security system. Maintaining safe and reliable firesafety systems is vital to protecting the public health and safety and ensuring the economic well-being of the state. Disclosure of sensitive information relating to firesafety systems could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation, adversely impacting the public health and safety and economic well-being of the state. Because of the interconnected nature of firesafety and security systems, such a security breach may also impact security systems. As a result, the Legislature finds that the public and private harm in disclosing the information made exempt by this act outweighs any public benefit derived from the disclosure of such information. The protection of information made exempt by this act will ensure

Page 5 of 6

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8-00823-18

2018738

that firesafety systems are better protected against security threats and will bolster efforts to develop more resilient firesafety systems. Therefore, the Legislature finds that it is a public necessity to make firesafety system plans held by an agency and information relating to firesafety systems for certain properties exempt from public records and public meetings requirements.

(3) The Legislature further finds that these public meetings and public records exemptions must be given retroactive application because they are remedial in nature.

Section 5. This act shall take effect upon becoming a law.

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #738**, relating to Public Records and Public Meetings/Fire safety systems, be placed on the:

- ☒ Committee agenda at your earliest possible convenience.
- ☐ Next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long horizontal line extending to the right.

Senator Keith Perry
Florida Senate, District 8

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 Rules

BILL: SB 988

INTRODUCER: Senator Perry

SUBJECT: Public Records/ First Responder Network Authority/Nationwide Public Safety
Broadband Network

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

I. Summary:

SB 988 creates a public records exemption for specified information provided by the First Responder Network Authority (FirstNet) or the Nationwide Public Safety Broadband Network by a person or entity who is with FirstNet or who contracts with FirstNet.

Specifically, the bill makes confidential and exempt from public disclosure the following information:

- Information regarding the design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- Features, functions, and capabilities of network infrastructure and facilities;
- Features, functions, and capabilities of network services provided to first responders and other network users; and
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

In the required public necessity statement, the bill provides as justification for the exemption that the information contains proprietary business information about communication service providers. Specifically, disclosure of this information would adversely affect the business interests and network security of these providers and their networks. Additionally, the public necessity statement provides that without the exemption, competitors could appropriate the information in such a way as to impede full and fair competition, therefore disadvantaging consumers of communications services who provide services pursuant to the authority.

The provisions of this bill are subject to the Open Government Sunset Review Act and are scheduled for repeal October 2, 2023, unless the Legislature saves the exemption from repeal and reenacts it before that date.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

First Responder Network Authority (FirstNet)

The federal Middle Class Tax Relief and Job Creation Act of 2012²³ created the First Responder Network Authority (FirstNet) as an independent authority within the Department of Commerce. FirstNet is designed to provide emergency responders with a nationwide, high-speed, broadband network dedicated to public safety.²⁴ FirstNet begins operation in 2018.

The First Responder Network Authority's public-private partnership with AT&T provides first responders with immediate access to mission-critical capabilities over the FirstNet network. This includes priority and preemption features that give first responders their own 'fast lane' on the public safety network to communicate and share information during emergencies, large events or other situations when commercial networks could become congested. FirstNet is the only broadband network to provide ruthless preemption for public safety.²⁵

FirstNet's enabling federal legislation²⁶ requires each Governor to determine whether to:

- Opt-in, meaning to participate in the deployment of the nationwide, interoperable network as proposed by the FirstNet State Plan, or
- Opt-out, meaning to conduct its own deployment of a radio access network, responsible for deploying, maintaining, operating, and improving a Radio Access Network that interoperates with the FirstNet network.²⁷

Public safety agencies who elect to opt-in are eligible to sign contracts with FirstNet, which provide first responders immediate access to AT&T's commercial network on a priority basis, with preemptive access provided within the year. Additionally, AT&T will install the FirstNet Radio Access Network at no cost to opt-in jurisdictions.²⁸

-
1. What specific records or meetings are affected by the exemption?
 2. Whom does the exemption uniquely affect, as opposed to the general public?
 3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Public Law 112-96--Feb. 22, 2012.

²⁴ FirstNet, available at: <https://www.firstnet.gov/> (last visited Jan. 12, 2018).

²⁵ *Id.*

²⁶ 47 U.S.C. s. 1442(e)(2).

²⁷ *Id.*

²⁸ FloridaNet, *FirstNet hits 50% 'opt-in' threshold as Indiana makes announcement*, available at: <http://www.floridanet.gov/news> (last visited Jan. 16, 2018).

FirstNet in Florida

The Florida Governor established the FloridaNet Executive Committee to oversee the decision-making process for the state regarding FirstNet. Since mid-year 2013, the executive committee has met periodically to discuss various aspects of FirstNet.²⁹ On September 28, 2017, FirstNet provided the State Plan to the State of Florida, which required a 90-day response by the Governor to elect to opt-in or opt-out.³⁰ On December 28, 2017, the 90th day, Florida elected to opt-in to the FirstNet deployment plan³¹, joining 49 other states, the District of Columbia and 4 U.S. territories.³² On January 19, 2018, the Northern Mariana Islands became the fifth and final territory to opt-in, bringing FirstNet participation to 100 percent.³³

III. Effect of Proposed Changes:

This bill creates a public records exemption for certain information provided by the First Responder Network Authority (FirstNet) or the Nationwide Public Safety Broadband Network by a person or entity who is with the authority or who contracts with the authority.

Specifically, the bill makes confidential and exempt from public disclosure the following information:

- Information regarding the design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- Features, functions, and capabilities of network infrastructure and facilities;
- Features, functions, and capabilities of network services provided to first responders and other network users; and
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

In the required public necessity statement, the bill provides as justification for the exemption that the information contains proprietary business information about communication service providers who provide services pursuant to the authority. Specifically, disclosure of this information would adversely affect the business interests and network security of these providers and their networks. Additionally, the public necessity statement provides that without the exemption, competitors could appropriate the information in such a way as to impede full and fair competition, therefore disadvantaging consumers of communications services as they relate to FirstNet.

²⁹ FirstNet, *Archived Discussions*, available at: <http://www.floridanet.gov/archived-discussions> (last visited Jan. 17, 2018).

³⁰ FloridaNet, *Florida's Public Safety Broadband Network*, available at: <http://www.floridanet.gov/events> (last visited Jan. 17, 2018).

³¹ Governor Rick Scott's letter to FirstNet provides, in part: "This letter serves as notice...that Florida has decided to participate in the deployment of the nationwide, interoperable broadband network as proposed in the FirstNet State Plan... I believe this is in the best interest for Florida taxpayers." Letter from Governor Rick Scott to Mike Poth, Chief Executive Officer with First Responder Network Authority (Dec. 28, 2017).

³² FirstNet, *State Plans Dashboard*, available at: <https://firstnet.gov/news> (last visited Jan. 17, 2018).

³³ FirstNet, *State Plans Dashboard*, available at: <https://firstnet.gov/news/northern-mariana-islands-transform-communications-public-safety> (last visited Jan. 22, 2018).

The provisions of this bill are subject to the Open Government Sunset Review Act and are scheduled for repeal October 2, 2023, unless the Legislature saves the exemption from repeal and reenacts it before that date.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt certain information obtained by persons from, or who enter into contract with FirstNet. Information protected by the exemption includes information on design, development, construction, deployment, and operation of network facilities; network coverage, including geographical maps; and security, including cybersecurity on the network and associated services and products. The public necessity statement for the exemption provides that the exemption is needed to protect propriety business information and preserve full and fair competition in the communication services industry. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

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:

This bill creates an undesignated section of law.

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 Perry

8-00938-18

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A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for information obtained by persons or agencies from the First Responder Network Authority and information relating to the Nationwide Public Safety Broadband Network obtained by persons or agencies from entities operating pursuant to a contract with the First Responder Network Authority; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Information from the First Responder Network Authority and relating to the Nationwide Public Safety Broadband Network; public records exemption.—

(1) Any information obtained by any person or agency from the First Responder Network Authority, or any information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq. obtained by any person or agency from any entity operating pursuant to a contract with the First Responder Network Authority, is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) For purposes of subsection (1), any information relating to the Nationwide Public Safety Broadband Network includes any information regarding the design, development,

Page 1 of 3

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8-00938-18

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construction, deployment, and operation of network facilities; network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities; the features, functions, and capabilities of network infrastructure and facilities; the features, functions, and capabilities of network services provided to first responders, as that term is defined in s. 112.1815, Florida Statutes, and other network users; the design, features, functions, and capabilities of network devices provided to first responders and other network users; and security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any information obtained by any person or agency from the First Responder Network Authority, or any information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq. obtained by any person or agency from any entity operating pursuant to a contract with the First Responder Network Authority, be held confidential and exempt from public records requirements. Such information contains proprietary business information of communications services providers. Disclosure of such information would adversely affect the business interests and compromise the network security of such providers and of their networks. Further, disclosure of such information would impair

Page 2 of 3

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59 competition in the communications services industry because
60 competitors could use such information to impede full and fair
61 competition in the communications services industry to the
62 disadvantage of their consumers. Therefore, the Legislature
63 finds that any information obtained by any person or agency from
64 the First Responder Network Authority, or any information
65 relating to the Nationwide Public Safety Broadband Network
66 established pursuant to 47 U.S.C. ss. 1401 et seq. obtained by
67 any person or agency from any entity operating pursuant to a
68 contract with the First Responder Network Authority, must be
69 held confidential and exempt from disclosure under s. 119.07(1),
70 Florida Statutes, and s. 24(a), Article I of the State
71 Constitution.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 26, 2018

I respectfully request that **Senate Bill #988**, relating to Public Records/First Responders , be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15

Meeting Date

988

Bill Number (if applicable)

Topic FIRST Net Public Record Exemption

Amendment Barcode (if applicable)

Name CASEY REED

Job Title State Director - Legislative Affairs

Address 150 S. MONROE ST. Ste 400

Phone (850) 591-6002

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TALLAHASSEE

FL

32301

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State

Zip

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing ATT

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
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 Rules

BILL: CS/CS/SB 970

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Brandes

SUBJECT: Alcohol and Drug-related Overdoses

DATE: February 14, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Stallard	Cibula	JU	Fav/CS
3. Erickson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 970 expands the statute that grants a person immunity from a drug-possession prosecution that otherwise could result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

Under the bill, this immunity is expanded in several ways, including that it:

- Shields a person from arrest, and not just charges, prosecution, or penalties;
- Shields a person from several crimes beyond drug-possession, including drug-trafficking, alcohol possession by a person under 21, and possession of a controlled substance with intent to sell it;
- Shields a person who is seeking medical help for another from arrest or prosecution for first-degree murder caused by giving another person a controlled substance (with or without the intent to kill the person);
- Applies to alcohol-related overdoses; and
- No longer requires a person seeking help for himself or herself to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

Additionally, the bill prohibits a person from being penalized for a violation of a condition of probation, parole, or pretrial release as the result of the person's seeking medical assistance for his or her own overdose. However, for the immunity to apply, the person must receive treatment for the overdose. Finally, the bill prohibits a person from being penalized for a violation of a

condition of probation, parole, or pretrial release as the result of his or her good-faith seeking of treatment for another person's overdose.

II. Present Situation:

Overview

The Legislature enacted Florida's "911 Good Samaritan Act" in 2012 to encourage people to seek medical assistance for persons having a drug overdose.¹ The act, which is codified in s. 893.21, F.S., prohibits a person from being charged, prosecuted, or penalized for possession of a controlled substance with evidence obtained as the result of the person's seeking medical assistance due to his or her overdose or the overdose of another person.

However, for the immunity to apply, the act requires a person seeking help for another to act in good faith. Moreover, the act specifies that it does not provide a basis for the suppression of evidence in other prosecutions.

The criminal conduct protected by the act is the "possession of a controlled substance." This general reference, however, does not clearly indicate whether the act protects a person possessing a sufficient quantity of a controlled substance to be charged with a trafficking offense. For example, a person who knowingly possesses at least 28 grams of cocaine commits the crime of trafficking in cocaine.²

"Good Samaritan" Laws Regarding Drug Overdoses

In addition to the 911 Good Samaritan Act, this state also has a statute, s. 381.887, F.S., which grants civil immunity to a person who administers a drug such as naloxone hydrochloride, which blocks the effects of opioids. Most other states have similar immunity laws, and these laws have been studied by the National Conference of State Legislatures (NCSL).

According to the NCSL, drug overdose rates continue to rise and these deaths are increasingly caused by opioids and opiates. The NCSL notes that "[o]pioid overdoses can be reversed with the timely administration of a medication called naloxone[.]" an FDA-approved drug that "can be administered in a number of ways that make it possible for a lay person to use."³

According to the NCSL, "[o]ften family and friends are in the best position to administer this lifesaving drug to their loved ones who overdose. Access to naloxone, however, was relatively limited until legislatures provided specific statutory protections for nonmedical professionals to possess and administer naloxone without a prescription."⁴ Many legislatures have enacted a law allowing naloxone administration and this law is often coupled with a law providing limited immunity from criminal prosecution for providing such medical assistance.

¹ Chapter 2012-36, Laws of Fla.

² See s. 893.135(1)(b), F.S.

³ "Drug Overdose Immunity and Good Samaritan Laws" (June 5, 2017), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> (last visited on Jan. 23, 2018).

⁴ *Id.*

According to NCSL, 40 states and the District of Columbia have Good Samaritan laws. The NCSL's description of the components that these laws generally share reads quite similarly to this state's Good Samaritan statute.⁵ One notable common component in other states' laws which Florida's statute lacks is a prohibition on the arrest of a person covered by the immunity.

Data on Drug-Overdose Deaths in Florida

A recent report by the Florida Medical Examiners Commission (FMEC) cited statistics that 102,173 deaths occurred in Florida during the first 6 months of 2016.⁶ Of the cases seen by medical examiners, toxicology results determined that ethanol (ethyl alcohol) and/or various controlled substances were present at the time of death in 5,392 cases.⁷

Some general statewide trends noted by the FMEC in its report include the following:

- Total drug-related deaths increased by 13.9 percent (658 more) when compared with the first half of 2015.
- 3,044 individuals (466 more deaths than the first half of 2015) died with one or more prescription drugs in their system. The drugs were identified as both the cause of death and present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol.
- 1,616 individuals (440 more deaths than the first half of 2015) died with at least one prescription drug in their system that was identified as the cause of death. These drugs may have been mixed with other prescription drugs, illicit drugs, and/or alcohol.
- The drugs that caused the most deaths were fentanyl (704), cocaine (643), benzodiazepines (632, including 355 alprazolam deaths), morphine (559), heroin (406), ethyl alcohol (405), oxycodone (324), methadone (156), and fentanyl analogs (149). Of these drugs, heroin (93.5 percent), fentanyl (87.5 percent), fentanyl analogs (81.4 percent), methadone (65.0 percent), morphine (63.7 percent), cocaine (56.2 percent), and oxycodone (51.3 percent) were listed as causing death in more than 50 percent of the deaths in which these drugs were found.⁸

III. Effect of Proposed Changes:

The bill expands the statute that generally grants a person immunity from charges, prosecution, or penalties for possession of a controlled substance which could otherwise result from the person's seeking medical help for his or her own overdose or for the overdose of another person.

Under the bill, this immunity is expanded in several ways, including that it:

- Shields a person from arrest, and not just charges, prosecution, or penalties;

⁵ *Id.*

⁶ *Drugs Identified in Deceased Persons by Florida Medical Examiners – 2016 Interim Report* (May 2017), p. 1, Florida Medical Examiners Commission, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Interim-Drug-Report.aspx>.

⁷ *Id.*

⁸ *Id.* at p. 2.

- Shields a person from several crimes beyond drug-possession, including drug-trafficking, alcohol possession by a person under 21, and possession of a controlled substance with intent to sell it;
- Shields a person who is seeking medical help for another from arrest or prosecution for first-degree murder of the type that is caused by giving another person a controlled substance (with or without the intent to kill the person);
- Applies to alcohol-related overdoses; and
- Does not require a person seeking help for themselves to actually be experiencing an overdose as long as the person has a good faith belief that he or she is overdosing.

Additionally, the bill expands the immunity beyond the realm of criminal prosecution. Particularly, the bill prohibits a person from being penalized for a violation of a condition of probation, parole, or pretrial release based on evidence obtained as a result of the person's seeking medical assistance for his or her overdose or apparent overdose. However, for the immunity to apply, the person must receive treatment for the overdose.⁹ Finally, the bill prohibits a person from being penalized for a violation of a condition of probation, parole, or pretrial release based on evidence obtained as a result of his or her good-faith seeking of treatment for another person's overdose.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁹ This requirement is unique to this provision. The parts of the bill relating to immunity from criminal charges do not require that anyone actually receive treatment for the immunity to apply.

B. Private Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

C. Government Sector Impact:

To the extent that the bill encourages people to seek medical assistance for drug and alcohol overdoses, the bill will increase medical costs. These additional costs will likely be borne by the person receiving treatment, insurers, health care providers, and the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Most of the changes proposed by the bill are features of the overdose immunity laws of at least one other state,¹⁰ and the inclusion of arrests in s. 893.21, F.S., was a recommendation of Florida's Statewide Drug Policy Advisory Council.¹¹ However, Senate Criminal Justice Committee staff was unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 782.04(1)(a)3., F.S., which punishes first degree murder involving unlawful distribution of a specified controlled substance. In fact, at least one state, Illinois, specifically states in its overdose immunity law that the law is not intended to prevent arrest or prosecution for drug-induced homicide.¹² As indicated by the NCSL, overdose immunity laws "generally provide immunity from arrest, charge or prosecution for certain controlled substance possession and paraphernalia offenses[.]"¹³

While the bill does not nullify s. 782.04(1)(a)3., F.S., the bill appears to effectively bar arrest or prosecution of a person who distributed a controlled substance to a user that was the proximate cause of the user's death but who also provided medical assistance to the user (albeit the user still died) in accordance with s. 893.21, F.S., as amended by the bill.

¹⁰ Provided are a few examples: Georgia law (Ga. Code Ann. s. 16-13-5) includes arrests; Colorado law (Colo. Rev. Stat. s. 18-1-711) includes alcohol overdose; New York law (N.Y. Penal Law s. 220.78) provides immunity for possession of alcohol by a person under 21 years of age; Mississippi law (Miss. Code Ann. s. 41-29-149.1) provides immunity for drug paraphernalia offenses; and Tennessee law (Tenn. Code Ann. s. 63-1-156) provides immunity for pretrial, probation, or parole violations.

¹¹ *Statewide Drug Policy Advisory Council – 2016 Annual Report* (December 1, 2016), p. 15, Florida Department of Health, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf> (last visited on December 12, 2017).

¹² 720 Ill. Comp. Stat. Ann. 570/414.

¹³ "Drug Overdose Immunity 'Good Samaritan' Laws" (July 1, 2014), National Conference of State Legislatures (on file with the Senate Committee on Criminal Justice).

Staff was also unable to find any overdose immunity law of another state that provides immunity from criminal arrest, charge, prosecution, or penalty for a law comparable to s. 893.135, F.S., which punishes drug trafficking.¹⁴

VIII. Statutes Affected:

This bill substantially amends section 893.21 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on January 25, 2018:

The committee substitute modifies the underlying bill's grant of immunity from a violation of a condition of pretrial release, probation, or parole for a person who seeks medical help for an individual who is overdosing or is believed to be overdosing. Particularly, the committee substitute makes it clear that immunity from these violations applies to a person who seeks help for the overdose of any person, including himself or herself. For the immunity to apply to a person seeking help for another person, he or she must do so "in good faith." For the immunity to apply to someone who seeks help for his or her own overdose, the person must have a "good faith belief" that he or she is experiencing an overdose and must receive medical assistance.

CS by Criminal Justice on January 9, 2018:

The Committee Substitute corrects incorrect statutory references and provides for uniform word usage.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ The act of "trafficking" can include possession, purchase, sale, manufacture, delivery, or importation.

By the Committees on Judiciary; and Criminal Justice; and
Senator Brandes

590-02438-18

2018970c2

A bill to be entitled

An act relating to alcohol and drug-related overdoses; amending s. 893.21, F.S.; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol or a drug-related overdose; prohibiting a person from being penalized for a violation of a condition of certain programs if that person in good faith seeks medical assistance for himself or herself or for an individual experiencing, or believed to be experiencing, an alcohol or a drug-related overdose; prohibiting the protection from arrest, charge, and prosecution for certain offenses from being grounds for suppression of evidence in other criminal prosecutions; providing an effective date.

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

Section 1. Section 893.21, Florida Statutes, is amended to read:

893.21 Alcohol and drug-related overdoses; medical assistance; immunity from arrest, charge, and prosecution.—

(1) A person acting in good faith who seeks medical assistance

Page 1 of 3

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

590-02438-18

2018970c2

for an individual experiencing, or believed to be experiencing,
an alcohol or a drug-related overdose may not be arrested,
charged, prosecuted, or penalized ~~pursuant to this chapter~~ for a
violation of s. 562.111, s. 782.04(1)(a)3., s. 893.13, s.
893.135, or s. 893.147, ~~possession of a controlled substance~~ if
the evidence for such offense ~~possession of a controlled~~
~~substance~~ was obtained as a result of the person's seeking
medical assistance.

(2) A person who experiences, or has a good faith belief
that he or she is experiencing, an alcohol or a drug-related
overdose and is in need of medical assistance may not be
arrested, charged, prosecuted, or penalized ~~pursuant to this~~
~~chapter~~ for a violation of s. 562.111, s. 893.13, s. 893.135, or
s. 893.147, ~~possession of a controlled substance~~ if the evidence
for such offense ~~possession of a controlled substance~~ was
obtained as a result of the person's seeking ~~the overdose and~~
~~the need for~~ medical assistance.

(3) A person who is experiencing, or has a good faith
belief that he or she is experiencing, an alcohol or a drug-
related overdose and receives medical assistance, or a person
acting in good faith who seeks medical assistance for an
individual experiencing, or believed to be experiencing, an
alcohol or a drug-related overdose, may not be penalized for a
violation of a condition of pretrial release, probation, or
parole if the evidence for such a violation was obtained as a
result of the person's seeking medical assistance.

~~(4)(3)~~ Protection in this section from arrest, charge, and
prosecution for an offense listed in this section ~~possession~~
~~offenses under this chapter~~ may not be grounds for suppression

Page 2 of 3

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

590-02438-18

2018970c2

59 of evidence in other criminal prosecutions.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: January 25, 2018

I respectfully request that **Senate Bill #970**, relating to **Alcohol and Drug-related Overdoses**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

Meeting Date

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

970

Bill Number (if applicable)

Topic Alcohol & Drug-Related Offenses

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S Andrews

Phone 954-785-9293

Street

Fort Lauderdale

FL

State

33301

Zip

Email devest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

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)

2.15.18

Meeting Date

970

Bill Number (if applicable)

Topic ALCOHOL DRUG RELATED OVERDOSES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644

Phone 813.264.2977

Street

TAMPA

FL

33694

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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
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 Rules

BILL: SB 1776

INTRODUCER: Senator Bradley

SUBJECT: Vegetable Gardens

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.	Present	Phelps	RC	Favorable

I. Summary:

SB 1776 prohibits a county, municipality, or other political subdivision of the state from regulating vegetable gardens on residential properties. Additionally, any such local ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable.

However, local governments may still adopt a local ordinance or regulation of a general nature which does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

II. Present Situation:

Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state.

Article I, section 2 of the Florida Constitution's Declaration of Rights provides that "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, *and to acquire, possess and protect property...*"

Article I, section 23 of the Florida Constitution's Right to Privacy provides that "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life..." The Florida Constitution's right to privacy is perceived to provide greater protection than the United States Constitution.¹

¹ Overton and Giddings, *The Right to Privacy in Florida in the Age of Technology and the Twenty-First Century: A Need for Protection from Private and Commercial Intrusion*, Florida State University Law Review, Volume 25, Issue 1, Article 3, (1997), available at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1394&context=lr>.

Village of Miami Shores Court Case

Residents of the Village of Miami Shores recently brought an action challenging the constitutionality of a zoning ordinance that prohibited the residents from growing vegetables in their front yard.² Violators of the ordinance faced fines of \$50 per day. The residents claimed the ordinance violated their constitutional rights to acquire, possess, and protect property; and their right to privacy. In its opinion, the Court held that even constitutionally protected property rights are not absolute and are subject to the fair exercise of the State's powers including the power to promote the general welfare of the people through regulation. As a result, using a rational basis standard of review,³ the Court found that the ordinance was rationally related to the Village code's design standards and landscaping regulations. The ordinance was upheld, and the prohibition remains in place.

On February 9, 2018, the Florida Supreme Court denied the petition for review of the case.⁴

III. Effect of Proposed Changes:

The bill provides that except as otherwise provided by law, a county, municipality, or other political subdivision may not regulate vegetable gardens on residential properties. Additionally, any such ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

However, the section does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

The bill also provides that it is the Legislature's intent to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² *Ricketts v. Village of Miami Shores*, 2017 WL 4943772 (Fla. 3d DCA 2017).

³ The rational basis standard of review is a deferential standard that requires the reviewing court to uphold the enactment if it is "fairly debatable" whether the purpose of the law is legitimate and whether the methods adopted in the law serve that legitimate purpose. *Membreno & Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 S0. 3d 13, 25 (Fla. 3d DCA 2016).

⁴ *Ricketts v. Village of Miami Shores*, 2018 WL 794717. (Fla. 2018).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Occupants of residential properties will be able to cultivate a vegetable garden without government intrusion.

C. Government Sector Impact:

Counties, municipalities, and other political subdivisions of the state are prohibited from regulating vegetable gardens on residential properties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 604.71 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 Bradley

5-01089B-18

20181776__

A bill to be entitled

An act relating to vegetable gardens; creating s.
604.71, F.S.; prohibiting local governments from
regulating vegetable gardens on residential properties
except as otherwise provided by law; specifying that
such regulations are void and unenforceable;
specifying exceptions; providing applicability;
providing an effective date.

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

Section 1. Section 604.71, Florida Statutes, is created to
read:

604.71 Local regulation of vegetable gardens.-

(1) The Legislature intends to encourage the development of
sustainable cultivation of vegetables and fruits at all levels
of production, including for personal consumption, as an
important interest of the state.

(2) Except as otherwise provided by law, a county,
municipality, or other political subdivision of this state may
not regulate vegetable gardens on residential properties. Any
such local ordinance or regulation regulating vegetable gardens
on residential properties is void and unenforceable.

(3) This section does not preclude the adoption of a local
ordinance or regulation of a general nature that does not
specifically regulate vegetable gardens, including, but not
limited to, regulations and ordinances relating to water use
during drought conditions, fertilizer use, or control of
invasive species.

Page 1 of 2

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5-01089B-18

20181776__

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

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill # 1776**, relating to Vegetable Gardens, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-15-18

Meeting Date

1776

Bill Number (if applicable)

Topic Vegetable Gardens

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

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)

2/15/18

Meeting Date

1776

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ari Bargin

Job Title Attorney

Address 2016 Bay Dr. #501

Street

Miami Beach,

City

FL

State

33141

Zip

Phone 305-721-1600

Email abargin@ij.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Institute for Justice, Herman Belkett

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)

2/15/18

Meeting Date

1776

Bill Number (if applicable)

Topic Vegetable Gardens

Amendment Barcode (if applicable)

Name David CruzJob Title Legislative CounselAddress P.O. Box 1757

Street

Phone 701-3674Tallahassee

City

FL

State

32302

Zip

Email DCRUZ@FLCITI0.COMSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida League of CitiesAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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
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 Rules

BILL: CS/SB 8

INTRODUCER: Health Policy Committee and Senator Benacquisto and others

SUBJECT: Controlled Substances

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	Favorable
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 8 amends various sections of law to increase the regulation, training, and reporting required when prescribing and dispensing controlled substances. The bill:

- Restricts Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving medication-assisted treatment (MAT) services.
- Requires all prescribing practitioners to complete a two-hour training course on the proper manner to prescribe controlled substances.
- Requires applicable health care regulatory boards to create guidelines for prescribing controlled substances for the treatment of acute pain.
- Limits prescriptions to no more than three days of opioids listed in Schedule II to treat acute pain as defined in the bill. This limit is increased to seven days if determined to be medically necessary, and properly documented, by the prescribing practitioner.
- Requires clinics that are exempt from the requirement to register as a pain management clinic to obtain a certificate of exemption from the Department of Health (DOH).
- Requires pharmacists and dispensing practitioners to verify a patient's identity prior to dispensing controlled substances.
- Conforms an exemption allowing health care practitioners to dispense controlled substances in connection with a surgical procedure to the limits on prescribing established for Schedule II opioid medications.

- Creates an exemption to allow a physician to dispense Schedule II and III controlled substances approved by the United States Food and Drug Administration (FDA) for the MAT of his or her own patients.
- Adds and reschedules substances to the various schedules of controlled substances.
- Substantially rewords the Prescription Drug Monitoring Program (PDMP) with changes including, but not limited to:
 - Including Schedule V controlled substances in the list of drugs that must be reported to the PDMP, and eliminating an exemption for reporting controlled substances dispensed to minors under the age of 16;
 - Requiring prescribing practitioners to consult the PDMP before prescribing controlled substances; and
 - Allowing the DOH to coordinate and share Florida's PDMP data with other states' PDMPs.

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.

The bill provides supplemental appropriations of:

- \$27,035,360 in non-recurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
 - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
- \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
- \$5 million in recurring general revenue funds to the DOH to purchase naloxone for emergency medical services (EMS) responders.

The effective date of the bill is July 1, 2018, except that Sections 5, 6, 13, and 14 take effect January 1, 2019.

II. Present Situation:

Opioid Abuse in Florida

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. By nearly every measure, the opioid crisis has worsened in recent years. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2015, 2016 saw:

- 5,725 (35 percent more) opioid-related deaths;
- 6,658 (24 percent more) individuals died with one or more prescription drugs in their system;¹
- 3,550 (40 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;

¹ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

- Occurrences of heroin increased by 31 percent, and deaths caused by heroin increased by 30 percent;
- Occurrences of fentanyl increased by 80 percent, and deaths caused by fentanyl increased by 97 percent;
- Occurrences of methadone (10 percent) and hydrocodone (2 percent) increased. Deaths caused by methadone (40 more) and hydrocodone (9 more) also increased;
- Occurrences of morphine increased by 38 percent, and deaths caused by morphine increased by 49 percent;
- Occurrences of oxycodone increased by 28 percent, and deaths caused by oxycodone also increased by 28 percent; and
- Occurrences of buprenorphine increased by 90 percent, and deaths caused by buprenorphine (14 more) increased.²

Additionally, collateral impacts of controlled substance and opioid misuse have increased. For example, between 2007 and 2015, the instance of neonatal abstinence syndrome – an infant disorder that occurs when babies are exposed to drugs in the womb before birth – increased by nearly 500 percent, from 536 cases to 2,487 cases. Overall hospital costs that can be attributed to the opioid crisis more than doubled between 2010 and 2015, from \$460 million to \$1.1 billion.³

History of the Opioid Crisis

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.⁴ Between the early 2000s and the early 2010s, 93 of the top 100 oxycodone-dispensing doctors in the United States were in Florida,⁵ and at one point, doctors in Florida bought 89 percent of all Oxycodone sold in the county.⁶

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics, creating the PDMP, and stricter regulation on selling, distributing, and dispensing controlled substances.⁷ Between 2010 and 2014, deaths from prescription drugs dropped, but deaths from illegal opioids, such as heroin, began to rise.⁸ As evidenced in the prescription controlled substance and opioid-related mortality data reported by the FDLE, deaths from prescription controlled substances are once

² FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2016 Annual Report* (Nov. 2017) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Annual-Drug-Report.aspx> (last visited on Jan. 6, 2018).

³ Florida Behavioral Health Association, *Florida's Opioid Crisis* (Jan. 2017) http://www.fadaa.org/links/Opioid%20Media%20Kit_FINAL.pdf, (last visited on Jan. 6, 2018).

⁴ National Institute on Drug Abuse, *Opioid Overdose Crisis*, (Jan. 2018) <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 6, 2018).

⁵ Elaine Silvestrini, *Florida heals from pill mill epidemic*, TAMPA BAY TIMES, Aug. 30, 2014, available at <http://www.tbo.com/news/crime/florida-heals-from-pill-mill-epidemic-20140830/> (last visited on Jan. 6, 2018).

⁶ Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, THE NEW YORK TIMES, Aug. 31, 2011, available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on Jan. 6, 2018).

⁷ See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁸ Supra note 3

again on the rise. In early 2017, the United States Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic, and shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

The federal government and many states have mobilized to combat the opioid epidemic. The United States Department of Health and Human Services (HHS) has focused its efforts on five major priorities:

- Improving access to treatment and recovery services;
- Promoting use of overdose-reversing drugs;
- Strengthening the understanding of the epidemic through better public health surveillance;
- Providing support for cutting-edge research on pain and addiction; and
- Advancing better practices for pain management.⁹

Individual states have taken actions to combat the opioid crisis, such as: increasing the availability of Naloxone and other related medications to prevent overdose deaths, increasing the availability and funding of MAT, and establishing stricter guidelines and regulations on the prescribing and dispensing of controlled substances.

Medication-Assisted Treatment

Medication-assisted treatment is the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders.¹⁰ Medications including buprenorphine (Suboxone and Subutex), methadone, and extended release naltrexone (Vivitrol) are effective in treating opioid use disorders. MAT medications do not substitute one addiction for another since, when properly administered, MAT medications do not cause a high but serve to reduce opioid cravings and withdrawal. Additionally, diversion of buprenorphine is uncommon and when diversion does occur it is primarily used to manage withdrawal symptoms. Patients treated with medications were more likely to remain in therapy compared to patients receiving treatment without medication.¹¹

State and Federal Prescribing Guidelines

CDC Prescribing Guidelines

The CDC has established guidelines to reduce the risk of addiction and dependency when prescribing opioids. These guidelines are applicable to both chronic and acute pain and include:

- Not using opioids as first-line therapy.
- Establishing realistic goals for pain and function and discontinuing opioid therapy if the benefits do not outweigh the risks.
- Discussing the risks and benefits with patients before and during opioid therapy.

⁹ Supra note 4

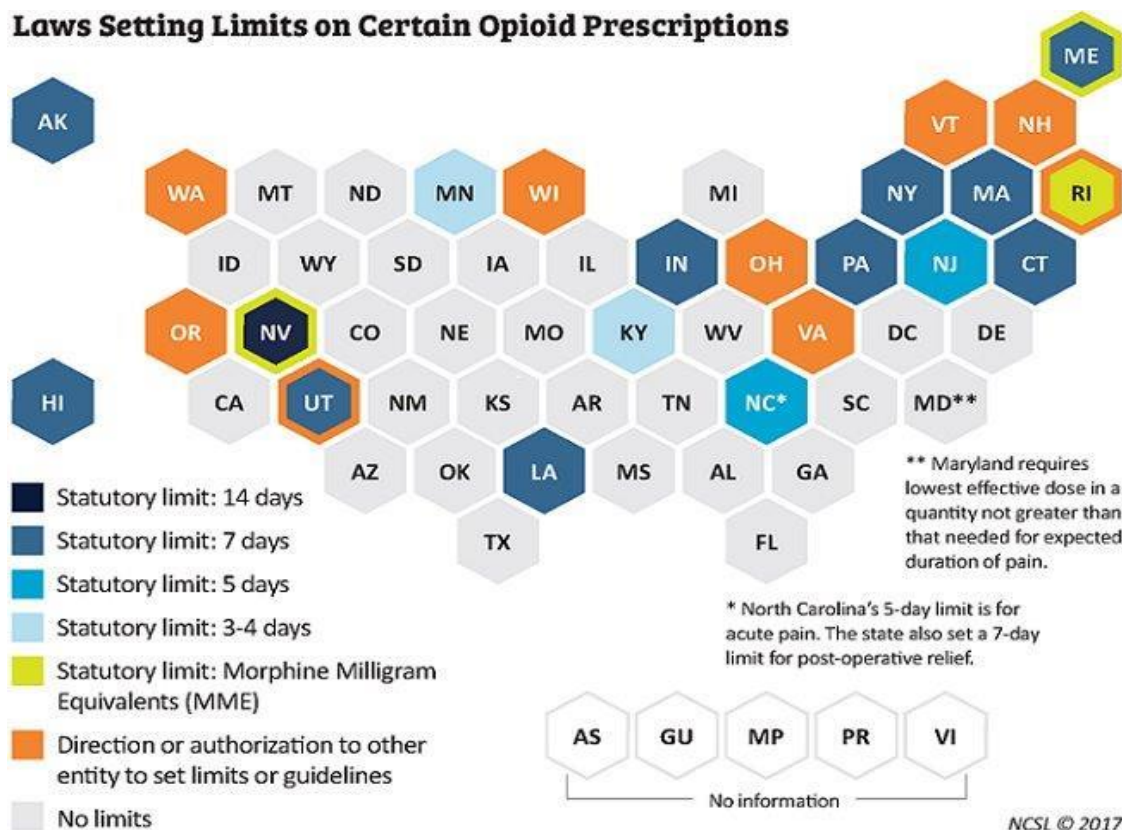
¹⁰ MAT overview, Substance Abuse and Mental Health Services Administration, available at <https://www.integration.samhsa.gov/clinical-practice/mat/mat-overview>, (last visited on Jan. 17, 2018).

¹¹ Effective Treatments of Opioid Addiction, National Institute on Drug Abuse, available at <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction>, (last visited Jan. 17, 2018).

- Using immediate-release opioids at first and using the lowest effective dose.
- Prescribing short durations for acute pain. The CDC states that, generally, three days or less will be sufficient and more than seven days will rarely be needed.
- Evaluating benefits and harms within one to four weeks of starting the medication and at least every three months throughout the course the medication is prescribed.
- Reviewing PDMP data, using urine drug testing, and avoiding prescribing opioids and benzodiazepine concurrently.
- Offering treatment for opioid use disorders.¹²

State Opioid Prescription Limits

Beginning in 2016, more than 30 states have considered at least 130 bills related to opioid prescribing, and 24 states have enacted legislation that imposes some type of limit, guideline, or requirement related to opioid prescribing. Most legislation limits first time opioid prescriptions to a certain number of days' supply, with seven days being most common. Some states have set limits as low as three days and as high as 14 days. In some cases, states may also set dosage limits using morphine milligram equivalents. Most states also specify that the dosage limits are for acute pain only or exclude chronic pain, palliative care, and cancer treatment.¹³ Specific states' laws can be seen on the map below:



¹² CDC Guidelines for Prescribing Opioids for Chronic Pain https://www.cdc.gov/drugoverdose/pdf/guidelines_at-a-glance-a.pdf, (last visited Jan. 10, 2018).

¹³ Prescribing policies: States Confront Opioid Overdose Epidemic, National Conference of State Legislatures, <http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx> (last visited Jan. 10, 2018). A table of specific legislation is also available at this site under the tab: "Table: Legislation."

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic database to monitor the prescribing and dispensing of certain controlled substances.¹⁴ The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.¹⁵ Dispensers have reported over 232 million controlled substance prescriptions to the PDMP since its inception.¹⁶ Health care practitioners began accessing the PDMP on October 17, 2011.¹⁷ Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.¹⁸

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV¹⁹ must report specific information to the PDMP database each time the controlled substance is dispensed by the close of the next business day after dispensing. The information required to be reported includes the:²⁰

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.²¹

Certain acts of dispensing or administering are exempt from PDMP reporting. Current law exempts:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in Florida.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.

¹⁴ Section 893.055(2)(a), F.S.

¹⁵ Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2013), available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited on Jan. 7, 2018).

¹⁶ Florida Dep't of Health, *2016-2017 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2017), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/funding/2017PDMPAnnualReport.pdf> (last visited on Jan. 7, 2017).

¹⁷ *Supra* note 13

¹⁸ *Supra* note 13

¹⁹ Currently, Florida is one of 16 states that do not require the dispensing of Schedule V controlled substances to be reported to their state's PDMP. For more details please see http://pdmpassist.org/pdf/PDMP_Substances_Tracked_20171205.pdf, (last visited on Jan. 8, 2018).

²⁰ The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

²¹ *See* s. 893.055(3), F.S.

- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating physician.²²

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information²³ of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in article I, section 24(a) of the State Constitution.²⁴

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists, and their designees.²⁵ Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient; however, physicians and pharmacists queried the database more than 3.7 million times in 2012, over 9.3 million times in 2014, over 18.6 million times in 2015, and over 35.8 million times in 2016.²⁶ Qualified physicians who are issuing physician certifications for the medical use of marijuana under s. 381.986, F.S., are currently required to review the patient's controlled drug prescription history in the PDMP.²⁷

Indirect access to the PDMP database is provided to:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations²⁸ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH;
- Patients, or the legal guardians or designated health care surrogates, of incapacitated patients; and
- Impaired practitioner consultants.²⁹

²² Section 893.055(5), F.S.

²³ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

²⁴ Section 893.0551(2)(a)-(h), F.S.

²⁵ Section 893.055(7)(b), F.S.

²⁶ *Supra* notes 14 and 15.

²⁷ See s. 381.986(4)(a)5., F.S.

²⁸ Section 893.055(1)(h), F.S., defines an "active investigation" as an investigation being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

²⁹ Section 893.055(7)(c)1.-5., F.S.

Indirect access means the person must request the information from the PDMP manager at the DOH. After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.³⁰

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and methaqualone.
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Pain Management Clinics

A pain management clinic is any facility that advertises pain management services or a facility where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.³¹ Pain management clinics must register with the DOH and meet provisions concerning staffing, sanitation, recordkeeping, and quality assurance.³² A clinic is exempt from these provisions if it is:

- Licensed as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;

³⁰ See s. 893.055(7)(c), F.S., and Rule 64K-1.003, F.A.C.

³¹ “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or injury that is the cause of pain for more than 90 days after surgery. See ss. 458.3265 and 459.0137, F.S.

³² Sections 458.3265 and 459.0137, F.S. Chapter 458, F.S., is the Medical Practice Act, and Chapter 459, F.S., is the Osteopathic Medical Practice Act. The two sections regulating pain management clinics are substantively identical.

- Owned by a publicly-held corporation with total assets exceeding \$50 million;
- Affiliated with an accredited medical school;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation as a charitable organization;
- Wholly owned and operated by board-eligible or board-certified anesthesiologists, psychiatrists, rheumatologists, or neurologists; or
- Wholly owned and operated by a physician multispecialty practice with physicians holding credentials in pain medicine that perform interventional pain procedures routinely billed using surgical codes.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X of ch. 400, F.S., to be eligible for registration as a pain management clinic. Pain management clinics must also designate a physician who is responsible for complying with all the registration and operation requirements designated in ss. 458.3265 or 459.0137, F.S. A pain management clinic may not be owned by, or have a contractual or employee relationship with, a physician who has had his or her Drug Enforcement Administration (DEA) license number revoked, has had his or her application for a license to practice using controlled substances denied by any jurisdiction, or has had any convictions or pleas for illicit drug felonies within the previous 10 years.

The DOH must conduct an annual inspection of each pain management clinic. Through the inspection, the DOH ensures the following requirements are met:

- The pain management clinic is registered with the DOH and the DOH has been notified of the designated physician;
- Every physician meets the training requirements to practice at the clinic;
- The clinic, including its grounds, buildings, furniture, appliances, and equipment is structurally sound, in good repair, clean, and free from health and safety hazards;
- Storage and handling of prescription drugs complies with ss. 499.0121 and 893.07, F.S.;
- Physicians maintain control and security of prescription blanks and other methods for prescribing controlled substances and report in writing any theft or loss of prescription blanks to the DOH within 24 hours;
- Physicians are in compliance with the requirements for counterfeit-resistant prescription blanks; and
- The designated physician has reported all adverse incidents to the DOH as set forth in s. 458.351, F.S.³³

The DOH may suspend or revoke a clinic registration or impose administrative fines of up to \$5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules. If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. The DOH may impose an administrative fine of up to \$5,000 per day for a clinic that operates without a registration, unless exempt. No owner or operator of a pain management clinic that has had its

³³ Department of Health, *Senate Bill 450 Analysis* (2016) (on file with the Senate Committee on Health Policy).

registration revoked may own or operate another pain clinic for five years after such revocation.³⁴

Currently, if a pain clinic meets one of the statutorily approved exemptions from registering with the DOH, they are not required to register or show proof of a valid exemption from registration nor are they required to meet any of the requirements established pursuant to sections 458.3265 and 459.0137, F.S. The determination as to whether the pain clinic meets one of the exemptions is made by the owner of the pain clinic and the DOH is unaware of which approved exemption the unregistered clinic meets and, without a formal complaint being filed, does not have the authority to inquire. If a clinic no longer qualifies for an exemption they are required to register; however, because the DOH is not aware of clinics that qualify for an exemption from registration and inspection, it is also not aware when the clinic no longer meets the criteria for an exemption from registration.³⁵

In 2010, when pain management clinic registration was first required by law, there were 921 registered pain management clinics. There were 259 clinics at the end of the 2016-2017 fiscal year. It is indeterminate how many clinics closed voluntarily because they could not meet the more stringent requirements established by law and how many were no longer registered because they self-determined they operated under one of the exemptions outlined earlier in this section.³⁶

III. Effect of Proposed Changes:

Sections 1 and 9 amend ss. 409.967 and 627.42392, F.S., respectively, to restrict Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving MAT services. Section 627.42392, F.S., defines “health insurer” to include health insurers, managed care plans, and health maintenance organizations.

Section 2 creates s. 456.0301, F.S., to require that, if not already required under a licensee’s individual practice act, each appropriate board must require a practitioner licensed with the DEA and authorized to prescribe controlled substances to complete a board-approved two-hour continuing education course on prescribing controlled substances when renewing his or her license.³⁷ Each licensee must submit confirmation of completing the course when applying for licensure renewal, and the DOH is prohibited from renewing the license of any practitioner who has failed to complete the course. The course may be offered in a distance learning format and be included within the number of continuing education hours required by law. The course must include:

- Information on the current standards regarding prescribing controlled substances, particularly opiates;
- Alternatives to these standards; and
- Information on the risks of opioid addiction following all stages of treatment in the management of acute pain.

³⁴ Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.

³⁵ DOH, *Senate Bill 8 Analysis* (Oct. 23, 2017) (on file with the Senate Committee on Health Policy).

³⁶ *Id.*

³⁷ Beginning on January 31, 2019.

Each board may adopt rules to implement the required course.

Section 3 amends s. 456.072, F.S., to add violations of ss. 893.055 or 893.0551, F.S., relating to the PDMP and the public records exemption for the PDMP to the list of actions that constitute grounds for disciplinary action against a health care practitioner.

Section 4 amends s. 456.44, F.S., to establish standards for the treatment of acute pain.

The bill defines the term “acute pain” to mean the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The applicable regulatory boards are required to adopt rules establishing guidelines for prescribing controlled substances for acute pain, including:

- Evaluating the patient;
- Creating and maintaining a treatment plan;
- Obtaining informed consent;
- Periodic review of the treatment plan;
- Consultation;
- Medical record review; and
- Compliance with controlled substances laws and regulations.

The bill specifies that failure to follow these guidelines is a practice act violation.

The bill restricts a practitioner from prescribing more than a three-day supply of an opioid listed in Schedule II when treating acute pain except that up to a seven-day supply may be prescribed if:

- The practitioner, in his or her professional judgement, believes that more than a three-day supply is medically necessary;
- The practitioner indicates “medically necessary” on the prescription; and
- The practitioner adequately documents in the patient’s medical record the acute patient’s acute condition and lack of alternative treatment options.

Sections 5 and 6 amend ss. 458.3265 and 459.0137, F.S., respectively, to require clinics that are exempt from registration as pain management clinics to obtain a certificate of exemption from the DOH. The bill requires the DOH to adopt an application form in rule for a certificate of exemption. The form must include:

- The name or names under which the applicant does business;
- The address where the pain management clinic is located;
- The specific exemption, with supporting documentation, that the applicant is claiming; and
- Any other information deemed necessary by the DOH.

The DOH must approve or deny a certificate within 30 days, and certificates must be renewed biennially.³⁸ A certificate holder must prominently display the certificate and make it available to the DOH or board upon request. A new certificate is required for a change of address and

³⁸ The DOH may issue initial certificates for three years in order to stagger renewal dates.

certificates are only valid for the applicant, owners, licenses, registrations, certifications, and services provided under the specific exemption claimed. A certificate holder must notify the DOH at least 60 days before any anticipated relocation, name change, or change of ownership. If a pain management clinic ceases to qualify for a certificate of exemption, the certificate holder must notify the DOH within three days and register as a pain management clinic or cease operations.

Sections 5 and 6 take effect January 1, 2019.

Sections 7 and 8 amend ss. 465.0155 and 465.0276, F.S., to require pharmacists and dispensing practitioners to confirm a person's identity before dispensing controlled substances to that person if he or she is not personally known to the pharmacist. If the person does not have proper identification,³⁹ the dispenser must verify the validity of the prescription and the identity of the patient with the prescriber or his or her agent. This requirement does not apply in an institutional setting or long-term care facility including, but not limited to, an assisted living facility or a hospital.

Section 8 amends several provisions in s. 465.0276, F.S., related to the dispensing of controlled substances by health care practitioners. Current law allows health care practitioners who are authorized to prescribe medicinal drugs to dispense such drugs if they are registered with their professional licensing boards; however, current law also restricts such practitioners from dispensing Schedule II or III controlled substances unless there is a specific exemption that allows them to do so. One such exemption allows practitioners to dispense up to a 14-day supply of Schedule II or III controlled substances in connection with the performance of a surgical procedure. The bill amends this exemption to require practitioners to follow the prescribing limits established in **section 4** of the bill when dispensing Schedule II controlled substances under the exemption. The bill creates a new exemption for practitioners authorized under 21 U.S.C. 823⁴⁰ to dispense Schedule II or III controlled substances that are approved for MAT by the FDA to their own patients for MAT of opiate addiction.

Section 10 amends s. 893.03, F.S., to add substances to lists of controlled substances as follows:

- Dihydroetorphine, hydrocodone combination products, oripavine, remifentanyl, tapentadol, thiafentanyl, lisdexamfetamine, and dornabinol (synthetic THC) in oral solution in a drug product approved by the FDA are added to Schedule II.
- Buprenorphine,⁴¹ embutramide, and perampanel are added to Schedule III.
- Alfaxalone, dexfenfluramine, dichloralphenazone, eluxadoline, eszopiclone, fospropofol, lorcaserin, modafinil, petrichloral, sibutramine, suvorexant, tramadol, zaleplon, zolpidem, and zopiclone are added to Schedule IV.

³⁹ The bill defines "proper identification" as an identification that is issued by a state or federal government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B). The verification of health plan eligibility is also considered to be proper identification.

⁴⁰ Such practitioners include qualifying physicians (who must be licensed under state law and hold a specialty in addiction treatment or has had specified training) and nurse practitioners and physician assistants who are supervised by, or working in collaboration with, a qualifying physician.

⁴¹ Buprenorphine is rescheduled from Schedule V to Schedule III.

- Not more than .5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dose, and any amount of brivaracetum, ezogabine, lacosamide, and pregabalin are added to Schedule V.

These changes conform Florida law to federal law.⁴²

Section 11 substantially rewords s. 893.055, F.S., creating the PDMP. Many of the provisions in existing law are reordered. The section:

- Defines the terms:
 - “Active investigation” to mean an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - “Administration” to mean the obtaining and giving of a single dose of controlled substance by a legally authorized person to a patient for his or her consumption.
 - “Controlled substance” to mean a controlled substance listed in Schedule II, III, IV, or V of s. 893.03, F.S., or 21 U.S.C. s. 812. Schedule Vs are added to the reporting requirements. Most states include the dispensing of Schedule V controlled substances in their PDMPs.⁴³
 - “Dispense” to mean the transfer of possession of one or more doses of a controlled substance by a dispenser to the ultimate consumer or to his or her agent.
 - “Dispenser” to mean a dispensing health care practitioner, pharmacy or pharmacist licensed to dispense controlled substances in or into Florida.
 - “Health care practitioner,” or “practitioner,” means any practitioner licensed under chapters 458, 459, 461, 463, 464, 465, or 466, F.S.
 - “Health care regulatory board” to have the same meaning as s. 456.001(1), F.S.
 - “Law enforcement agency” to mean the Department of Law Enforcement, a sheriff’s office or police department in Florida, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and which its agents and officers are empowered by law to conduct criminal investigations and make arrests.
 - “Pharmacy” to include a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, or an Internet pharmacy that is licensed by the DOH under chapter 465 and that dispenses or delivers controlled substances, including controlled substances, to an individual or address in Florida.
 - “Prescriber” to mean a prescribing physician, practitioner, or other health care practitioner authorized by the laws of this state to order controlled substances.
 - “Program manager” to mean an employee of, or a person contracted by, the DOH who is designated to ensure the integrity of the PDMP in accordance with the requirements established in this section.

⁴² Supra note 33

⁴³ Supra note 13

- Requires the DOH to maintain an electronic system to collect and store controlled substance dispensing information and release the information as authorized in s. 893.0551, F.S.⁴⁴ The system must:
 - Not infringe on the legitimate prescribing and dispensing of controlled substances;
 - Be consistent with standards of the American Society for Automation in Pharmacy; and
 - Comply with the Health Insurance Portability and Accountability Act (HIPAA) and all other relevant state and federal privacy and security laws and regulations;
- Allows the DOH to collaborate with health care regulatory boards, appropriate organizations, and other state agencies to identify indicators of controlled substance abuse.
- Requires the dispenser, when dispensing a controlled substance to a patient, to report the following information to the PDMP no later than the close of business the day after the controlled substance was dispensed:
 - The name of the prescribing practitioner, his or her DEA registration number, his or her National Provider Identification (NPI), and the date of the prescription.
 - The date the prescription was filled and the method of payment.
 - The full name, address, telephone number, and date of birth of the person for whom the prescription was written.
 - The name, national drug code, quantity, and strength of the controlled substance dispensed.
 - The full name, DEA registration number, DOH pharmacy permit number, and address of the pharmacy where the controlled substance was dispensed or, if dispensed by a practitioner other than a pharmacist, the practitioner's name, address, DEA registration number, DOH license number, and NPI.
 - Whether the drug was dispensed as an initial prescription or a refill and the number of refills ordered;
 - The name of the individual picking up the controlled substance prescription and type of identification provided; and
 - Other appropriate identifying information as determined by the DOH in rule.
- Exempts all acts of administration from the reporting requirement.
- Eliminates an exemption for reporting the dispensing of controlled substances to minors under the age of 16.
- Grants direct access to the PDMP system to:
 - Prescribers and dispensers and their designees;
 - Employees of the United State Department of Veterans Affairs,⁴⁵ the United States Department of Defense, or the Indian Health Service who provide health care services pursuant to such employment and who have authority to prescribe controlled substances;
 - The program manager and designated support staff to administer the PDMP system. The program manager or designated support staff:
 - Must complete a level II background screening;
 - May have access to de-identified data in order to calculate performance measures; and
 - Must provide the DOH de-identified data for public health care and safety initiatives;
 - The program manager;

⁴⁴ Section 893.0551, F.S., establishes the public records exemption for information in the PDMP.

⁴⁵ Employees of the US Department of Veterans Affairs were allowed access last year in Ch. 2017-169, Laws of Fla.

- May provide relevant information to the prescriber and dispenser when determining a pattern that indicates controlled substance abuse; and
 - May provide relevant information to law enforcement upon determining a pattern of controlled substance abuse and upon having cause to believe that a violation of controlled substance laws has occurred.
- Grants indirect access to the PDMP system to:
 - The DOH and its health care regulatory boards for investigations involving licensees authorized to prescribe or dispense controlled substances. The bill removes access for the DOH's regulatory boards;
 - The Attorney General for Medicaid fraud cases involving prescribed controlled substances;
 - A law enforcement agency during an active investigation of potential criminal activity, fraud, or theft regarding prescribed controlled substances;
 - A medical examiner when conducting an authorized investigation to determine the cause of death of an individual;⁴⁶
 - An impaired practitioner consultant who is retained by the DOH to review the PDMP system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and has agreed in writing to the consultant's access; and
 - A patient, legal guardian, or designated health care surrogate of an incapacitated patient who submits a written and notarized request including the patient's name, address, phone number, date of birth, and a copy of a government-issued photo identification.
- Allows the DOH to enter into a reciprocal agreement or contract to share PDMP information with other states, districts, and territories if their PDMPs are compatible with Florida's.⁴⁷ To determine compatibility, the DOH must consider for the other states', districts', or territories' PDMP:
 - Privacy safeguards and the program's success in protecting patient privacy;
 - The persons who are authorized to view the data collected by the program. Persons and entities in other states who are comparable to those granted access to Florida's PDMP may have access to Florida's PDMP upon approval by the DOH;
 - The schedules of controlled substances monitored;
 - Data reported to the program;
 - Any implementing criteria deemed essential; and
 - The costs and benefits to Florida of sharing prescription information.
- Requires the DOH to assess continued compatibility every four years and requires any agreements with other states to contain the same restrictions as Florida's program and s. 893.0551, F.S.
- Allows the DOH to enter into agreements and contracts to establish secure connections between the PDMP and health care providers' electronic health recordkeeping system.
- Requires all prescribers and dispensers, or their designees, to consult the PDMP system before prescribing or dispensing a controlled substance. Prescribers and dispensers are exempt from this requirement if the system is not operational or temporarily cannot be accessed. Any prescriber or dispenser who does not consult the system must document the reason why he or she could not consult the system and may not prescribe or dispense more

⁴⁶ This access is newly added.

⁴⁷ This authorization to share data is newly added.

than a three-day supply of a controlled substance. The DOH is required to issue a non-disciplinary citation pursuant to the procedure in s. 456.077, F.S., to any prescriber or dispenser who fails to consult the system. Under s. 456.077, F.S., the first citation is non-disciplinary and the second and subsequent citations are disciplinary.

- Establishes the penalty of a first-degree misdemeanor for any person who willfully and knowingly fails to report the dispensing of a controlled substance to the PDMP.
- Restricts information in the PDMP system from being released other than as specified in this section and s. 893.0551, F.S.
- Specifies that the content of the PDMP system is informational only.
- Restricts information in the PDMP system from being introduced as evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient and exempts the program manager and staff from being required to testify to any findings, recommendations, evaluations, opinions, or other actions taken in connection with the management of the system.
- Allows a prescriber or dispenser, or his or her designee, to have access to information in the PDMP system that relates to his or her patient as needed for the purpose of reviewing the patient's controlled substance prescription history. A prescriber or dispenser acting in good faith is immune from civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information in the system. The bill specifies that accessing or failing to access information in the system does not create a private cause of action against a prescriber or dispenser.
- Specifies that the PDMP must be funded through federal grants, private funding, or state funds appropriated in the General Appropriations Act. The DOH may not commit funds for the PDMP without ensuring funding is available and may not use funds provided directly or indirectly by prescription drug manufacturers.
- Allows the DOH to establish a direct support organization to raise funds for the PDMP and incorporates an automatic repeal date of October 1, 2027, that is in existing law unless saved from repeal by the Legislature.
- Requires the DOH to conduct or contract for studies to examine the feasibility of enhancing the PDMP for public health initiatives and statistical reporting. Such studies must respect the privacy of patients and be focused on:
 - Improving the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs;
 - Taking advantage of advances in technology;
 - Reducing duplicative prescriptions and the overprescribing of prescription drugs; and
 - Reducing drug abuse.
- Requires the DOH to annually report to the Governor and the Legislature on specific performance measures for the PDMP.
- Requires the DOH to adopt rules necessary to implement this section.

Section 12 amends s. 893.0551, F.S., to amend the public records exemption for the PDMP to conform to changes made to s. 893.055, F.S., and to conform the section to the requirement in s. 381.986, F.S., that a qualified physician must check the PDMP prior to issuing a physician certification recommending the medical use of marijuana.

Sections 13 through 19 amend various sections of law to conform cross references to changes made in the bill.

Section 20 provides supplemental appropriations for the 2018-2019 fiscal year as follows:

- \$27,035,360 in nonrecurring funds from the Federal Grants Trust Fund and \$15,520,000 in recurring general revenue funds are appropriated to the Department of Children and Families (DCF) for outpatient, case management, and after care services; residential treatment; MAT, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and targeted outreach to pregnant women.
 - From the \$15.5 million in recurring general revenue funds, the DCF must use \$4,720,000 to contract with a nonprofit organization for the distribution of drugs for MAT as follows:
 - \$472,000 for methadone;
 - \$1,888,000 for buprenorphine; and
 - \$2,360,000 for naltrexone extended-release injectable.
- \$6 million in recurring general revenue funds are appropriated to the Office of the State Courts Administrator (OSCA) for treatment of substance abuse disorders in individuals involved in the criminal justice system, individuals who have a high likelihood of criminal justice involvement, or who are in court-ordered, community-based drug treatment. The OSCA must contract with a non-profit entity to make available the following drugs:
 - \$600,000 for methadone;
 - \$2.4 million for buprenorphine; and
 - \$3 million for naltrexone extended-release injectable.
- \$5 million of recurring general revenue funds are appropriated to the DOH for the purchase of naloxone to be made available to EMS responders.

Section 21 establishes an effective date of July 1, 2018, unless otherwise specified in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill establishes fees for the issuance of certificates of exemption for pain management clinics.

B. Private Sector Impact:

CS/SB 8 may cost clinics that are required to obtain a certificate of exemption from the requirement to register as a pain management clinic.

The bill may cost health care practitioners who are required to attend the additional training established in the bill.

The bill may cost patients due to the supply limits imposed for prescription of opioid medications listed in Schedule II.

The bill may increase the cost of the administrative operations of health care providers who are required to consult the PDMP prior to prescribing controlled substances and do not currently do so.

Any non-profit entities that are awarded contracts with the DCF or the OSCA to provide MAT medications, pursuant to the supplemental appropriations established in the bill, will have increased revenues.

C. Government Sector Impact:

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.⁴⁸

The bill provides appropriations as detailed in the Effects of Proposed Changes section above.

VI. Technical Deficiencies:

CS/SB 8 amends the public records exemption for the PDMP and consolidates access to the PDMP for pharmacists with other health care practitioners on lines 1669-1672. This change is a result of pharmacists being added to the definition of “health care practitioner” in s. 893.055, F.S., by the bill; however, the bill leaves out a reference to s. 893.04, F.S., when allowing access to health care practitioners that is currently incorporated into the access allowed to pharmacists by s. 893.0551(3)(e), F.S. The reference to s. 893.04, F.S., should be added to line 1671 of the bill.

VII. Related Issues:

None.

⁴⁸ Supra note 28.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.967, 456.072, 456.44, 458.3265, 459.0137, 465.0155, 465.0276, 627.42392, 893.03, 893.055, 893.0551, 458.331, 459.015, 463.0055, 782.04, 893.13, 893.135, and 921.0022.

This bill creates section 456.0301 and one unnumbered section of the Florida Statutes.

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 Health Policy on January 16, 2018.

The CS makes several substantive changes along with numerous conforming, clarifying, and technical changes. Substantive changes include:

- Restricting Medicaid and health insurers from requiring prior authorization for MAT.
- Requiring applicable boards, rather than the DOH, to establish guidelines for prescribing controlled substances to treat acute pain.
- Requiring physicians to maintain treatment plans when prescribing Schedule II opioids for the treatment of acute pain.
- Conforming provisions relating to practitioners dispensing Schedule II and Schedule III controlled substances.
- Establishing an exception to allow physicians to dispense MAT drugs to their own patients to treat substance abuse disorders.
- Modifying the definitions of “dispense” and “dispenser” within the PDMP to ensure that out-of-state dispensers must report controlled substances dispensed into the state.
- Reestablishing indirect access to the PDMP for the DOH’s health care regulatory boards.
- Eliminating language stating that the content of the PDMP creates no obligations or legal duties for prescribers, dispensers, pharmacies, or patients.
- Providing supplemental appropriations of:
 - \$27,035,360 in nonrecurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
 - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
 - \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
 - \$5 million in recurring general revenue funds to the DOH to purchase naloxone for EMS responders.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Benacquisto,
Perry, Stargel, Bean, and Passidomo

588-02151C-18

20188c1

1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 409.967, F.S.; prohibiting managed care plans and
4 their fiscal agents or intermediaries from imposing
5 certain requirements or conditions on recipients as a
6 prerequisite to receiving medication-assisted
7 treatment (MAT) services to treat substance abuse
8 disorders; creating s. 456.0301, F.S.; authorizing
9 certain boards to require practitioners to complete a
10 specified board-approved continuing education course
11 to obtain authorization to prescribe controlled
12 substances as part of biennial license renewal;
13 providing exceptions; providing course requirements;
14 prohibiting the Department of Health from renewing a
15 license of a prescriber under specified circumstances;
16 requiring a licensee to submit confirmation of course
17 completion; providing for each licensing board
18 requiring such continuing education course to include
19 hours of completion with the total hours of continuing
20 education required in certain circumstances;
21 authorizing rulemaking; amending s. 456.072, F.S.;
22 authorizing disciplinary action against practitioners
23 for violating specified provisions relating to
24 controlled substances; amending s. 456.44, F.S.;
25 defining the term "acute pain"; requiring the
26 applicable boards to adopt rules establishing certain
27 guidelines for prescribing controlled substances for
28 acute pain; providing that failure of a practitioner
29 to follow specified guidelines is grounds for

Page 1 of 136

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588-02151C-18

20188c1

30 disciplinary action; limiting opioid drug
31 prescriptions for the treatment of acute pain to a
32 specified period under certain circumstances;
33 authorizing prescriptions for such opioids for an
34 extended period if specified requirements are met;
35 amending ss. 458.3265 and 459.0137, F.S.; requiring
36 certain pain management clinic owners to register
37 approved exemptions with the department; requiring
38 certain clinics to obtain certificates of exemption;
39 providing requirements for such certificates;
40 requiring the department to adopt rules necessary to
41 administer such exemptions; amending s. 465.0155,
42 F.S.; providing requirements for pharmacists for the
43 dispensing of controlled substances to persons not
44 known to them; defining the term "proper
45 identification"; amending s. 465.0276, F.S.;
46 prohibiting the dispensing of certain controlled
47 substances in an amount that exceeds a 3-day supply or
48 a medically necessary 7-day supply if certain criteria
49 are met; providing an exception for the dispensing of
50 certain controlled substances by a practitioner to the
51 practitioner's own patients for the medication-
52 assisted treatment of opiate addiction; providing
53 requirements for practitioners for the dispensing of
54 controlled substances to persons not known to them;
55 defining the term "proper identification"; amending s.
56 627.42392, F.S.; prohibiting a health insurer from
57 imposing certain requirements or conditions on
58 insureds as a prerequisite to receiving medication-

Page 2 of 136

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588-02151C-18

20188c1

59 assisted treatment (MAT) services to treat substance
60 abuse disorders; amending s. 893.03, F.S.; conforming
61 the state controlled substances schedule to the
62 federal controlled substances schedule; amending s.
63 893.055, F.S.; revising and providing definitions;
64 revising requirements for the prescription drug
65 monitoring program; authorizing rulemaking; requiring
66 the department to maintain an electronic system for
67 certain purposes which meets specified requirements;
68 requiring certain information to be reported to the
69 system by a specified time; specifying direct access
70 to system information; authorizing the department to
71 enter into reciprocal agreements or contracts to share
72 prescription drug monitoring information with certain
73 entities; providing requirements for such agreements;
74 authorizing the department to enter into agreements or
75 contracts for secure connections with practitioner
76 electronic systems; requiring specified persons to
77 consult the system for certain purposes within a
78 specified time; providing exceptions to the duty of
79 specified persons to consult the system under certain
80 circumstances; authorizing the department to issue
81 citations to specified entities for failing to meet
82 certain requirements; prohibiting the failure to
83 report the dispensing of a controlled substance when
84 required to do so; providing penalties; authorizing
85 the department to enter into agreements or contracts
86 for specified purposes; providing for the release of
87 information obtained by the system; allowing specified

Page 3 of 136

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588-02151C-18

20188c1

88 persons to have direct access to information for the
89 purpose of reviewing the controlled drug prescription
90 history of a patient; providing prescriber or
91 dispenser immunity from liability for review of
92 patient history when acting in good faith; providing
93 construction; prohibiting the department from
94 specified uses of funds; requiring the department to
95 conduct or participate in studies for specified
96 purposes; requiring an annual report to be submitted
97 to the Governor and Legislature by a specified date;
98 providing report requirements; authorizing the
99 department to establish a certain direct-support
100 organization for specified purposes; defining the term
101 "direct-support organization"; requiring a direct-
102 support organization to operate under written contract
103 with the department; providing contract requirements;
104 requiring the direct-support organization to obtain
105 written approval from the department for specified
106 purposes; authorizing the department to adopt certain
107 rules relating to resources used by the direct-support
108 organization; providing for an independent annual
109 financial audit by the direct-support organization;
110 providing that copies of such audit be provided to
111 specified entities; providing for future repeal of
112 provisions relating to the direct-support
113 organization; requiring the department to adopt rules
114 to implement the system; amending s. 893.0551, F.S.;
115 revising provisions concerning the release of
116 information held by the prescription drug monitoring

Page 4 of 136

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588-02151C-18

20188c1

117 program; amending ss. 458.331, 459.015, 463.0055,
 118 782.04, 893.13, 893.135, and 921.0022, F.S.;

119 correcting cross-references; conforming provisions to
 120 changes made by the act; providing appropriations;
 121 providing effective dates.

122

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

124

125 Section 1. Paragraph (c) of subsection (2) of section
 126 409.967, Florida Statutes, is amended to read:

127 409.967 Managed care plan accountability.—

128 (2) The agency shall establish such contract requirements
 129 as are necessary for the operation of the statewide managed care
 130 program. In addition to any other provisions the agency may deem
 131 necessary, the contract must require:

132 (c) Access.—

133 1. The agency shall establish specific standards for the
 134 number, type, and regional distribution of providers in managed
 135 care plan networks to ensure access to care for both adults and
 136 children. Each plan must maintain a regionwide network of
 137 providers in sufficient numbers to meet the access standards for
 138 specific medical services for all recipients enrolled in the
 139 plan. The exclusive use of mail-order pharmacies may not be
 140 sufficient to meet network access standards. Consistent with the
 141 standards established by the agency, provider networks may
 142 include providers located outside the region. A plan may
 143 contract with a new hospital facility before the date the
 144 hospital becomes operational if the hospital has commenced
 145 construction, will be licensed and operational by January 1,

588-02151C-18

20188c1

146 2013, and a final order has issued in any civil or
 147 administrative challenge. Each plan shall establish and maintain
 148 an accurate and complete electronic database of contracted
 149 providers, including information about licensure or
 150 registration, locations and hours of operation, specialty
 151 credentials and other certifications, specific performance
 152 indicators, and such other information as the agency deems
 153 necessary. The database must be available online to both the
 154 agency and the public and have the capability to compare the
 155 availability of providers to network adequacy standards and to
 156 accept and display feedback from each provider's patients. Each
 157 plan shall submit quarterly reports to the agency identifying
 158 the number of enrollees assigned to each primary care provider.

159 2. Each managed care plan must publish any prescribed drug
 160 formulary or preferred drug list on the plan's website in a
 161 manner that is accessible to and searchable by enrollees and
 162 providers. The plan must update the list within 24 hours after
 163 making a change. Each plan must ensure that the prior
 164 authorization process for prescribed drugs is readily accessible
 165 to health care providers, including posting appropriate contact
 166 information on its website and providing timely responses to
 167 providers. For Medicaid recipients diagnosed with hemophilia who
 168 have been prescribed anti-hemophilic-factor replacement
 169 products, the agency shall provide for those products and
 170 hemophilia overlay services through the agency's hemophilia
 171 disease management program.

172 3. Managed care plans, and their fiscal agents or
 173 intermediaries, must accept prior authorization requests for any
 174 service electronically.

588-02151C-18

20188c1

175 4. Managed care plans, and their fiscal agents and
 176 intermediaries, may not implement, manage, or require a prior
 177 authorization process or step therapy procedures and may not
 178 impose any other conditions on recipients as a prerequisite to
 179 receiving medication-assisted treatment (MAT) services, as
 180 defined in s. 397.311, to treat substance abuse disorders.

181 5. Managed care plans serving children in the care and
 182 custody of the Department of Children and Families must maintain
 183 complete medical, dental, and behavioral health encounter
 184 information and participate in making such information available
 185 to the department or the applicable contracted community-based
 186 care lead agency for use in providing comprehensive and
 187 coordinated case management. The agency and the department shall
 188 establish an interagency agreement to provide guidance for the
 189 format, confidentiality, recipient, scope, and method of
 190 information to be made available and the deadlines for
 191 submission of the data. The scope of information available to
 192 the department shall be the data that managed care plans are
 193 required to submit to the agency. The agency shall determine the
 194 plan's compliance with standards for access to medical, dental,
 195 and behavioral health services; the use of medications; and
 196 followup on all medically necessary services recommended as a
 197 result of early and periodic screening, diagnosis, and
 198 treatment.

199 Section 2. Section 456.0301, Florida Statutes, is created
 200 to read:

201 456.0301 Requirement for instruction on controlled
 202 substance prescribing.-

203 (1)(a) If not already required by the licensee's practice

588-02151C-18

20188c1

204 act, the appropriate board shall require each person registered
 205 with the United States Drug Enforcement Administration and
 206 authorized to prescribe controlled substances pursuant to 21
 207 U.S.C. s. 822 to complete a board-approved 2-hour continuing
 208 education course on prescribing controlled substances as part of
 209 biennial license renewal. The course must include information on
 210 the current standards for prescribing controlled substances,
 211 particularly opiates; alternatives to these standards; and
 212 information on the risks of opioid addiction following all
 213 stages of treatment in the management of acute pain. The course
 214 may be offered in a distance learning format and must be
 215 included within the number of continuing education hours
 216 required by law. The department may not renew the license of any
 217 prescriber registered with the United States Drug Enforcement
 218 Administration to prescribe controlled substances who has failed
 219 to complete the course. When required by this paragraph, the
 220 course must be completed by January 31, 2019, and at each
 221 subsequent renewal.

222 (b) Each such licensee shall submit confirmation of having
 223 completed such course when applying for biennial license
 224 renewal.

225 (2) Each board may adopt rules to administer this section.

226 Section 3. Paragraph (gg) of subsection (1) of section
 227 456.072, Florida Statutes, is amended to read:

228 456.072 Grounds for discipline; penalties; enforcement.-

229 (1) The following acts shall constitute grounds for which
 230 the disciplinary actions specified in subsection (2) may be
 231 taken:

232 (gg) Engaging in a pattern of practice when prescribing

588-02151C-18

20188c1

233 medicinal drugs or controlled substances which demonstrates a
 234 lack of reasonable skill or safety to patients, a violation of
 235 ~~any provision of this chapter or ss. 893.055 and 893.0551~~, a
 236 violation of the applicable practice act, or a violation of any
 237 rules adopted under this chapter or the applicable practice act
 238 of the prescribing practitioner. Notwithstanding s. 456.073(13),
 239 the department may initiate an investigation and establish such
 240 a pattern from billing records, data, or any other information
 241 obtained by the department.

242 Section 4. Paragraphs (a) through (g) of subsection (1) of
 243 section 456.44, Florida Statutes, are redesignated as paragraphs
 244 (b) through (h), respectively, a new paragraph (a) is added to
 245 that subsection, subsection (3) is amended, and subsections (4)
 246 and (5) are added to that section, to read:

247 456.44 Controlled substance prescribing.—

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

249 (a) “Acute pain” means the normal, predicted,
 250 physiological, and time-limited response to an adverse chemical,
 251 thermal, or mechanical stimulus associated with surgery, trauma,
 252 or acute illness.

253 (3) STANDARDS OF PRACTICE FOR TREATMENT OF CHRONIC
 254 NONMALIGNANT PAIN.—The standards of practice in this section do
 255 not supersede the level of care, skill, and treatment recognized
 256 in general law related to health care licensure.

257 (a) A complete medical history and a physical examination
 258 must be conducted before beginning any treatment and must be
 259 documented in the medical record. The exact components of the
 260 physical examination shall be left to the judgment of the
 261 registrant who is expected to perform a physical examination

588-02151C-18

20188c1

262 proportionate to the diagnosis that justifies a treatment. The
 263 medical record must, at a minimum, document the nature and
 264 intensity of the pain, current and past treatments for pain,
 265 underlying or coexisting diseases or conditions, the effect of
 266 the pain on physical and psychological function, a review of
 267 previous medical records, previous diagnostic studies, and
 268 history of alcohol and substance abuse. The medical record shall
 269 also document the presence of one or more recognized medical
 270 indications for the use of a controlled substance. Each
 271 registrant must develop a written plan for assessing each
 272 patient’s risk of aberrant drug-related behavior, which may
 273 include patient drug testing. Registrants must assess each
 274 patient’s risk for aberrant drug-related behavior and monitor
 275 that risk on an ongoing basis in accordance with the plan.

276 (b) Each registrant must develop a written individualized
 277 treatment plan for each patient. The treatment plan shall state
 278 objectives that will be used to determine treatment success,
 279 such as pain relief and improved physical and psychosocial
 280 function, and shall indicate if any further diagnostic
 281 evaluations or other treatments are planned. After treatment
 282 begins, the registrant shall adjust drug therapy to the
 283 individual medical needs of each patient. Other treatment
 284 modalities, including a rehabilitation program, shall be
 285 considered depending on the etiology of the pain and the extent
 286 to which the pain is associated with physical and psychosocial
 287 impairment. The interdisciplinary nature of the treatment plan
 288 shall be documented.

289 (c) The registrant shall discuss the risks and benefits of
 290 the use of controlled substances, including the risks of abuse

588-02151C-18

20188c1

and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The registrant shall use a written controlled substance agreement between the registrant and the patient outlining the patient's responsibilities, including, but not limited to:

1. Number and frequency of controlled substance prescriptions and refills.

2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.

3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating registrant unless otherwise authorized by the treating registrant and documented in the medical record.

(d) The patient shall be seen by the registrant at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the registrant's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the registrant shall reevaluate the appropriateness of continued treatment. The registrant shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.

588-02151C-18

20188c1

(e) The registrant shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addiction medicine specialist or a psychiatrist.

(f) A registrant must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.

2. Diagnostic, therapeutic, and laboratory results.

3. Evaluations and consultations.

4. Treatment objectives.

5. Discussion of risks and benefits.

6. Treatments.

7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.

9. Periodic reviews.

10. Results of any drug testing.

11. A photocopy of the patient's government-issued photo identification.

588-02151C-18

20188c1

12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.

13. The registrant's full name presented in a legible manner.

(g) A registrant shall immediately refer patients with signs or symptoms of substance abuse to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the registrant is a physician who is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing registrant shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing registrant shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the registrant shall be documented in the patient's medical record.

This subsection does not apply to a board-eligible or board-certified anesthesiologist, physiatrist, rheumatologist, or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and

588-02151C-18

20188c1

primarily provides surgical services. This subsection does not apply to a board-eligible or board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board eligible or board certified in pain medicine by the American Board of Pain Medicine, the American Board of Interventional Pain Physicians, the American Association of Physician Specialists, or a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes. This subsection does not apply to a registrant who prescribes medically necessary controlled substances for a patient during an inpatient stay in a hospital licensed under chapter 395.

(4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.—The applicable boards shall adopt rules establishing guidelines for prescribing controlled substances for acute pain, including evaluation of the patient, creation and maintenance of a treatment plan, obtaining informed consent and agreement for treatment, periodic review of the treatment plan, consultation, medical record review, and compliance with controlled substance laws and regulations. Failure of a prescriber to follow such guidelines constitutes grounds for disciplinary action pursuant to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

(5) PRESCRIPTION SUPPLY.—

(a) Except as provided in paragraph (b), a prescription for an opioid drug listed as a Schedule II controlled substance in s. 893.03 or 21 U.S.C. s. 812, for the treatment of acute pain

588-02151C-18

20188c1

may not exceed a 3-day supply.

(b) Up to a 7-day supply of an opioid described in paragraph (a) may be prescribed if:

1. The practitioner, in his or her professional judgment, believes that more than a 3-day supply of such an opioid is medically necessary to treat the patient's pain as an acute medical condition.

2. The practitioner indicates "MEDICALLY NECESSARY" on the prescription.

3. The prescriber adequately documents in the patient's medical records the acute medical condition and lack of alternative treatment options that justify deviation from the 3-day supply limit established in this subsection.

Section 5. Effective January 1, 2019, subsections (2) through (5) of section 458.3265, Florida Statutes, are renumbered as subsections (3) through (6), respectively, paragraphs (a) and (g) of subsection (1), paragraph (a) of present subsection (2), paragraph (a) of present subsection (3) and paragraph (a) of present subsection (4) of that section, are amended, and a new subsection (2) is added to that section, to read:

458.3265 Pain-management clinics.—

(1) REGISTRATION.—

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

a. "Board eligible" means successful completion of an anesthesia, physical medicine and rehabilitation, rheumatology, or neurology residency program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association for a period of 6 years from successful

588-02151C-18

20188c1

completion of such residency program.

b. "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

c. "Pain-management clinic" or "clinic" means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

2. Each pain-management clinic must register with the department or hold a valid certificate of exemption pursuant to subsection (2). ~~unless:~~

3. The following clinics are exempt from the registration requirement of paragraphs (c)-(m), and must apply to the department for a certificate of exemption:

a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to chapter 395;

b. A clinic in which the majority of the physicians who provide services in the clinic primarily provide surgical services;

c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;

d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical school at which training is provided for medical students,

588-02151C-18

20188c1

residents, or fellows;

e. A ~~The clinic that~~ does not prescribe controlled substances for the treatment of pain;

f. A ~~The clinic is~~ owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);

g. A ~~The clinic is~~ wholly owned and operated by one or more board-eligible or board-certified anesthesiologists, physiatrists, rheumatologists, or neurologists; or

h. A ~~The clinic is~~ wholly owned and operated by a physician multispecialty practice where one or more board-eligible or board-certified medical specialists, who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or who are also board-certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Medical Specialties, the American Association of Physician Specialists, or the American Osteopathic Association, perform interventional pain procedures of the type routinely billed using surgical codes.

(g) The department may revoke the clinic's certificate of registration and prohibit all physicians associated with that pain-management clinic from practicing at that clinic location based upon an annual inspection and evaluation of the factors described in subsection ~~(4)(3)~~.

(2) CERTIFICATE OF EXEMPTION.-

(a) A pain management clinic claiming an exemption from the registration requirements of subsection (1) must apply for a certificate of exemption on a form adopted in rule by the department. The form must require the applicant to provide:

588-02151C-18

20188c1

1. The name or names under which the applicant does business.

2. The address at which the pain management clinic is located.

3. The specific exemption the applicant is claiming with supporting documentation.

4. Any other information deemed necessary by the department.

(b) The department must approve or deny the application within 30 days after the receipt of a complete application.

(c) The certificate of exemption must be renewed biennially, except that the department may issue the initial certificates of exemption for up to 3 years in order to stagger renewal dates.

(d) A certificateholder must prominently display the certificate of exemption and make it available to the department or the board upon request.

(e) A new certificate of exemption is required for a change of address and is not transferable. A certificate of exemption is valid only for the applicant, qualifying owners, licenses, registrations, certifications, and services provided under a specific statutory exemption and is valid only to the specific exemption claimed and granted.

(f) A certificateholder must notify the department at least 60 days before any anticipated relocation or name change of the pain management clinic or a change of ownership.

(g) If a pain management clinic no longer qualifies for a certificate of exemption, the certificateholder must notify the department within 3 days after becoming aware that the clinic no

588-02151C-18

20188c1

523 longer qualifies for a certificate of exemption and register as
 524 a pain management clinic under subsection (1) or cease
 525 operations.

526 ~~(3)(2)~~ PHYSICIAN RESPONSIBILITIES.—These responsibilities
 527 apply to any physician who provides professional services in a
 528 pain-management clinic that is required to be registered in
 529 subsection (1).

530 (a) A physician may not practice medicine in a pain-
 531 management clinic, as described in subsection ~~(5)(4)~~, if the
 532 pain-management clinic is not registered with the department as
 533 required by this section. Any physician who qualifies to
 534 practice medicine in a pain-management clinic pursuant to rules
 535 adopted by the Board of Medicine as of July 1, 2012, may
 536 continue to practice medicine in a pain-management clinic as
 537 long as the physician continues to meet the qualifications set
 538 forth in the board rules. A physician who violates this
 539 paragraph is subject to disciplinary action by his or her
 540 appropriate medical regulatory board.

541 ~~(4)(3)~~ INSPECTION.—

542 (a) The department shall inspect the pain-management clinic
 543 annually, including a review of the patient records, to ensure
 544 that it complies with this section and the rules of the Board of
 545 Medicine adopted pursuant to subsection ~~(5)(4)~~ unless the clinic
 546 is accredited by a nationally recognized accrediting agency
 547 approved by the Board of Medicine.

548 ~~(5)(4)~~ RULEMAKING.—

549 (a) The department shall adopt rules necessary to
 550 administer the registration, exemption, and inspection of pain-
 551 management clinics which establish the specific requirements,

588-02151C-18

20188c1

552 procedures, forms, and fees.

553 Section 6. Effective January 1, 2019, subsections (2)
 554 through (5) of section 459.0137, Florida Statutes, are
 555 renumbered as subsections (3) through (6), respectively,
 556 paragraphs (a) and (g) of subsection (1), paragraph (a) of
 557 present subsection (2), paragraph (a) of present subsection (3)
 558 and paragraph (a) of present subsection (4) of that section, are
 559 amended, and a new subsection (2) is added to that section, to
 560 read:

561 459.0137 Pain-management clinics.—

562 (1) REGISTRATION.—

563 (a)1. As used in this section, the term:

564 a. "Board eligible" means successful completion of an
 565 anesthesia, physical medicine and rehabilitation, rheumatology,
 566 or neurology residency program approved by the Accreditation
 567 Council for Graduate Medical Education or the American
 568 Osteopathic Association for a period of 6 years from successful
 569 completion of such residency program.

570 b. "Chronic nonmalignant pain" means pain unrelated to
 571 cancer which persists beyond the usual course of disease or the
 572 injury that is the cause of the pain or more than 90 days after
 573 surgery.

574 c. "Pain-management clinic" or "clinic" means any publicly
 575 or privately owned facility:

576 (I) That advertises in any medium for any type of pain-
 577 management services; or

578 (II) Where in any month a majority of patients are
 579 prescribed opioids, benzodiazepines, barbiturates, or
 580 carisoprodol for the treatment of chronic nonmalignant pain.

588-02151C-18

20188c1

2. Each pain-management clinic must register with the department or hold a valid certificate of exemption pursuant to subsection (2). ~~unless:~~

3. The following clinics are exempt from the registration requirement of paragraphs (c)-(m), and must apply to the department for a certificate of exemption:

a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to chapter 395;

b. A clinic in which the majority of the physicians who provide services in the clinic primarily provide surgical services;

c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;

d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

e. A ~~The~~ clinic ~~that~~ does not prescribe controlled substances for the treatment of pain;

f. A ~~The~~ clinic ~~is~~ owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);

g. A ~~The~~ clinic ~~is~~ wholly owned and operated by one or more board-eligible or board-certified anesthesiologists, physiatrists, rheumatologists, or neurologists; or

h. A ~~The~~ clinic ~~is~~ wholly owned and operated by a physician multispecialty practice where one or more board-eligible or board-certified medical specialists, who have also completed fellowships in pain medicine approved by the Accreditation

588-02151C-18

20188c1

Council for Graduate Medical Education or the American Osteopathic Association or who are also board-certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Medical Specialties, the American Association of Physician Specialists, or the American Osteopathic Association, perform interventional pain procedures of the type routinely billed using surgical codes.

(g) The department may revoke the clinic's certificate of registration and prohibit all physicians associated with that pain-management clinic from practicing at that clinic location based upon an annual inspection and evaluation of the factors described in subsection (4)(3).

(2) CERTIFICATE OF EXEMPTION.-

(a) A pain management clinic claiming an exemption from the registration requirements of subsection (1) must apply for a certificate of exemption on a form adopted in rule by the department. The form shall require the applicant to provide:

1. The name or names under which the applicant does business.

2. The address at which the pain management clinic is located.

3. The specific exemption the applicant is claiming with supporting documentation.

4. Any other information deemed necessary by the department.

(b) Within 30 days after the receipt of a complete application, the department must approve or deny the application.

(c) The certificate of exemption must be renewed

588-02151C-18

20188c1

639 biennially, except that the department may issue the initial
 640 certificates of exemption for up to 3 years in order to stagger
 641 renewal dates.

642 (d) A certificateholder must prominently display the
 643 certificate of exemption and make it available to the department
 644 or the board upon request.

645 (e) A new certificate of exemption is required for a change
 646 of address and is not transferable. A certificate of exemption
 647 is valid only for the applicant, qualifying owners, licenses,
 648 registrations, certifications, and services provided under a
 649 specific statutory exemption and is valid only to the specific
 650 exemption claimed and granted.

651 (f) A certificateholder must notify the department at least
 652 60 days before any anticipated relocation or name change of the
 653 pain management clinic or a change of ownership.

654 (g) If a pain management clinic no longer qualifies for a
 655 certificate of exemption, the certificateholder must notify the
 656 department within 3 days after becoming aware that the clinic no
 657 longer qualifies for a certificate of exemption and register as
 658 a pain management clinic under subsection (1) or cease
 659 operations.

660 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
 661 apply to any osteopathic physician who provides professional
 662 services in a pain-management clinic that is required to be
 663 registered in subsection (1).

664 (a) An osteopathic physician may not practice medicine in a
 665 pain-management clinic, as described in subsection (5)-(4), if
 666 the pain-management clinic is not registered with the department
 667 as required by this section. Any physician who qualifies to

588-02151C-18

20188c1

668 practice medicine in a pain-management clinic pursuant to rules
 669 adopted by the Board of Osteopathic Medicine as of July 1, 2012,
 670 may continue to practice medicine in a pain-management clinic as
 671 long as the physician continues to meet the qualifications set
 672 forth in the board rules. An osteopathic physician who violates
 673 this paragraph is subject to disciplinary action by his or her
 674 appropriate medical regulatory board.

675 (4)-(3) INSPECTION.—

676 (a) The department shall inspect the pain-management clinic
 677 annually, including a review of the patient records, to ensure
 678 that it complies with this section and the rules of the Board of
 679 Osteopathic Medicine adopted pursuant to subsection (5)-(4)
 680 unless the clinic is accredited by a nationally recognized
 681 accrediting agency approved by the Board of Osteopathic
 682 Medicine.

683 (5)-(4) RULEMAKING.—

684 (a) The department shall adopt rules necessary to
 685 administer the registration, exemption, and inspection of pain-
 686 management clinics which establish the specific requirements,
 687 procedures, forms, and fees.

688 Section 7. Section 465.0155, Florida Statutes, is amended
 689 to read:

690 465.0155 Standards of practice.—

691 (1) Consistent with the provisions of this act, the board
 692 shall adopt by rule standards of practice relating to the
 693 practice of pharmacy which shall be binding on every state
 694 agency and shall be applied by such agencies when enforcing or
 695 implementing any authority granted by any applicable statute,
 696 rule, or regulation, whether federal or state.

588-02151C-18

20188c1

697 (2) (a) Before dispensing a controlled substance to a person
 698 not known to the pharmacist, the pharmacist must require the
 699 person purchasing, receiving, or otherwise acquiring the
 700 controlled substance to present valid photographic
 701 identification or other verification of his or her identity. If
 702 the person does not have proper identification, the pharmacist
 703 may verify the validity of the prescription and the identity of
 704 the patient with the prescriber or his or her authorized agent.
 705 Verification of health plan eligibility through a real-time
 706 inquiry or adjudication system is considered to be proper
 707 identification.

708 (b) This subsection does not apply in an institutional
 709 setting or to a long-term care facility, including, but not
 710 limited to, an assisted living facility or a hospital to which
 711 patients are admitted.

712 (c) As used in this subsection, the term "proper
 713 identification" means an identification that is issued by a
 714 state or the Federal Government containing the person's
 715 photograph, printed name, and signature or a document considered
 716 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

717 Section 8. Paragraph (b) of subsection (1) of section
 718 465.0276, Florida Statutes, is amended, and paragraph (d) is
 719 added to subsection (2) of that section, to read:

720 465.0276 Dispensing practitioner.—

721 (1)

722 (b) A practitioner registered under this section may not
 723 dispense a controlled substance listed in Schedule II or
 724 Schedule III as provided in s. 893.03. This paragraph does not
 725 apply to:

588-02151C-18

20188c1

726 1. The dispensing of complimentary packages of medicinal
 727 drugs which are labeled as a drug sample or complimentary drug
 728 as defined in s. 499.028 to the practitioner's own patients in
 729 the regular course of her or his practice without the payment of
 730 a fee or remuneration of any kind, whether direct or indirect,
 731 as provided in subsection (4).

732 2. The dispensing of controlled substances in the health
 733 care system of the Department of Corrections.

734 3. The dispensing of a controlled substance listed in
 735 Schedule II or Schedule III in connection with the performance
 736 of a surgical procedure.

737 a. For a controlled substance listed in Schedule II, the
 738 amount dispensed pursuant to this subparagraph may not exceed a
 739 3-day supply unless the criteria in s. 456.44(5)(b) are met, in
 740 which case the amount dispensed may not exceed a 7-day supply.

741 b. For a controlled substance listed in Schedule III, the
 742 amount dispensed pursuant to this ~~the~~ subparagraph may not
 743 exceed a 14-day supply.

744 c. The exception in this subparagraph ~~exception~~ does not
 745 allow for the dispensing of a controlled substance listed in
 746 Schedule II or Schedule III more than 14 days after the
 747 performance of the surgical procedure.

748 d. For purposes of this subparagraph, the term "surgical
 749 procedure" means any procedure in any setting which involves, or
 750 reasonably should involve:

751 (I)a- Perioperative medication and sedation that allows the
 752 patient to tolerate unpleasant procedures while maintaining
 753 adequate cardiorespiratory function and the ability to respond
 754 purposefully to verbal or tactile stimulation and makes intra-

588-02151C-18

20188c1

and postoperative monitoring necessary; or

~~(II)B.~~ The use of general anesthesia or major conduction anesthesia and preoperative sedation.

4. The dispensing of a controlled substance listed in Schedule II or Schedule III pursuant to an approved clinical trial. For purposes of this subparagraph, the term "approved clinical trial" means a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the United States Food and Drug Administration.

5. The dispensing of methadone in a facility licensed under s. 397.427 where medication-assisted treatment for opiate addiction is provided.

6. The dispensing of a controlled substance listed in Schedule II or Schedule III to a patient of a facility licensed under part IV of chapter 400.

7. The dispensing of controlled substances listed in Schedule II or Schedule III which have been approved by the United States Food and Drug Administration for the purpose of treating opiate addiction including, but not limited to, buprenorphine and buprenorphine combination products, by a practitioner authorized under 21 U.S.C. 823, as amended, to the practitioner's own patients for the medication-assisted treatment of opiate addiction.

(2) A practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind, whether direct or indirect, must:

(d)1. Before dispensing a controlled substance to a person

588-02151C-18

20188c1

not known to the dispenser, require the person purchasing, receiving, or otherwise acquiring the controlled substance to present valid photographic identification or other verification of his or her identity. If the person does not have proper identification, the dispenser may verify the validity of the prescription and the identity of the patient with the prescriber or his or her authorized agent. Verification of health plan eligibility through a real-time inquiry or adjudication system is considered to be proper identification.

2. This paragraph does not apply in an institutional setting or to a long-term care facility, including, but not limited to, an assisted living facility or a hospital to which patients are admitted.

3. As used in this paragraph, the term "proper identification" means an identification that is issued by a state or the Federal Government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

Section 9. Subsection (5) is added to section 627.42392, Florida Statutes, to read:

627.42392 Prior authorization.—

(5) A health insurer may not require a prior authorization process or step therapy procedure or impose any other conditions on insureds as a prerequisite to receiving medication-assisted treatment (MAT) services, as defined in s. 397.311, to treat substance abuse disorders.

Section 10. Subsections (2), (3), (4), and (5) of section 893.03, Florida Statutes, are amended to read:

893.03 Standards and schedules.—The substances enumerated

588-02151C-18

20188c1

in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmeferene or isoquinoline alkaloids of opium, including, but not limited to the following:

- a. Raw opium.
- b. Opium extracts.
- c. Opium fluid extracts.
- d. Powdered opium.

588-02151C-18

20188c1

- e. Granulated opium.
- f. Tincture of opium.
- g. Codeine.
- h. Dihydroetorphine.
- i. ~~h~~ Ethylmorphine.
- j. ~~i~~ Etorphine hydrochloride.
- k. ~~j~~ Hydrocodone and hydrocodone combination products.
- l. ~~k~~ Hydromorphone.
- m. ~~l~~ Levo-alphaacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- n. ~~m~~ Metopon (methyldihydromorphinone).
- o. ~~n~~ Morphine.
- p. Oripavine.
- q. ~~o~~ Oxycodone.
- r. ~~p~~ Oxymorphone.
- s. ~~q~~ Thebaine.
- 2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.
- 3. Any part of the plant of the species *Papaver somniferum*, L.
- 4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine, except that these substances shall not include ioflupane I 123.
- (b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including

588-02151C-18

20188c1

871 their isomers, esters, ethers, salts, and salts of isomers,
 872 esters, and ethers, whenever the existence of such isomers,
 873 esters, ethers, and salts is possible within the specific
 874 chemical designation:
 875 1. Alfentanil.
 876 2. Alphaprodine.
 877 3. Anileridine.
 878 4. Bezitramide.
 879 5. Bulk propoxyphene (nondosage forms).
 880 6. Carfentanil.
 881 7. Dihydrocodeine.
 882 8. Diphenoxylate.
 883 9. Fentanyl.
 884 10. Isomethadone.
 885 11. Levomethorphan.
 886 12. Levorphanol.
 887 13. Metazocine.
 888 14. Methadone.
 889 15. Methadone-Intermediate,4-cyano-2-
 890 dimethylamino-4,4-diphenylbutane.
 891 16. Moramide-Intermediate,2-methyl-
 892 3-morpholino-1,1-diphenylpropane-carboxylic acid.
 893 17. Nabilone.
 894 18. Pethidine (meperidine).
 895 19. Pethidine-Intermediate-A,4-cyano-1-
 896 methyl-4-phenylpiperidine.
 897 20. Pethidine-Intermediate-B,ethyl-4-
 898 phenylpiperidine-4-carboxylate.
 899 21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-

588-02151C-18

20188c1

900 4-carboxylic acid.
 901 22. Phenazocine.
 902 23. Phencyclidine.
 903 24. 1-Phenylcyclohexylamine.
 904 25. Piminodine.
 905 26. 1-Piperidinocyclohexanecarbonitrile.
 906 27. Racemethorphan.
 907 28. Racemorphan.
 908 29. Remifentanil.
 909 30.29. Sufentanil.
 910 31. Tapentadol.
 911 32. Thiafentanil.
 912 (c) Unless specifically excepted or unless listed in
 913 another schedule, any material, compound, mixture, or
 914 preparation which contains any quantity of the following
 915 substances, including their salts, isomers, optical isomers,
 916 salts of their isomers, and salts of their optical isomers:
 917 1. Amobarbital.
 918 2. Amphetamine.
 919 3. Glutethimide.
 920 4. Lisdexamfetamine.
 921 5.4. Methamphetamine.
 922 6.5. Methylphenidate.
 923 7.6. Pentobarbital.
 924 8.7. Phenmetrazine.
 925 9.8. Phenylacetone.
 926 10.9. Secobarbital.
 927 (d) Dronabinol (synthetic THC) in oral solution in a drug
 928 product approved by the United States Food and Drug

588-02151C-18

20188c1

Administration.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.

2. Benzphetamine.

3. Buprenorphine.

4.3- Chlorhexadol.

5.4- Chlorphentermine.

6.5- Clortermine.

7. Embutramide.

8.6- Lysergic acid.

9.7- Lysergic acid amide.

10.8- Methyprylon.

11. Perampanel.

588-02151C-18

20188c1

12.9- Phendimetrazine.

13.10- Sulfondiethylmethane.

14.11- Sulfonethylmethane.

15.12- Sulfonmethane.

16.13- Tiletamine and zolazepam or any salt thereof.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

588-02151C-18

20188c1

987 6. Not more than 300 milligrams of ethylmorphine per 100
 988 milliliters or not more than 15 milligrams per dosage unit, with
 989 one or more active, nonnarcotic ingredients in recognized
 990 therapeutic amounts.

991 7. Not more than 50 milligrams of morphine per 100
 992 milliliters or per 100 grams, with recognized therapeutic
 993 amounts of one or more active ingredients which are not
 994 controlled substances.

995

996 For purposes of charging a person with a violation of s. 893.135
 997 involving any controlled substance described in subparagraph 3.
 998 or subparagraph 4., the controlled substance is a Schedule III
 999 controlled substance pursuant to this paragraph but the weight
 1000 of the controlled substance per milliliters or per dosage unit
 1001 is not relevant to the charging of a violation of s. 893.135.
 1002 The weight of the controlled substance shall be determined
 1003 pursuant to s. 893.135(6).

1004 (d) Anabolic steroids.

1005 1. The term "anabolic steroid" means any drug or hormonal
 1006 substance, chemically and pharmacologically related to
 1007 testosterone, other than estrogens, progestins, and
 1008 corticosteroids, that promotes muscle growth and includes:

1009 a. Androsterone.
 1010 b. Androsterone acetate.
 1011 c. Boldenone.
 1012 d. Boldenone acetate.
 1013 e. Boldenone benzoate.
 1014 f. Boldenone undecylenate.
 1015 g. Chlorotestosterone (Clostebol).

Page 35 of 136

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588-02151C-18

20188c1

1016 h. Dehydrochlormethyltestosterone.
 1017 i. Dihydrotestosterone (Stanolone).
 1018 j. Drostanolone.
 1019 k. Ethylestrenol.
 1020 l. Fluoxymesterone.
 1021 m. Formebolone (Formebolone).
 1022 n. Mesterolone.
 1023 o. Methandrostenolone (Methandienone).
 1024 p. Methandranone.
 1025 q. Methandriol.
 1026 r. Methenolone.
 1027 s. Methyltestosterone.
 1028 t. Mibolerone.
 1029 u. Nortestosterone (Nandrolone).
 1030 v. Norethandrolone.
 1031 w. Nortestosterone decanoate.
 1032 x. Nortestosterone phenylpropionate.
 1033 y. Nortestosterone propionate.
 1034 z. Oxandrolone.
 1035 aa. Oxymesterone.
 1036 bb. Oxymetholone.
 1037 cc. Stanozolol.
 1038 dd. Testolactone.
 1039 ee. Testosterone.
 1040 ff. Testosterone acetate.
 1041 gg. Testosterone benzoate.
 1042 hh. Testosterone cypionate.
 1043 ii. Testosterone decanoate.
 1044 jj. Testosterone enanthate.

Page 36 of 136

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

588-02151C-18

20188c1

1045 kk. Testosterone isocaproate.
 1046 ll. Testosterone oleate.
 1047 mm. Testosterone phenylpropionate.
 1048 nn. Testosterone propionate.
 1049 oo. Testosterone undecanoate.
 1050 pp. Trenbolone.
 1051 qq. Trenbolone acetate.
 1052 rr. Any salt, ester, or isomer of a drug or substance
 1053 described or listed in this subparagraph if that salt, ester, or
 1054 isomer promotes muscle growth.

1055 2. The term does not include an anabolic steroid that is
 1056 expressly intended for administration through implants to cattle
 1057 or other nonhuman species and that has been approved by the
 1058 United States Secretary of Health and Human Services for such
 1059 administration. However, any person who prescribes, dispenses,
 1060 or distributes such a steroid for human use is considered to
 1061 have prescribed, dispensed, or distributed an anabolic steroid
 1062 within the meaning of this paragraph.

1063 (e) Ketamine, including any isomers, esters, ethers, salts,
 1064 and salts of isomers, esters, and ethers, whenever the existence
 1065 of such isomers, esters, ethers, and salts is possible within
 1066 the specific chemical designation.

1067 (f) Dronabinol (synthetic THC) in sesame oil and
 1068 encapsulated in a soft gelatin capsule in a drug product
 1069 approved by the United States Food and Drug Administration.

1070 (g) Any drug product containing gamma-hydroxybutyric acid,
 1071 including its salts, isomers, and salts of isomers, for which an
 1072 application is approved under s. 505 of the Federal Food, Drug,
 1073 and Cosmetic Act.

588-02151C-18

20188c1

1074 (4) (a) SCHEDULE IV.—A substance in Schedule IV has a low
 1075 potential for abuse relative to the substances in Schedule III
 1076 and has a currently accepted medical use in treatment in the
 1077 United States, and abuse of the substance may lead to limited
 1078 physical or psychological dependence relative to the substances
 1079 in Schedule III.

1080 (b) Unless specifically excepted or unless listed in
 1081 another schedule, any material, compound, mixture, or
 1082 preparation which contains any quantity of the following
 1083 substances, including its salts, isomers, and salts of isomers
 1084 whenever the existence of such salts, isomers, and salts of
 1085 isomers is possible within the specific chemical designation,
 1086 are controlled in Schedule IV:

1087 1. Alfaxalone.
 1088 2. ~~(a)~~ Alprazolam.
 1089 3. ~~(b)~~ Barbitol.
 1090 4. ~~(c)~~ Bromazepam.
 1091 5. ~~(iii)~~ Butorphanol tartrate.
 1092 6. ~~(d)~~ Camazepam.
 1093 7. ~~(jjj)~~ Carisoprodol.
 1094 8. ~~(e)~~ Cathine.
 1095 9. ~~(f)~~ Chloral betaine.
 1096 10. ~~(g)~~ Chloral hydrate.
 1097 11. ~~(h)~~ Chlordiazepoxide.
 1098 12. ~~(i)~~ Clobazam.
 1099 13. ~~(j)~~ Clonazepam.
 1100 14. ~~(k)~~ Clorazepate.
 1101 15. ~~(l)~~ Clotiazepam.
 1102 16. ~~(m)~~ Cloxazolam.

588-02151C-18

20188c1

1103 17. Dexfenfluramine.
 1104 18.~~(n)~~ Delorazepam.
 1105 19. Dichloralphenazone.
 1106 20.~~(p)~~ Diazepam.
 1107 21.~~(q)~~ Diethylpropion.
 1108 22. Eluxadoline.
 1109 23.~~(r)~~ Estazolam.
 1110 24. Eszopiclone.
 1111 25.~~(s)~~ Ethchlorvynol.
 1112 26.~~(t)~~ Ethinamate.
 1113 27.~~(u)~~ Ethyl loflazepate.
 1114 28.~~(v)~~ Fencamfamin.
 1115 29.~~(w)~~ Fenfluramine.
 1116 30.~~(x)~~ Fenproporex.
 1117 31.~~(y)~~ Fludiazepam.
 1118 32.~~(z)~~ Flurazepam.
 1119 33. Fospropofol.
 1120 34.~~(aa)~~ Halazepam.
 1121 35.~~(bb)~~ Haloxazolam.
 1122 36.~~(cc)~~ Ketazolam.
 1123 37.~~(dd)~~ Loprazolam.
 1124 38.~~(ee)~~ Lorazepam.
 1125 39. Lorcaserin.
 1126 40.~~(ff)~~ Lormetazepam.
 1127 41.~~(gg)~~ Mazindol.
 1128 42.~~(hh)~~ Mebutamate.
 1129 43.~~(ii)~~ Medazepam.
 1130 44.~~(jj)~~ Mefenorex.
 1131 45.~~(kk)~~ Meprobamate.

Page 39 of 136

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588-02151C-18

20188c1

1132 46.~~(ll)~~ Methohexital.
 1133 47.~~(mm)~~ Methylphenobarbital.
 1134 48.~~(nn)~~ Midazolam.
 1135 49. Modafinil.
 1136 50.~~(oo)~~ Nimetazepam.
 1137 51.~~(pp)~~ Nitrazepam.
 1138 52.~~(qq)~~ Nordiazepam.
 1139 53.~~(rr)~~ Oxazepam.
 1140 54.~~(ss)~~ Oxazolam.
 1141 55.~~(tt)~~ Paraldehyde.
 1142 56.~~(uu)~~ Pemoline.
 1143 57.~~(vv)~~ Pentazocine.
 1144 58. Petrichloral.
 1145 59.~~(ww)~~ Phenobarbital.
 1146 60.~~(xx)~~ Phentermine.
 1147 61.~~(yy)~~ Pinazepam.
 1148 62.~~(zz)~~ Pipradrol.
 1149 63.~~(aaa)~~ Prazepam.
 1150 64.~~(e)~~ Propoxyphene (dosage forms).
 1151 65.~~(bbb)~~ Propylhexedrine, excluding any patent or
 1152 proprietary preparation containing propylhexedrine, unless
 1153 otherwise provided by federal law.
 1154 66.~~(ccc)~~ Quazepam.
 1155 67. Sibutramine.
 1156 68.~~(eee)~~ SPA[(-)-1 dimethylamino-1, 2
 1157 diphenylethane].
 1158 69. Suvorexant.
 1159 70.~~(fff)~~ Temazepam.
 1160 71.~~(ddd)~~ Tetrazepam.

Page 40 of 136

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

588-02151C-18

20188c1

1161 72. Tramadol.
 1162 ~~73. (ggg)~~ Triazolam.
 1163 74. Zaleplon.
 1164 75. Zolpidem.
 1165 76. Zopiclone.
 1166 ~~77. (hhh)~~ Not more than 1 milligram of difenoxin and not
 1167 less than 25 micrograms of atropine sulfate per dosage unit.
 1168 (5) SCHEDULE V.—A substance, compound, mixture, or
 1169 preparation of a substance in Schedule V has a low potential for
 1170 abuse relative to the substances in Schedule IV and has a
 1171 currently accepted medical use in treatment in the United
 1172 States, and abuse of such compound, mixture, or preparation may
 1173 lead to limited physical or psychological dependence relative to
 1174 the substances in Schedule IV.
 1175 (a) Substances controlled in Schedule V include any
 1176 compound, mixture, or preparation containing any of the
 1177 following limited quantities of controlled substances, which
 1178 must shall include one or more active medicinal ingredients that
 1179 ~~which~~ are not controlled substances in sufficient proportion to
 1180 confer upon the compound, mixture, or preparation valuable
 1181 medicinal qualities other than those possessed by the controlled
 1182 substance alone:
 1183 1. Not more than 200 milligrams of codeine per 100
 1184 milliliters or per 100 grams.
 1185 2. Not more than 100 milligrams of dihydrocodeine per 100
 1186 milliliters or per 100 grams.
 1187 3. Not more than 100 milligrams of ethylmorphine per 100
 1188 milliliters or per 100 grams.
 1189 4. Not more than 2.5 milligrams of diphenoxylate and not

588-02151C-18

20188c1

1190 less than 25 micrograms of atropine sulfate per dosage unit.
 1191 5. Not more than 100 milligrams of opium per 100
 1192 milliliters or per 100 grams.
 1193 6. Not more than 0.5 milligrams of difenoxin and not less
 1194 than 25 micrograms of atropine sulfate per dosage unit.
 1195 (b) Unless a specific exception exists or unless listed in
 1196 another schedule, any material, compound, mixture, or
 1197 preparation that contains any quantity of the following
 1198 substances is controlled in Schedule V:
 1199 1. Brivaracetam.
 1200 2. Ezogabine.
 1201 3. Lacosamide.
 1202 4. Pregabalin ~~Narcotic drugs. Unless specifically excepted~~
 1203 ~~or unless listed in another schedule, any material, compound,~~
 1204 ~~mixture, or preparation containing any of the following narcotic~~
 1205 ~~drugs and their salts: Buprenorphine.~~
 1206 (c) Stimulants. Unless specifically excepted or unless
 1207 listed in another schedule, any material, compound, mixture, or
 1208 preparation which contains any quantity of the following
 1209 substances having a stimulant effect on the central nervous
 1210 system, including its salts, isomers, and salts of isomers:
 1211 Pyrovalerone.
 1212 Section 11. Section 893.055, Florida Statutes, is amended
 1213 to read:
 1214 (Substantial rewording of section. See
 1215 s. 893.055, F.S., for present text.)
 1216 893.055 Prescription drug monitoring program.—
 1217 (1) As used in this section, the term:
 1218 (a) "Active investigation" means an investigation that is

588-02151C-18

20188c1

1219 being conducted with a reasonable, good faith belief that it
 1220 could lead to the filing of administrative, civil, or criminal
 1221 proceedings, or that is ongoing and continuing and for which
 1222 there is a reasonable, good faith anticipation of securing an
 1223 arrest or prosecution in the foreseeable future.

1224 (b) "Administration" means the obtaining and giving of a
 1225 single dose of a controlled substance by a legally authorized
 1226 person to a patient for her or his consumption.

1227 (c) "Controlled substance" means a controlled substance
 1228 listed in Schedule II, Schedule III, Schedule IV, or Schedule V
 1229 of s. 893.03 or 21 U.S.C. s. 812.

1230 (d) "Dispense" means the transfer of possession of one or
 1231 more doses of a controlled substance by a dispenser to the
 1232 ultimate consumer or to his or her agent.

1233 (e) "Dispenser" means a dispensing health care
 1234 practitioner, pharmacy, or pharmacist licensed to dispense
 1235 controlled substances in or into this state.

1236 (f) "Health care practitioner" or "practitioner" means any
 1237 practitioner licensed under chapter 458, chapter 459, chapter
 1238 461, chapter 463, chapter 464, chapter 465, or chapter 466.

1239 (g) "Health care regulatory board" has the same meaning as
 1240 s. 456.001(1).

1241 (h) "Law enforcement agency" means the Department of Law
 1242 Enforcement, a sheriff's office in this state, a police
 1243 department in this state, or a law enforcement agency of the
 1244 Federal Government which enforces the laws of this state or the
 1245 United States relating to controlled substances and whose agents
 1246 and officers are empowered by law to conduct criminal
 1247 investigations and make arrests.

588-02151C-18

20188c1

1248 (i) "Pharmacy" includes a community pharmacy, an
 1249 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
 1250 or an Internet pharmacy that is licensed by the department under
 1251 chapter 465 and that dispenses or delivers controlled substances
 1252 to an individual or address in this state.

1253 (j) "Prescriber" means a prescribing physician, prescribing
 1254 practitioner, or other prescribing health care practitioner
 1255 authorized by the laws of this state to order controlled
 1256 substances.

1257 (k) "Program manager" means an employee of or a person
 1258 contracted by the department who is designated to ensure the
 1259 integrity of the prescription drug monitoring program in
 1260 accordance with the requirements established in this section.

1261 (2) (a) The department shall maintain an electronic system
 1262 to collect and store controlled substance dispensing information
 1263 and shall release the information as authorized in this section
 1264 and s. 893.0551. The electronic system must:

1265 1. Not infringe upon the legitimate prescribing or
 1266 dispensing of a controlled substance by a prescriber or
 1267 dispenser acting in good faith and in the course of professional
 1268 practice.

1269 2. Be consistent with standards of the American Society for
 1270 Automation in Pharmacy.

1271 3. Comply with the Health Insurance Portability and
 1272 Accountability Act as it pertains to protected health
 1273 information, electronic protected health information, and all
 1274 other relevant state and federal privacy and security laws and
 1275 regulations.

1276 (b) The department may collaborate with professional health

588-02151C-18

20188c1

1277 care regulatory boards, appropriate organizations, and other
 1278 state agencies to identify indicators of controlled substance
 1279 abuse.

1280 (3) For each controlled substance dispensed to a patient in
 1281 the state, the following information must be reported by the
 1282 dispenser to the system as soon thereafter as possible but no
 1283 later than the close of the next business day after the day the
 1284 controlled substance is dispensed unless an extension or
 1285 exemption is approved by the department:

1286 (a) The name of the prescribing practitioner, the
 1287 practitioner's federal Drug Enforcement Administration
 1288 registration number, the practitioner's National Provider
 1289 Identification (NPI) or other appropriate identifier, and the
 1290 date of the prescription.

1291 (b) The date the prescription was filled and the method of
 1292 payment, such as cash by an individual, insurance coverage
 1293 through a third party, or Medicaid payment. This paragraph does
 1294 not authorize the department to include individual credit card
 1295 numbers or other account numbers in the system.

1296 (c) The full name, address, telephone number, and date of
 1297 birth of the person for whom the prescription was written.

1298 (d) The name, national drug code, quantity, and strength of
 1299 the controlled substance dispensed.

1300 (e) The full name, federal Drug Enforcement Administration
 1301 registration number, State of Florida Department of Health
 1302 issued pharmacy permit number, and address of the pharmacy or
 1303 other location from which the controlled substance was
 1304 dispensed. If the controlled substance was dispensed by a
 1305 practitioner other than a pharmacist, the practitioner's full

588-02151C-18

20188c1

1306 name, address, federal Drug Enforcement Administration
 1307 registration number, State of Florida Department of Health
 1308 issued license number, and National Provider Identification
 1309 (NPI).

1310 (f) Whether the drug was dispensed as an initial
 1311 prescription or a refill, and the number of refills ordered.

1312 (g) The name of the individual picking up the controlled
 1313 substance prescription and type and issuer of the identification
 1314 provided.

1315 (h) Other appropriate identifying information as determined
 1316 by department rule.

1317

1318 All acts of administration of controlled substances are exempt
 1319 from the reporting requirements of this subsection.

1320 (4) The following must be provided direct access to
 1321 information in the system:

1322 (a) A prescriber or dispenser or his or her designee.

1323 (b) An employee of the United States Department of Veterans
 1324 Affairs, United States Department of Defense, or the Indian
 1325 Health Service who provides health care services pursuant to
 1326 such employment and who has the authority to prescribe
 1327 controlled substances shall have access to the information in
 1328 the program's system upon verification of employment.

1329 (c) The program manager or designated program and support
 1330 staff may have access to administer the system.

1331 1. In order to calculate performance measures pursuant to
 1332 subsection (14), the program manager or program and support
 1333 staff members who have been directed by the program manager to
 1334 calculate performance measures may have direct access to

588-02151C-18

20188c1

information that contains no identifying information of any patient, physician, health care practitioner, prescriber, or dispenser.

2. The program manager or designated program and support staff must provide the department, upon request, data that does not contain patient, physician, health care practitioner, prescriber, or dispenser identifying information for public health care and safety initiatives purposes.

3. The program manager, upon determining a pattern consistent with the department's rules established under subsection (16), may provide relevant information to the prescriber and dispenser.

4. The program manager, upon determining a pattern consistent with the rules established under subsection (16) and having cause to believe a violation of s. 893.13(7)(a)8., (8)(a), or (8)(b) has occurred, may provide relevant information to the applicable law enforcement agency.

The program manager and designated program and support staff must complete a level II background screening.

(5) The following entities may not directly access information in the system, but may request information from the program manager or designated program and support staff:

(a) The department and its health care regulatory boards, as appropriate, for investigations involving licensees authorized to prescribe or dispense controlled substances.

(b) The Attorney General for Medicaid fraud cases involving prescribed controlled substances.

(c) A law enforcement agency during active investigations

588-02151C-18

20188c1

of potential criminal activity, fraud, or theft regarding prescribed controlled substances.

(d) A medical examiner when conducting an authorized investigation under s. 406.11, to determine the cause of death of an individual.

(e) An impaired practitioner consultant who is retained by the department under s. 456.076 to review the system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and who has separately agreed in writing to the consultant's access to and review of such information.

(f) A patient or the legal guardian or designated health care surrogate of an incapacitated patient who submits a written and notarized request that includes the patient's full name, address, phone number, date of birth, and a copy of a government-issued photo identification.

(6) The department may enter into a reciprocal agreement or contract to share prescription drug monitoring information with another state, district, or territory if the prescription drug monitoring programs of other states, districts, or territories are compatible with the Florida program.

(a) In determining compatibility, the department shall consider:

1. The safeguards for privacy of patient records and the success of the program in protecting patient privacy.

2. The persons authorized to view the data collected by the program. Comparable entities and licensed health care practitioners in other states, districts, or territories of the United States, law enforcement agencies, the Attorney General's

588-02151C-18

20188c1

1393 Medicaid Fraud Control Unit, medical regulatory boards, and, as
 1394 needed, management staff that have similar duties as management
 1395 staff who work with the prescription drug monitoring program as
 1396 authorized in s. 893.0551 are authorized access upon approval by
 1397 the department.

1398 3. The schedules of the controlled substances that are
 1399 monitored by the program.

1400 4. The data reported to or included in the program's
 1401 system.

1402 5. Any implementing criteria deemed essential for a
 1403 thorough comparison.

1404 6. The costs and benefits to the state of sharing
 1405 prescription information.

1406 (b) The department shall assess the prescription drug
 1407 monitoring program's continued compatibility with the other
 1408 state's, district's, or territory's program every 4 years.

1409 (c) Any agreement or contract for sharing of prescription
 1410 drug monitoring information between the department and another
 1411 state, district, or territory shall contain the same
 1412 restrictions and requirements as this section or s. 893.0551,
 1413 and the information must be provided according to the
 1414 department's determination of compatibility.

1415 (7) The department may enter into agreements or contracts
 1416 to establish secure connections between the system and a
 1417 prescribing or dispensing health care practitioner's electronic
 1418 health recordkeeping system. The electronic health recordkeeping
 1419 system owner or license holder will be responsible for ensuring
 1420 that only authorized individuals have access to prescription
 1421 drug monitoring program information.

588-02151C-18

20188c1

1422 (8) A prescriber or dispenser or a designee of a prescriber
 1423 or dispenser must consult the system to review a patient's
 1424 controlled substance dispensing history before prescribing or
 1425 dispensing a controlled substance.

1426 (a) The duty to consult the system does not apply to a
 1427 prescriber or dispenser or designee of a prescriber or dispenser
 1428 if the system is not operational, as determined by the
 1429 department, or when it cannot be accessed by a health care
 1430 practitioner because of a temporary technological or electrical
 1431 failure.

1432 (b) A prescriber or dispenser or designee of a prescriber
 1433 or dispenser who does not consult the system under this
 1434 subsection shall document the reason he or she did not consult
 1435 the system in the patient's medical record or prescription
 1436 record, and shall not prescribe or dispense greater than a 3-day
 1437 supply of a controlled substance to the patient.

1438 (c) The department shall issue a citation pursuant to the
 1439 procedure in s. 456.077 to any prescriber or dispenser who fails
 1440 to consult the system as required by this subsection.

1441 (9) A person who willfully and knowingly fails to report
 1442 the dispensing of a controlled substance as required by this
 1443 section commits a misdemeanor of the first degree, punishable as
 1444 provided in s. 775.082 or s. 775.083.

1445 (10) Information in the prescription drug monitoring
 1446 program's system may be released only as provided in this
 1447 section and s. 893.0551. The content of the system is intended
 1448 to be informational only. Information in the system is not
 1449 subject to discovery or introduction into evidence in any civil
 1450 or administrative action against a prescriber, dispenser,

588-02151C-18

20188c1

pharmacy, or patient arising out of matters that are the subject of information in the system. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to management of the system may not be permitted or required to testify in any such civil or administrative action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the system.

(11) A prescriber or dispenser, or his or her designee, may have access to the information under this section which relates to a patient of that prescriber or dispenser as needed for the purpose of reviewing the patient's controlled drug prescription history. A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information.

(12)(a) All costs incurred by the department in administering the prescription drug monitoring program shall be funded through federal grants, private funding applied for or received by the state, or state funds appropriated in the General Appropriations Act. The department may not:

1. Commit funds for the monitoring program without ensuring funding is available; or

2. Use funds provided, directly or indirectly by prescription drug manufacturers to implement the program.

588-02151C-18

20188c1

(b) The department shall cooperate with the direct-support organization established under subsection (15) in seeking federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department if the costs of doing so are immaterial. Immaterial costs include, but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant. The department may competitively procure and contract pursuant to s. 287.057 for any goods and services required by this section.

(13) The department shall conduct or participate in studies to examine the feasibility of enhancing the prescription drug monitoring program for the purposes of public health initiatives and statistical reporting. Such studies shall respect the privacy of the patient, the prescriber, and the dispenser. Such studies may be conducted by the department or a contracted vendor in order to:

(a) Improve the quality of health care services and safety by improving prescribing and dispensing practices for controlled substances;

(b) Take advantage of advances in technology;

(c) Reduce duplicative prescriptions and the overprescribing of controlled substances; and

(d) Reduce drug abuse.

(14) The department shall annually report on performance measures to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1. Performance measures may include, but are not limited to, the following outcomes:

(a) Reduction of the rate of inappropriate use of

588-02151C-18

20188c1

1509 controlled substances through department education and safety
 1510 efforts.

1511 (b) Reduction of the quantity of controlled substances
 1512 obtained by individuals attempting to engage in fraud and
 1513 deceit.

1514 (c) Increased coordination among partners participating in
 1515 the prescription drug monitoring program.

1516 (d) Involvement of stakeholders in achieving improved
 1517 patient health care and safety and reduction of controlled
 1518 substance abuse and controlled substance diversion.

1519 (15) The department may establish a direct-support
 1520 organization to provide assistance, funding, and promotional
 1521 support for the activities authorized for the prescription drug
 1522 monitoring program.

1523 (a) As used in this subsection, the term "direct-support
 1524 organization" means an organization that is:

1525 1. A Florida corporation not for profit incorporated under
 1526 chapter 617, exempted from filing fees, and approved by the
 1527 Department of State.

1528 2. Organized and operated to conduct programs and
 1529 activities; raise funds; request and receive grants, gifts, and
 1530 bequests of money; acquire, receive, hold, and invest, in its
 1531 own name, securities, funds, objects of value, or other
 1532 property, either real or personal; and make expenditures or
 1533 provide funding to or for the direct or indirect benefit of the
 1534 department in the furtherance of the prescription drug
 1535 monitoring program.

1536 (b) The State Surgeon General shall appoint a board of
 1537 directors for the direct-support organization.

588-02151C-18

20188c1

1538 1. The board of directors shall consist of no fewer than
 1539 five members who shall serve at the pleasure of the State
 1540 Surgeon General.

1541 2. The State Surgeon General shall provide guidance to
 1542 members of the board to ensure that moneys received by the
 1543 direct-support organization are not received from inappropriate
 1544 sources. Inappropriate sources include, but are not limited to,
 1545 donors, grantors, persons, prescription drug manufacturers, or
 1546 organizations that may monetarily or substantively benefit from
 1547 the purchase of goods or services by the department in
 1548 furtherance of the prescription drug monitoring program.

1549 (c) The direct-support organization shall operate under
 1550 written contract with the department. The contract must, at a
 1551 minimum, provide for:

1552 1. Approval of the articles of incorporation and bylaws of
 1553 the direct-support organization by the department.

1554 2. Submission of an annual budget for the approval of the
 1555 department.

1556 3. The reversion, without penalty, to the department's
 1557 grants and donations trust fund for the administration of the
 1558 prescription drug monitoring program of all moneys and property
 1559 held in trust by the direct-support organization for the benefit
 1560 of the prescription drug monitoring program if the direct-
 1561 support organization ceases to exist or if the contract is
 1562 terminated.

1563 4. The fiscal year of the direct-support organization,
 1564 which must begin July 1 of each year and end June 30 of the
 1565 following year.

1566 5. The disclosure of the material provisions of the

588-02151C-18

20188c1

contract to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications, and an explanation to such donors of the distinction between the department and the direct-support organization.

6. The direct-support organization's collecting, expending, and providing of funds to the department for the development, implementation, and operation of the prescription drug monitoring program as described in this section. The direct-support organization may collect and expend funds to be used for the functions of the direct-support organization's board of directors, as necessary and approved by the department. In addition, the direct-support organization may collect and provide funding to the department in furtherance of the prescription drug monitoring program by:

a. Establishing and administering the prescription drug monitoring program's electronic system, including hardware and software.

b. Conducting studies on the efficiency and effectiveness of the program to include feasibility studies as described in subsection (13).

c. Providing funds for future enhancements of the program within the intent of this section.

d. Providing user training of the prescription drug monitoring program, including distribution of materials to promote public awareness and education and conducting workshops or other meetings, for health care practitioners, pharmacists, and others as appropriate.

e. Providing funds for travel expenses.

588-02151C-18

20188c1

f. Providing funds for administrative costs, including personnel, audits, facilities, and equipment.

g. Fulfilling all other requirements necessary to implement and operate the program as outlined in this section.

7. Certification by the department that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the goals and purposes of the prescription drug monitoring program and in the best interests of the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(d) The activities of the direct-support organization must be consistent with the goals and mission of the department, as determined by the department, and in the best interests of the state. The direct-support organization must obtain written approval from the department for any activities in support of the prescription drug monitoring program before undertaking those activities.

(e) The direct-support organization shall provide for an independent annual financial audit in accordance with s. 215.981. Copies of the audit shall be provided to the department and the Office of Policy and Budget in the Executive Office of the Governor.

(f) The direct-support organization may not exercise any power under s. 617.0302(12) or (16).

(g) The direct-support organization is not considered a lobbying firm within the meaning of s. 11.045.

(h) The department may permit, without charge, appropriate use of administrative services, property, and facilities of the

588-02151C-18

20188c1

1625 department by the direct-support organization, subject to this
 1626 section. The use must be directly in keeping with the approved
 1627 purposes of the direct-support organization and may not be made
 1628 at times or places that would unreasonably interfere with
 1629 opportunities for the public to use such facilities for
 1630 established purposes. Any moneys received from rentals of
 1631 facilities and properties managed by the department may be held
 1632 in a separate depository account in the name of the direct-
 1633 support organization and subject to the provisions of the letter
 1634 of agreement with the department. The letter of agreement must
 1635 provide that any funds held in the separate depository account
 1636 in the name of the direct-support organization must revert to
 1637 the department if the direct-support organization is no longer
 1638 approved by the department to operate in the best interests of
 1639 the state.

1640 (i) The department may adopt rules under s. 120.54 to
 1641 govern the use of administrative services, property, or
 1642 facilities of the department or office by the direct-support
 1643 organization.

1644 (j) The department may not permit the use of any
 1645 administrative services, property, or facilities of the state by
 1646 a direct-support organization if that organization does not
 1647 provide equal membership and employment opportunities to all
 1648 persons regardless of race, color, religion, gender, age, or
 1649 national origin.

1650 (k) This subsection is repealed October 1, 2027, unless
 1651 reviewed and saved from repeal by the Legislature.

1652 (16) The department shall adopt rules necessary to
 1653 implement this section.

588-02151C-18

20188c1

1654 Section 12. Section 893.0551, Florida Statutes, is amended
 1655 to read:

1656 893.0551 Public records exemption for the prescription drug
 1657 monitoring program.—

1658 (1) For purposes of this section, the terms used in this
 1659 section have the same meanings as provided in s. 893.055.

1660 (2) The following information of a patient or patient's
 1661 agent, a health care practitioner, a dispenser, an employee of
 1662 the practitioner who is acting on behalf of and at the direction
 1663 of the practitioner, a pharmacist, or a pharmacy that is
 1664 contained in records held by the department under s. 893.055 is
 1665 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 1666 of the State Constitution:

1667 (a) Name.

1668 (b) Address.

1669 (c) Telephone number.

1670 (d) Insurance plan number.

1671 (e) Government-issued identification number.

1672 (f) Provider number.

1673 (g) Drug Enforcement Administration number.

1674 (h) Any other unique identifying information or number.

1675 (3) The department shall disclose such ~~confidential and~~
 1676 ~~exempt~~ information to the following persons or entities upon
 1677 request and after using a verification process to ensure the
 1678 legitimacy of the request as provided in s. 893.055:

1679 (a) A health care practitioner, or his or her designee, who
 1680 certifies that the information is necessary to provide medical
 1681 treatment to a current patient in accordance with ss. 893.05 and
 1682 893.055.

588-02151C-18

20188c1

(b) A qualified physician, to review a patient's controlled drug prescription history before issuing a physician certification pursuant to s. 381.986.

(c) An employee of the United States Department of Veterans Affairs, United States Department of Defense, or the Indian Health Service who provides health care services pursuant to such employment and who has the authority to prescribe controlled substances shall have access to the information in the program's system upon verification of such employment.

(d) The program manager and designated support staff for administration of the program, and to provide relevant information to the prescriber, dispenser, and appropriate law enforcement agencies, in accordance with s. 893.055.

(e) The department for investigations involving licensees authorized to prescribe or dispense controlled substances. The department may request information from the program but may not have direct access to its system. The department may provide to a law enforcement agency pursuant to ss. 456.066 and 456.073 only information that is relevant to the specific controlled substances investigation that prompted the request for the information.

(f)(a) The Attorney General or his or her designee when working on Medicaid fraud cases involving prescribed controlled substances ~~prescription drugs~~ or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud or specific identifiers that warrant a Medicaid investigation regarding prescribed controlled substances ~~prescription drugs~~. The Attorney General's Medicaid fraud investigators may not have direct access to the department's system database. The Attorney

588-02151C-18

20188c1

General or his or her designee may disclose to a criminal justice agency, as defined in s. 119.011, only the ~~confidential~~ and ~~exempt~~ information received from the department that is relevant to an identified active investigation that prompted the request for the information.

(g)(b) The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide to a law enforcement agency pursuant to ss. 456.066 and 456.073 only information that is relevant to the specific controlled substances investigation that prompted the request for the information.

(h)(e) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances and that has entered into a user agreement with the department. A law enforcement agency may request information from the department but may not have direct access to its system database. The law enforcement agency may disclose to a criminal justice agency, as defined in s. 119.011, only ~~confidential and exempt~~ information received from the department that is relevant to an identified active investigation that prompted the request for such information.

588-02151C-18

20188c1

(i) A district medical examiner or associate medical examiner, as described in s. 406.06, pursuant to his or her official duties, as required by s. 406.11, to determine the cause of death of an individual. Such medical examiners may request information from the department but may not have direct access to the system

~~(d) A health care practitioner, or his or her designee, who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055.~~

~~(e) A pharmacist, or his or her designee, who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055.~~

~~(f) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. 893.055(7)(c)4.~~

~~(g) The patient's pharmacy, prescriber, or dispenser, or the designee of the pharmacy, prescriber, or dispenser, who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. 893.055.~~

~~(j)(h)~~ An impaired practitioner consultant who has been authorized in writing by a participant in, or by a referral to, the impaired practitioner program to access and review information as provided in s. 893.055(5)(e) ~~893.055(7)(c)5~~.

(k) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. 893.055(5)(f).

588-02151C-18

20188c1

(4) If the department determines consistent with its rules that a pattern of controlled substance abuse exists, the department may disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055. The law enforcement agency may disclose to a criminal justice agency, as defined in s. 119.011, only ~~confidential and exempt~~ information received from the department that is relevant to an identified active investigation that is specific to a violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).

(5) Before disclosing ~~confidential and exempt~~ information to a criminal justice agency or a law enforcement agency pursuant to this section, the disclosing person or entity must take steps to ensure the continued confidentiality of all ~~confidential and exempt~~ information. At a minimum, these steps must include redacting any nonrelevant information.

(6) An agency or person who obtains any ~~confidential and exempt~~ information pursuant to this section must maintain the confidential and exempt status of that information and may not disclose such information unless authorized by law. Information shared with a state attorney pursuant to paragraph ~~(3)(f)~~ ~~(3)(a)~~ or paragraph ~~(3)(h)~~ ~~(3)(e)~~ may be released only in response to a discovery demand if such information is directly related to the criminal case for which the information was requested. Unrelated information may be released only upon an order of a court of competent jurisdiction.

(7) A person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

588-02151C-18

20188c1

1799 Section 13. Effective January 1, 2019, paragraphs (pp) and
 1800 (qq) of subsection (1) of section 458.331, Florida Statutes, are
 1801 amended to read:

1802 458.331 Grounds for disciplinary action; action by the
 1803 board and department.—

1804 (1) The following acts constitute grounds for denial of a
 1805 license or disciplinary action, as specified in s. 456.072(2):

1806 (pp) Applicable to a licensee who serves as the designated
 1807 physician of a pain-management clinic as defined in s. 458.3265
 1808 or s. 459.0137:

1809 1. Registering a pain-management clinic through
 1810 misrepresentation or fraud;

1811 2. Procuring, or attempting to procure, the registration of
 1812 a pain-management clinic for any other person by making or
 1813 causing to be made, any false representation;

1814 3. Failing to comply with any requirement of chapter 499,
 1815 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
 1816 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
 1817 the Drug Abuse Prevention and Control Act; or chapter 893, the
 1818 Florida Comprehensive Drug Abuse Prevention and Control Act;

1819 4. Being convicted or found guilty of, regardless of
 1820 adjudication to, a felony or any other crime involving moral
 1821 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
 1822 the courts of this state, of any other state, or of the United
 1823 States;

1824 5. Being convicted of, or disciplined by a regulatory
 1825 agency of the Federal Government or a regulatory agency of
 1826 another state for, any offense that would constitute a violation
 1827 of this chapter;

588-02151C-18

20188c1

1828 6. Being convicted of, or entering a plea of guilty or nolo
 1829 contendere to, regardless of adjudication, a crime in any
 1830 jurisdiction of the courts of this state, of any other state, or
 1831 of the United States which relates to the practice of, or the
 1832 ability to practice, a licensed health care profession;

1833 7. Being convicted of, or entering a plea of guilty or nolo
 1834 contendere to, regardless of adjudication, a crime in any
 1835 jurisdiction of the courts of this state, of any other state, or
 1836 of the United States which relates to health care fraud;

1837 8. Dispensing any medicinal drug based upon a communication
 1838 that purports to be a prescription as defined in s. 465.003(14)
 1839 or s. 893.02 if the dispensing practitioner knows or has reason
 1840 to believe that the purported prescription is not based upon a
 1841 valid practitioner-patient relationship; or

1842 9. Failing to timely notify the board of the date of his or
 1843 her termination from a pain-management clinic as required by s.
 1844 458.3265(3) ~~458.3265(2)~~.

1845 (qq) Failing to timely notify the department of the theft
 1846 of prescription blanks from a pain-management clinic or a breach
 1847 of other methods for prescribing within 24 hours as required by
 1848 s. 458.3265(3) ~~458.3265(2)~~.

1849 Section 14. Effective January 1, 2019, Paragraphs (rr) and
 1850 (ss) of subsection (1) of section 459.015, Florida Statutes, are
 1851 amended to read:

1852 459.015 Grounds for disciplinary action; action by the
 1853 board and department.—

1854 (1) The following acts constitute grounds for denial of a
 1855 license or disciplinary action, as specified in s. 456.072(2):

1856 (rr) Applicable to a licensee who serves as the designated

588-02151C-18

20188c1

physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for, any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or

588-02151C-18

20188c1

of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003(14) or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(3) ~~459.0137(2)~~.

(ss) Failing to timely notify the department of the theft of prescription blanks from a pain-management clinic or a breach of other methods for prescribing within 24 hours as required by s. 459.0137(3) ~~459.0137(2)~~.

Section 15. Paragraph (b) of subsection (4) of section 463.0055, Florida Statutes, is amended to read:

463.0055 Administration and prescription of ocular pharmaceutical agents.—

(4) A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for an ocular pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon. A certified optometrist may not administer or prescribe:

(b) A controlled substance for the treatment of chronic nonmalignant pain as defined in s. 456.44(1)(f) ~~456.44(1)(e)~~.

Section 16. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect

588-02151C-18

20188c1

1915 the death of the person killed or any human being;
 1916 2. When committed by a person engaged in the perpetration
 1917 of, or in the attempt to perpetrate, any:
 1918 a. Trafficking offense prohibited by s. 893.135(1),
 1919 b. Arson,
 1920 c. Sexual battery,
 1921 d. Robbery,
 1922 e. Burglary,
 1923 f. Kidnapping,
 1924 g. Escape,
 1925 h. Aggravated child abuse,
 1926 i. Aggravated abuse of an elderly person or disabled adult,
 1927 j. Aircraft piracy,
 1928 k. Unlawful throwing, placing, or discharging of a
 1929 destructive device or bomb,
 1930 l. Carjacking,
 1931 m. Home-invasion robbery,
 1932 n. Aggravated stalking,
 1933 o. Murder of another human being,
 1934 p. Resisting an officer with violence to his or her person,
 1935 q. Aggravated fleeing or eluding with serious bodily injury
 1936 or death,
 1937 r. Felony that is an act of terrorism or is in furtherance
 1938 of an act of terrorism, including a felony under s. 775.30, s.
 1939 775.32, s. 775.33, s. 775.34, or s. 775.35, or
 1940 s. Human trafficking; or
 1941 3. Which resulted from the unlawful distribution by a
 1942 person 18 years of age or older of any of the following
 1943 substances, or mixture containing any of the following

Page 67 of 136

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588-02151C-18

20188c1

1944 substances, when such substance or mixture is proven to be the
 1945 proximate cause of the death of the user:
 1946 a. A substance controlled under s. 893.03(1);
 1947 b. Cocaine, as described in s. 893.03(2)(a)4.;
 1948 c. Opium or any synthetic or natural salt, compound,
 1949 derivative, or preparation of opium;
 1950 d. Methadone;
 1951 e. Alfentanil, as described in s. 893.03(2)(b)1.;
 1952 f. Carfentanil, as described in s. 893.03(2)(b)6.;
 1953 g. Fentanyl, as described in s. 893.03(2)(b)9.;
 1954 h. Sufentanil, as described in s. 893.03(2)(b)30.
 1955 ~~893.03(2)(b)29.~~; or
 1956 i. A controlled substance analog, as described in s.
 1957 893.0356, of any substance specified in sub-subparagraphs a.-h.,
 1958
 1959 is murder in the first degree and constitutes a capital felony,
 1960 punishable as provided in s. 775.082.
 1961 Section 17. Paragraphs (a), (c), (d), (e), (f), and (h) of
 1962 subsection (1), subsection (2), paragraphs (a) and (b) of
 1963 subsection (4), and subsection (5) of section 893.13, Florida
 1964 Statutes, are amended to read:
 1965 893.13 Prohibited acts; penalties.—
 1966 (1) (a) Except as authorized by this chapter and chapter
 1967 499, a person may not sell, manufacture, or deliver, or possess
 1968 with intent to sell, manufacture, or deliver, a controlled
 1969 substance. A person who violates this provision with respect to:
 1970 1. A controlled substance named or described in s.
 1971 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
 1972 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as

Page 68 of 136

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

588-02151C-18

20188c1

provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000

588-02151C-18

20188c1

feet of the real property comprising a child care facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

(d) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as

588-02151C-18

20188c1

provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine

588-02151C-18

20188c1

and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person

588-02151C-18

20188c1

who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, a person may not purchase, or possess with intent to purchase, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable

588-02151C-18

20188c1

as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, a person may not purchase more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Except as authorized by this chapter, a person 18 years of age or older may not deliver any controlled substance to a person younger than 18 years of age, use or hire a person younger than 18 years of age as an agent or employee in the sale or delivery of such a substance, or use such person to assist in avoiding detection or apprehension for a violation of this chapter. A person who violates this subsection with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence may not be suspended or deferred, and the person so convicted may not be placed on probation.

(5) A person may not bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to

588-02151C-18

20188c1

2147 do so by the appropriate federal agency. A person who violates
2148 this provision with respect to:

2149 (a) A controlled substance named or described in s.
2150 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2151 ~~(2)(c)4.~~ commits a felony of the second degree, punishable as
2152 provided in s. 775.082, s. 775.083, or s. 775.084.

2153 (b) A controlled substance named or described in s.
2154 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,
2155 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a
2156 felony of the third degree, punishable as provided in s.
2157 775.082, s. 775.083, or s. 775.084.

2158 (c) A controlled substance named or described in s.
2159 893.03(5) commits a misdemeanor of the first degree, punishable
2160 as provided in s. 775.082 or s. 775.083.

2161 Section 18. Paragraphs (c) and (f) of subsection (1) of
2162 section 893.135, Florida Statutes, are amended to read:

2163 893.135 Trafficking; mandatory sentences; suspension or
2164 reduction of sentences; conspiracy to engage in trafficking.—

2165 (1) Except as authorized in this chapter or in chapter 499
2166 and notwithstanding the provisions of s. 893.13:

2167 (c)1. A person who knowingly sells, purchases,
2168 manufactures, delivers, or brings into this state, or who is
2169 knowingly in actual or constructive possession of, 4 grams or
2170 more of any morphine, opium, hydromorphone, or any salt,
2171 derivative, isomer, or salt of an isomer thereof, including
2172 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
2173 (3)(c)4., or 4 grams or more of any mixture containing any such
2174 substance, but less than 30 kilograms of such substance or
2175 mixture, commits a felony of the first degree, which felony

588-02151C-18

20188c1

2176 shall be known as "trafficking in illegal drugs," punishable as
2177 provided in s. 775.082, s. 775.083, or s. 775.084. If the
2178 quantity involved:

2179 a. Is 4 grams or more, but less than 14 grams, such person
2180 shall be sentenced to a mandatory minimum term of imprisonment
2181 of 3 years and shall be ordered to pay a fine of \$50,000.

2182 b. Is 14 grams or more, but less than 28 grams, such person
2183 shall be sentenced to a mandatory minimum term of imprisonment
2184 of 15 years and shall be ordered to pay a fine of \$100,000.

2185 c. Is 28 grams or more, but less than 30 kilograms, such
2186 person shall be sentenced to a mandatory minimum term of
2187 imprisonment of 25 years and shall be ordered to pay a fine of
2188 \$500,000.

2189 2. A person who knowingly sells, purchases, manufactures,
2190 delivers, or brings into this state, or who is knowingly in
2191 actual or constructive possession of, 14 grams or more of
2192 hydrocodone, as described in s. 893.03(2)(a)1.k.

2193 ~~893.03(2)(a)1.j.,~~ codeine, as described in s. 893.03(2)(a)1.g.,
2194 or any salt thereof, or 14 grams or more of any mixture
2195 containing any such substance, commits a felony of the first
2196 degree, which felony shall be known as "trafficking in
2197 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
2198 or s. 775.084. If the quantity involved:

2199 a. Is 14 grams or more, but less than 28 grams, such person
2200 shall be sentenced to a mandatory minimum term of imprisonment
2201 of 3 years and shall be ordered to pay a fine of \$50,000.

2202 b. Is 28 grams or more, but less than 50 grams, such person
2203 shall be sentenced to a mandatory minimum term of imprisonment
2204 of 7 years and shall be ordered to pay a fine of \$100,000.

588-02151C-18

20188c1

2205 c. Is 50 grams or more, but less than 200 grams, such
 2206 person shall be sentenced to a mandatory minimum term of
 2207 imprisonment of 15 years and shall be ordered to pay a fine of
 2208 \$500,000.

2209 d. Is 200 grams or more, but less than 30 kilograms, such
 2210 person shall be sentenced to a mandatory minimum term of
 2211 imprisonment of 25 years and shall be ordered to pay a fine of
 2212 \$750,000.

2213 3. A person who knowingly sells, purchases, manufactures,
 2214 delivers, or brings into this state, or who is knowingly in
 2215 actual or constructive possession of, 7 grams or more of
 2216 oxycodone, as described in s. 893.03(2)(a)1.g. ~~893.03(2)(a)1.e.~~,
 2217 or any salt thereof, or 7 grams or more of any mixture
 2218 containing any such substance, commits a felony of the first
 2219 degree, which felony shall be known as "trafficking in
 2220 oxycodone," punishable as provided in s. 775.082, s. 775.083, or
 2221 s. 775.084. If the quantity involved:

2222 a. Is 7 grams or more, but less than 14 grams, such person
 2223 shall be sentenced to a mandatory minimum term of imprisonment
 2224 of 3 years and shall be ordered to pay a fine of \$50,000.

2225 b. Is 14 grams or more, but less than 25 grams, such person
 2226 shall be sentenced to a mandatory minimum term of imprisonment
 2227 of 7 years and shall be ordered to pay a fine of \$100,000.

2228 c. Is 25 grams or more, but less than 100 grams, such
 2229 person shall be sentenced to a mandatory minimum term of
 2230 imprisonment of 15 years and shall be ordered to pay a fine of
 2231 \$500,000.

2232 d. Is 100 grams or more, but less than 30 kilograms, such
 2233 person shall be sentenced to a mandatory minimum term of

588-02151C-18

20188c1

2234 imprisonment of 25 years and shall be ordered to pay a fine of
 2235 \$750,000.

2236 4.a. A person who knowingly sells, purchases, manufactures,
 2237 delivers, or brings into this state, or who is knowingly in
 2238 actual or constructive possession of, 4 grams or more of:

2239 (I) Alfentanil, as described in s. 893.03(2)(b)1.;
 2240 (II) Carfentanil, as described in s. 893.03(2)(b)6.;
 2241 (III) Fentanyl, as described in s. 893.03(2)(b)9.;
 2242 (IV) Sufentanil, as described in s. 893.03(2)(b)30.
 2243 ~~893.03(2)(b)29.~~;
 2244 (V) A fentanyl derivative, as described in s.
 2245 893.03(1)(a)62.;

2246 (VI) A controlled substance analog, as described in s.
 2247 893.0356, of any substance described in sub-sub-subparagraphs
 2248 (I)-(V); or

2249 (VII) A mixture containing any substance described in sub-
 2250 sub-subparagraphs (I)-(VI),

2251 commits a felony of the first degree, which felony shall be
 2252 known as "trafficking in fentanyl," punishable as provided in s.
 2253 775.082, s. 775.083, or s. 775.084.

2254 b. If the quantity involved under sub-subparagraph a.:

2255 (I) Is 4 grams or more, but less than 14 grams, such person
 2256 shall be sentenced to a mandatory minimum term of imprisonment
 2257 of 3 years, and shall be ordered to pay a fine of \$50,000.

2258 (II) Is 14 grams or more, but less than 28 grams, such
 2259 person shall be sentenced to a mandatory minimum term of
 2260 imprisonment of 15 years, and shall be ordered to pay a fine of
 2261 \$100,000.

588-02151C-18

20188c1

2263 (III) Is 28 grams or more, such person shall be sentenced
 2264 to a mandatory minimum term of imprisonment of 25 years, and
 2265 shall be ordered to pay a fine of \$500,000.

2266 5. A person who knowingly sells, purchases, manufactures,
 2267 delivers, or brings into this state, or who is knowingly in
 2268 actual or constructive possession of, 30 kilograms or more of
 2269 any morphine, opium, oxycodone, hydrocodone, codeine,
 2270 hydromorphone, or any salt, derivative, isomer, or salt of an
 2271 isomer thereof, including heroin, as described in s.
 2272 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 2273 more of any mixture containing any such substance, commits the
 2274 first degree felony of trafficking in illegal drugs. A person
 2275 who has been convicted of the first degree felony of trafficking
 2276 in illegal drugs under this subparagraph shall be punished by
 2277 life imprisonment and is ineligible for any form of
 2278 discretionary early release except pardon or executive clemency
 2279 or conditional medical release under s. 947.149. However, if the
 2280 court determines that, in addition to committing any act
 2281 specified in this paragraph:

2282 a. The person intentionally killed an individual or
 2283 counseled, commanded, induced, procured, or caused the
 2284 intentional killing of an individual and such killing was the
 2285 result; or

2286 b. The person's conduct in committing that act led to a
 2287 natural, though not inevitable, lethal result,
 2288
 2289 such person commits the capital felony of trafficking in illegal
 2290 drugs, punishable as provided in ss. 775.082 and 921.142. A
 2291 person sentenced for a capital felony under this paragraph shall

Page 79 of 136

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588-02151C-18

20188c1

2292 also be sentenced to pay the maximum fine provided under
 2293 subparagraph 1.

2294 6. A person who knowingly brings into this state 60
 2295 kilograms or more of any morphine, opium, oxycodone,
 2296 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 2297 isomer, or salt of an isomer thereof, including heroin, as
 2298 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 2299 60 kilograms or more of any mixture containing any such
 2300 substance, and who knows that the probable result of such
 2301 importation would be the death of a person, commits capital
 2302 importation of illegal drugs, a capital felony punishable as
 2303 provided in ss. 775.082 and 921.142. A person sentenced for a
 2304 capital felony under this paragraph shall also be sentenced to
 2305 pay the maximum fine provided under subparagraph 1.

2306 (f)1. Any person who knowingly sells, purchases,
 2307 manufactures, delivers, or brings into this state, or who is
 2308 knowingly in actual or constructive possession of, 14 grams or
 2309 more of amphetamine, as described in s. 893.03(2)(c)2., or
 2310 methamphetamine, as described in s. 893.03(2)(c)5.
 2311 ~~893.03(2)(c)4.~~, or of any mixture containing amphetamine or
 2312 methamphetamine, or phenylacetone, phenylacetic acid,
 2313 pseudoephedrine, or ephedrine in conjunction with other
 2314 chemicals and equipment utilized in the manufacture of
 2315 amphetamine or methamphetamine, commits a felony of the first
 2316 degree, which felony shall be known as "trafficking in
 2317 amphetamine," punishable as provided in s. 775.082, s. 775.083,
 2318 or s. 775.084. If the quantity involved:

2319 a. Is 14 grams or more, but less than 28 grams, such person
 2320 shall be sentenced to a mandatory minimum term of imprisonment

Page 80 of 136

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588-02151C-18

20188c1

2321 of 3 years, and the defendant shall be ordered to pay a fine of
 2322 \$50,000.

2323 b. Is 28 grams or more, but less than 200 grams, such
 2324 person shall be sentenced to a mandatory minimum term of
 2325 imprisonment of 7 years, and the defendant shall be ordered to
 2326 pay a fine of \$100,000.

2327 c. Is 200 grams or more, such person shall be sentenced to
 2328 a mandatory minimum term of imprisonment of 15 calendar years
 2329 and pay a fine of \$250,000.

2330 2. Any person who knowingly manufactures or brings into
 2331 this state 400 grams or more of amphetamine, as described in s.
 2332 893.03(2)(c)2., or methamphetamine, as described in s.
 2333 893.03(2)(c)5. ~~893.03(2)(c)4.~~, or of any mixture containing
 2334 amphetamine or methamphetamine, or phenylacetone, phenylacetic
 2335 acid, pseudoephedrine, or ephedrine in conjunction with other
 2336 chemicals and equipment used in the manufacture of amphetamine
 2337 or methamphetamine, and who knows that the probable result of
 2338 such manufacture or importation would be the death of any person
 2339 commits capital manufacture or importation of amphetamine, a
 2340 capital felony punishable as provided in ss. 775.082 and
 2341 921.142. Any person sentenced for a capital felony under this
 2342 paragraph shall also be sentenced to pay the maximum fine
 2343 provided under subparagraph 1.

2344 Section 19. Paragraphs (b) through (e) and (g) of
 2345 subsection (3) of section 921.0022, Florida Statutes, are
 2346 amended to read:

2347 921.0022 Criminal Punishment Code; offense severity ranking
 2348 chart.-

2349 (3) OFFENSE SEVERITY RANKING CHART

Page 81 of 136

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588-02151C-18

20188c1

2350 (b) LEVEL 2

2351

2352

Florida Statute	Felony Degree	Description
2353 379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
2354 379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
2355 403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
2356 517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2357 590.28(1)	3rd	Intentional burning of lands.
2358 784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor

Page 82 of 136

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	588-02151C-18		20188c1	
			who uses it to inflict injury or death.	
2359	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.	
2360	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.	
2361	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.	
2362	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.	
2363	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.	
2364	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.	
2365				

	588-02151C-18		20188c1	
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.	
2366	817.234(1)(a)2.	3rd	False statement in support of insurance claim.	
2367	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.	
2368	817.52(3)	3rd	Failure to redeliver hired vehicle.	
2369	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	
2370	817.60(5)	3rd	Dealing in credit cards of another.	
2371	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.	
2372	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	

588-02151C-18

20188c1

2373	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2374	831.01	3rd	Forgery.
2375	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2376	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2377	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2378	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2379	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2380	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
2381			

Page 85 of 136

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588-02151C-18

20188c1

2382	843.08	3rd	False personation.
	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5. , (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., <u>(2)(c)10.</u> , (3), or (4) drugs other than cannabis.
2383	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
2384			
2385			
2386	(c) LEVEL 3		
2387			
2388			
	Florida Statute	Felony Degree	Description
2389	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
2390	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
2391	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
2392	316.1935(2)	3rd	Fleeing or attempting to elude

Page 86 of 136

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588-02151C-18

20188c1

law enforcement officer in
patrol vehicle with siren and
lights activated.

2393

319.30(4) 3rd Possession by junkyard of motor
vehicle with identification
number plate removed.

2394

319.33(1)(a) 3rd Alter or forge any certificate
of title to a motor vehicle or
mobile home.

2395

319.33(1)(c) 3rd Procure or pass title on stolen
vehicle.

2396

319.33(4) 3rd With intent to defraud,
possess, sell, etc., a blank,
forged, or unlawfully obtained
title or registration.

2397

327.35(2)(b) 3rd Felony BUI.

2398

328.05(2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

2399

328.07(4) 3rd Manufacture, exchange, or
possess vessel with counterfeit

Page 87 of 136

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588-02151C-18

20188c1

or wrong ID number.

2400

376.302(5) 3rd Fraud related to reimbursement
for cleanup expenses under the
Inland Protection Trust Fund.

2401

379.2431 3rd Taking, disturbing, mutilating,
(1)(e)5. destroying, causing to be
destroyed, transferring,
selling, offering to sell,
molesting, or harassing marine
turtles, marine turtle eggs, or
marine turtle nests in
violation of the Marine Turtle
Protection Act.

2402

379.2431 3rd Possessing any marine turtle
(1)(e)6. species or hatchling, or parts
thereof, or the nest of any
marine turtle species described
in the Marine Turtle Protection
Act.

2403

379.2431 3rd Soliciting to commit or
(1)(e)7. conspiring to commit a
violation of the Marine Turtle
Protection Act.

2404

400.9935(4)(a) 3rd Operating a clinic, or offering

Page 88 of 136

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	588-02151C-18		20188c1
	or (b)		services requiring licensure, without a license.
2405			
	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
2406			
	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
2407			
	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
2408			
	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
2409			
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
2410			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
2411			

	588-02151C-18		20188c1
	697.08	3rd	Equity skimming.
2412			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
2413			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
2414			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
2415			
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
2416			
	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
2417			
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
2418			
	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
2419			

588-02151C-18 20188c1

2420	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2421	817.233	3rd	Burning to defraud insurer.
2422	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
2423	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
2424	817.236	3rd	Filing a false motor vehicle insurance application.
2425	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2426	817.413(2)	3rd	Sale of used goods as new.
2427	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

588-02151C-18 20188c1

2428	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2429	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2430	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
2431	843.19	3rd	Injure, disable, or kill police dog or horse.
2432	860.15(3)	3rd	Overcharging for repairs and parts.
2433	870.01(2)	3rd	Riot; inciting or encouraging.
2434	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5. , (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., <u>(2)(c)10.</u> , (3), or (4) drugs).
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver

588-02151C-18

20188c1

s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (2)(c)10., (3), or
 (4) drugs within 1,000 feet of
 university.

2435

893.13(1)(f)2. 2nd Sell, manufacture, or deliver
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (2)(c)10., (3), or
 (4) drugs within 1,000 feet of
 public housing facility.

2436

893.13(4)(c) 3rd Use or hire of minor; deliver
 to minor other controlled
 substances.

2437

893.13(6)(a) 3rd Possession of any controlled
 substance other than felony
 possession of cannabis.

2438

893.13(7)(a)8. 3rd Withhold information from
 practitioner regarding previous
 receipt of or prescription for
 a controlled substance.

2439

893.13(7)(a)9. 3rd Obtain or attempt to obtain

Page 93 of 136

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588-02151C-18

20188c1

controlled substance by fraud,
 forgery, misrepresentation,
 etc.

2440

893.13(7)(a)10. 3rd Affix false or forged label to
 package of controlled
 substance.

2441

893.13(7)(a)11. 3rd Furnish false or fraudulent
 material information on any
 document or record required by
 chapter 893.

2442

893.13(8)(a)1. 3rd Knowingly assist a patient,
 other person, or owner of an
 animal in obtaining a
 controlled substance through
 deceptive, untrue, or
 fraudulent representations in
 or related to the
 practitioner's practice.

2443

893.13(8)(a)2. 3rd Employ a trick or scheme in the
 practitioner's practice to
 assist a patient, other person,
 or owner of an animal in
 obtaining a controlled
 substance.

2444

Page 94 of 136

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	588-02151C-18		20188c1
2445	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
2446	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
2447	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
2448	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
2449	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
2450	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
2451			
2452	(d) LEVEL 4		

Page 95 of 136

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

	588-02151C-18		20188c1
2453	Florida Statute	Felony Degree	Description
2454	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2455	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
2456	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
2457	517.07(1)	3rd	Failure to register securities.
2458	517.12(1)	3rd	Failure of dealer,

Page 96 of 136

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	588-02151C-18		20188c1	
			associated person, or issuer of securities to register.	
2459	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.	
2460	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.	
2461	784.075	3rd	Battery on detention or commitment facility staff.	
2462	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.	
2463	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.	
2464	784.081(3)	3rd	Battery on specified official or employee.	
2465	784.082(3)	3rd	Battery by detained	

	588-02151C-18		20188c1	
			person on visitor or other detainee.	
2466	784.083(3)	3rd	Battery on code inspector.	
2467	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.	
2468	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.	
2469	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.	
2470	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated	

	588-02151C-18		20188c1
			person.
2471	787.07	3rd	Human smuggling.
2472	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
2473	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
2474	790.115(2)(c)	3rd	Possessing firearm on school property.
2475	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
2476	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
2477	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an

	588-02151C-18		20188c1
			unoccupied conveyance; unarmed; no assault or battery.
2478	810.06	3rd	Burglary; possession of tools.
2479	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
2480	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
2481	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
2482	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
2483	817.505(4)(a)	3rd	Patient brokering.
2484	817.563(1)	3rd	Sell or deliver substance other than controlled substance

	588-02151C-18		20188c1
			agreed upon, excluding
			s. 893.03(5) drugs.
2485			
	817.568 (2) (a)	3rd	Fraudulent use of
			personal identification
			information.
2486			
	817.625 (2) (a)	3rd	Fraudulent use of
			scanning device,
			skimming device, or
			reencoder.
2487			
	817.625 (2) (c)	3rd	Possess, sell, or
			deliver skimming device.
2488			
	828.125 (1)	2nd	Kill, maim, or cause
			great bodily harm or
			permanent breeding
			disability to any
			registered horse or
			cattle.
2489			
	837.02 (1)	3rd	Perjury in official
			proceedings.
2490			
	837.021 (1)	3rd	Make contradictory
			statements in official
			proceedings.
2491			

	588-02151C-18		20188c1
	838.022	3rd	Official misconduct.
2492			
	839.13 (2) (a)	3rd	Falsifying records of an
			individual in the care
			and custody of a state
			agency.
2493			
	839.13 (2) (c)	3rd	Falsifying records of
			the Department of
			Children and Families.
2494			
	843.021	3rd	Possession of a
			concealed handcuff key
			by a person in custody.
2495			
	843.025	3rd	Deprive law enforcement,
			correctional, or
			correctional probation
			officer of means of
			protection or
			communication.
2496			
	843.15 (1) (a)	3rd	Failure to appear while
			on bail for felony (bond
			estreature or bond
			jumping).
2497			
	847.0135 (5) (c)	3rd	Lewd or lascivious
			exhibition using

588-02151C-18

20188c1

computer; offender less
than 18 years.

2498

874.05(1)(a)

3rd

Encouraging or
recruiting another to
join a criminal gang.

2499

893.13(2)(a)1.

2nd

Purchase of cocaine (or
other s. 893.03(1)(a),
(b), or (d), (2)(a),
(2)(b), or (2)(c)5.
~~(2)(c)4.~~ drugs).

2500

914.14(2)

3rd

Witnesses accepting
bribes.

2501

914.22(1)

3rd

Force, threaten, etc.,
witness, victim, or
informant.

2502

914.23(2)

3rd

Retaliation against a
witness, victim, or
informant, no bodily
injury.

2503

918.12

3rd

Tampering with jurors.

2504

934.215

3rd

Use of two-way
communications device to

Page 103 of 136

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588-02151C-18

20188c1

facilitate commission of
a crime.

2505

2506

2507

2508

2509

2510

(e) LEVEL 5

Florida
Statute

Felony
Degree

Description

2511

316.027(2)(a)

3rd

Accidents involving personal
injuries other than serious
bodily injury, failure to stop;
leaving scene.

2512

316.1935(4)(a)

2nd

Aggravated fleeing or eluding.

2513

316.80(2)

2nd

Unlawful conveyance of fuel;
obtaining fuel fraudulently.

2514

322.34(6)

3rd

Careless operation of motor
vehicle with suspended license,
resulting in death or serious
bodily injury.

2515

327.30(5)

3rd

Vessel accidents involving
personal injury; leaving scene.

2516

Page 104 of 136

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588-02151C-18 20188c1

2517	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
2518	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2519	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
2520	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.

Page 105 of 136

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588-02151C-18 20188c1

2521	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2522	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2523	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2524	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2525	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2526	790.01(2)	3rd	Carrying a concealed firearm.
2527	790.162	2nd	Threat to throw or discharge destructive device.
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms

Page 106 of 136

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	588-02151C-18		20188c1	
				in violent manner.
2528	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
2529	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
2530	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
2531	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
2532	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
2533	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
2534	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2535				

	588-02151C-18		20188c1	
	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2536	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
2537	812.131(2)(b)	3rd		Robbery by sudden snatching.
2538	812.16(2)	3rd		Owning, operating, or conducting a chop shop.
2539	817.034(4)(a)2.	2nd		Communications fraud, value \$20,000 to \$50,000.
2540	817.234(11)(b)	2nd		Insurance fraud; property value \$20,000 or more but less than \$100,000.
2541	817.2341(1), (2)(a) & (3)(a)	3rd		Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
2542	817.568(2)(b)	2nd		Fraudulent use of personal identification information; value of benefit, services

	588-02151C-18		20188c1	
			received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.	
2543				
	817.611(2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.	
2544				
	817.625(2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.	
2545				
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.	
2546				
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
2547				
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes	

Page 109 of 136

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	588-02151C-18		20188c1	
			sexual conduct by a child.	
2548				
	839.13(2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.	
2549				
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.	
2550				
	847.0135(5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	
2551				
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.	
2552				
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
2553				
	874.05(1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
2554				
	874.05(2) (a)	2nd	Encouraging or recruiting	

Page 110 of 136

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588-02151C-18

20188c1

person under 13 years of age to
join a criminal gang.

2555

893.13(1)(a)1. 2nd Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
~~(2)(e)4.~~ drugs).

2556

893.13(1)(c)2. 2nd Sell, manufacture, or deliver
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., ~~(2)(e)5.~~,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10., (3), or
(4) drugs) within 1,000 feet of
a child care facility, school,
or state, county, or municipal
park or publicly owned
recreational facility or
community center.

2557

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
~~(2)(e)4.~~ drugs) within 1,000
feet of university.

2558

Page 111 of 136

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588-02151C-18

20188c1

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., ~~(2)(e)5.~~,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (2)(c)10., (3), or
(4) within 1,000 feet of
property used for religious
services or a specified
business site.

2559

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)5.
~~(2)(e)4.~~ drugs) within 1,000
feet of public housing
facility.

2560

893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

2561

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

2562

2563

Page 112 of 136

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	588-02151C-18		20188c1
2564	(g) LEVEL 7		
2565			
	Florida	Felony	
	Statute	Degree	Description
2566			
	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
2567			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
2568			
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2569			
	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
2570			
	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

Page 113 of 136

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	588-02151C-18		20188c1
			bodily harm, permanent disfiguration, permanent disability, or death.
2571			
	409.920	3rd	Medicaid provider fraud; \$10,000 or less.
	(2)(b)1.a.		
2572			
	409.920	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
	(2)(b)1.b.		
2573			
	456.065(2)	3rd	Practicing a health care profession without a license.
2574			
	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
2575			
	458.327(1)	3rd	Practicing medicine without a license.
2576			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
2577			
	460.411(1)	3rd	Practicing chiropractic medicine without a

Page 114 of 136

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	588-02151C-18		20188c1	
			license.	
2578	461.012(1)	3rd	Practicing podiatric medicine without a license.	
2579	462.17	3rd	Practicing naturopathy without a license.	
2580	463.015(1)	3rd	Practicing optometry without a license.	
2581	464.016(1)	3rd	Practicing nursing without a license.	
2582	465.015(2)	3rd	Practicing pharmacy without a license.	
2583	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.	
2584	467.201	3rd	Practicing midwifery without a license.	
2585	468.366	3rd	Delivering respiratory care services without a license.	
2586				

Page 115 of 136

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	588-02151C-18		20188c1	
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.	
2587	483.901(7)	3rd	Practicing medical physics without a license.	
2588	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	
2589	484.053	3rd	Dispensing hearing aids without a license.	
2590	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.	
2591	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.	
2592	560.125(5)(a)	3rd	Money services business by	

Page 116 of 136

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

	588-02151C-18		20188c1	unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2593	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
2594	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2595	775.21(10)(b)	3rd		Sexual predator working where children regularly congregate.
2596	775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
2597	782.051(3)	2nd		Attempted felony murder of a person by a person other

Page 117 of 136

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	588-02151C-18		20188c1	than the perpetrator or the perpetrator of an attempted felony.
2598	782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
2599	782.071	2nd		Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
2600	782.072	2nd		Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2601	784.045(1)(a)1.	2nd		Aggravated battery; intentionally causing great bodily harm or disfigurement.
2602	784.045(1)(a)2.	2nd		Aggravated battery; using deadly weapon.
2603				

Page 118 of 136

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	588-02151C-18		20188c1
2604	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
2605	784.048(7)	3rd	Aggravated stalking; violation of court order.
2606	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
2607	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
2608	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
2609	784.081(1)	1st	Aggravated battery on specified official or employee.
2610	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

Page 119 of 136

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

	588-02151C-18		20188c1
2611	784.083(1)	1st	Aggravated battery on code inspector.
2612	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
2613	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
2614	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2615	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2616	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2617	790.165(3)	2nd	Possessing, displaying, or

Page 120 of 136

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	588-02151C-18		20188c1	
			threatening to use any hoax bomb while committing or attempting to commit a felony.	
2618	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.	
2619	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.	
2620	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.	
2621	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.	
2622				

Page 121 of 136

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

	588-02151C-18		20188c1	
	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.	
2623	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.	
2624	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.	
2625	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.	
2626	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.	
2627	806.01(2)	2nd	Maliciously damage	

Page 122 of 136

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

	588-02151C-18		20188c1	
			structure by fire or explosive.	
2628	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.	
2629	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.	
2630	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.	
2631	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.	
2632	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.	
2633	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than	

Page 123 of 136

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	588-02151C-18		20188c1	
			\$50,000, grand theft in 2nd degree.	
2634	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	
2635	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	
2636	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.	
2637	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.	
2638	812.131(2)(a)	2nd	Robbery by sudden snatching.	
2639	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.	
2640				

Page 124 of 136

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

	588-02151C-18		20188c1
2641	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
2642	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2643	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
2644	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
2645	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
2646	817.611(2)(b)	2nd	Traffic in or possess 15

Page 125 of 136

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

	588-02151C-18		20188c1
			to 49 counterfeit credit cards or related documents.
2647	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2648	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
2649	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2650	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
2651	837.05(2)	3rd	Giving false information about alleged capital felony to a law

Page 126 of 136

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

	588-02151C-18		20188c1
			enforcement officer.
2652	838.015	2nd	Bribery.
2653	838.016	2nd	Unlawful compensation or reward for official behavior.
2654	838.021(3)(a)	2nd	Unlawful harm to a public servant.
2655	838.22	2nd	Bid tampering.
2656	843.0855(2)	3rd	Impersonation of a public officer or employee.
2657	843.0855(3)	3rd	Unlawful simulation of legal process.
2658	843.0855(4)	3rd	Intimidation of a public officer or employee.
2659	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
2660	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex

Page 127 of 136

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

	588-02151C-18		20188c1
			act.
2661	872.06	2nd	Abuse of a dead human body.
2662	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2663	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
2664	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> (2)(c)4. within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community

Page 128 of 136

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

	588-02151C-18		20188c1	
			center.	
2665	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> (2)(c)4. , within 1,000 feet of property used for religious services or a specified business site.	
2666	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.	
2667	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.	
2668	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.	
2669	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.	
2670				

	588-02151C-18		20188c1	
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.	
2671	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.	
2672	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.	
2673	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.	
2674	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.	
2675	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.	
2676	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.	
2677				

	588-02151C-18		20188c1
	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
2678	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2679	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2680	893.135 (1)(j)1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
2681	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2682	893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
2683	893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or

Page 131 of 136

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

	588-02151C-18		20188c1
			more, less than 1,000 grams.
2684	893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
2685	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2686	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2687	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2688	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

Page 132 of 136

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

	588-02151C-18		20188c1
2689	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2690	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
2691	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2692	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2693	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
2694	944.607(10)(a)	3rd	Sexual offender; failure

Page 133 of 136

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

	588-02151C-18		20188c1
			to submit to the taking of a digitized photograph.
2695	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2696	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2697	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2698	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2699	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to

Page 134 of 136

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

588-02151C-18

20188c1

address verification;
providing false
registration information.

Section 20. For the 2018-2019 fiscal year:

(1) (a) The nonrecurring sum of \$27,035,360 from the Federal Grants Trust Fund, and the recurring sum of \$15,520,000 from the General Revenue Fund are appropriated to the Department of Children and Families. These funds shall be used for the following services to address opioid and other substance abuse disorders: outpatient, case management, and after care services; residential treatment; medication-assisted treatment, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and outreach targeted to pregnant women.

(b) From a total of \$4,720,000 of the recurring general revenue funds specified in paragraph (a), the Department of Children and Families shall contract with a nonprofit organization for the distribution and associated costs for the following drugs as part of its medication assisted treatment program for substance abuse disorders:

1. \$472,000 for methadone;
2. \$1,888,000 for buprenorphine; and
3. \$2,360,000 for naltrexone extended-release injectable.

(2) The recurring sum of \$6 million from the General Revenue Fund is appropriated to the Office of the State Courts Administrator for treatment of substance abuse disorders in

588-02151C-18

20188c1

individuals involved in the criminal justice system, individuals who have a high likelihood of criminal justice involvement, or who are in court-ordered, community-based drug treatment. The Office of the State Courts Administrator shall use the funds to contract with a non-profit entity for the purpose of distributing the medication. The Office of the State Courts Administrator shall make available the following drugs:

(a) \$600,000 for methadone;

(b) \$2.4 million for buprenorphine; and

(c) \$3 million for naltrexone extended-release injectable.

(3) The recurring sum of \$5 million from the General Revenue Fund is appropriated to the Department of Health for the purchase of naloxone to be made available to emergency responders.

Section 21. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

2/15/18

Meeting Date

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

8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St

Phone 352 359 6835

Street

Tallahassee FL 32311

City

State

Zip

Email Jake@arf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

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)

2/15/18

Meeting Date

SB 8

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.
Street

Phone 850 224-6496

City

State

Zip

Email jscott@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical 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.

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S-001 (10/14/14)

APPEARANCE RECORD

2.15.18

Meeting Date

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

8

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644

Phone 813.264.2977

Street

TAMPA

FL

33694

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

Meeting Date

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

SB8

Bill Number (if applicable)

Topic

SB8 Controlled Substances - Opioid Crisis

Amendment Barcode (if applicable)

Name

Wette DuBose

Job Title

Heart Gallery, Executive Director

Address

401 NE 4th

Phone

Street

Fort Lauderdale, FL

State

33301

Zip

Email

vette@heartgalleryofbroward.org

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Heart Gallery of Florida (Coalition)

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Feb 15, 18

Meeting Date

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

8

Bill Number (if applicable)

Topic OPioid PREscriBING

Amendment Barcode (if applicable)

Name Toni Large

Job Title _____

Address 519 E. Park Ave

Street

Phone (850) 556-1461Tallahassee FL 32301

City

State

Zip

Email toni@sulaw.netSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Orthopedic SocietyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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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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)

2-15-2018

Meeting Date

8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Immediate Past Chair

Address 404 E. Sixth Avenue

Phone 5616354168

Street

Tallahassee

FL

32303

Email ERIN.CHOY@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

Meeting Date

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

8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title _____

Address 205 S. Adams St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 954-648-1204Email Candice@ericksconsultants.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Palm Beach CountyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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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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)

2/15/18

Meeting Date

8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Kendra Briscoe

Job Title Assistant

Address 3631 Mitcham Drive

Phone 850-219-3631

Street
Tallahassee FL 32308
City State Zip

Email kbriscoe@fpca.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Feb. 15, 2018

Meeting Date

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

CS/SB 8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Karla D. Ellis

Job Title Volunteer / National Alliance on Mental Illness

Address P. O. Box 961

Phone 850-671-4445

Street

Tallahassee

FL

32302

Email Info@namiflorida.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Alliance on Mental Illness

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

Meeting Date

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

SB 8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews

Street

Ft. Lauderdale

City

FL

State

33301

Zip

Phone 954-789-9293

Email devwest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County

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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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)

2/15/18

Meeting Date

8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Roger Beaubien

Job Title Special Counsel

Address VL-01 The Capitol
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of the Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/15/18

Meeting Date

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

SB 8

Bill Number (if applicable)

Topic ORAID CRISIS

Amendment Barcode (if applicable)

Name NATALIE KELLY

Job Title CEO

Address 122 S CALHOUN STREET

Street

Phone 850 570-5747

TALLAHASSEE FL 32301

City

State

Zip

Email NATALIE@FL

MANAGINGENTITIES.COM

Speaking: ☒ For ☐ Against ☒ Information

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

Representing FLORIDA ASSOCIATION OF MANAGING 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.

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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)

2/15/18

Meeting Date

8

Bill Number (if applicable)

Topic Controlled Substance

Amendment Barcode (if applicable)

Name Jodi James

Job Title Ex Director

Address 2613 Larry Ct

Street

Phone 321 890 7302

Melbourne Fl 32935

City

State

Zip

Email jamesflorida@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL Cannabis Action Network

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General
Government
Commerce and Tourism
Community Affairs
Ethics and Elections
Appropriations Subcommittee on Civil and Criminal
Justice
Rules

SENATOR JOSE JAVIER RODRIGUEZ

Deputy Democratic Whip
37th District

February 13th, 2018

Chair Lizbeth Benacquisto
Rules Committee
404 S. Monroe St.
Tallahassee, FL 32399-1100
Sent via email to benacquisto.lizbeth@flsenate.gov

Chair Benacquisto,

I respectfully request to be excused from the February 15th, 2018 meeting of the Rules Committee. I have a commitment in the district that which I must attend to.

Please let me or my staff know if you have any questions.

Thank you,

Regards,

A handwritten signature in black ink, appearing to read "JR", followed by a stylized flourish or second signature.

Senator José Javier Rodríguez
District 37, Miami

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- ☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/15/2018 10:07:56 AM

Ends: 2/15/2018 11:55:36 AM **Length:** 01:47:41

10:08:01 AM Chair calls meeting to order
10:08:23 AM Quorum is present
10:08:47 AM Senator Rodriguez is excused
10:09:34 AM tab 4 SB 674 by Senator Young
10:10:05 AM Senator Thurston asks question of sponsor
10:10:48 AM Senator Young states HB is identical to SB
10:11:33 AM Roll call on SB 674 voted favorably
10:11:49 AM tab 5 SB 1020 by Senator Young
10:13:19 AM substitute amendment voted favorably 823640
10:14:06 AM roll call vote on SB 1020 voted favorable with CS
10:14:24 AM tab 6 SB 826 by Senator Hukill
10:15:07 AM take up PCS 487372
10:16:22 AM Sarah Cucci taxpayers advocate private citizen
10:19:12 AM Senator Braynon asks question
10:19:48 AM Senator Thurston asks question of Ms. Cucci
10:20:48 AM Senator Thurston asks a line of questions
10:21:16 AM Leader Braynon in debate of this bill
10:21:53 AM Senator Hukill responds
10:23:14 AM Roll call vote on SB 826 voted favorably
10:23:43 AM tab 2 SR 398 by Senator Bracy
10:24:46 AM roll call vote on SR 398 voted favorably
10:25:14 AM tab 8 SB 1316 by Senator Simmons
10:26:16 AM strike all amendment 138372 late filed no objection
10:26:53 AM on bill as amended
10:27:29 AM roll call vote on CS/SB 1316 voted favorably
10:27:49 AM tab 3 CS/SB 618 by Senator Baxley
10:28:45 AM Senator Thurston asks question on bill
10:29:39 AM Senator Baxley explains bill further
10:30:53 AM Senator Montford asks question of sponsor
10:32:01 AM Senator Baxley explain issues regarding subpoenas served
10:32:48 AM Senator Baxley says bill delays suspect being notified
10:33:17 AM Mike Spadafora, Brevard County Sheriff's Office speaks
10:34:58 AM Senator Thurston asks question of Agent
10:35:37 AM Deputy responds
10:36:15 AM Deputy says State Atty issues subpoenas
10:36:38 AM CJ Johnson to speak on bill
10:37:31 AM Senator Thurston with a follow up question
10:38:38 AM Senator Thurston asks if someone is here from the Atty General's Office
10:39:06 AM Phil Archer, State Attorney, speaks on bill
10:40:34 AM Senator Thurston asks further questions
10:42:47 AM Senator Thurston further questions if content is listed in subpoenas
10:43:05 AM Phil Archer said not with probably cause before a Judge

10:43:31 AM Brevard County Sheriff speaking on bill
10:44:53 AM John Sawicki speaks for himself
10:46:15 AM Senator Thurston asks question of Mr. Sawicki
10:48:43 AM Senator Lee asks question
10:50:15 AM Senator Brandes asks question of Mr. Sawicki
10:51:03 AM Mr. Sawicki responds
10:51:33 AM Senator Brandes asks for clarification from staff
10:52:17 AM Mike Erickson explains Florida and Federal laws required for supeonas
10:56:24 AM Senator Brandes asks question of staff
10:56:36 AM Mike Erickson responds
10:58:42 AM Staff responds to extention of notification process
10:59:07 AM Senator Lee asks for further clarification
10:59:20 AM Mike Erickson responds
11:00:08 AM Senator Lee asks another question regarding expanding notice law
11:00:45 AM Mike Erickson responds
11:01:09 AM Senator Thurston asks question of staff
11:01:27 AM Mike Erickson responds
11:03:18 AM Professional staff Mike Erickson continues
11:04:25 AM Senator Thurston continues with follow up questions
11:06:06 AM Mike Erickson responds
11:06:28 AM Senator Brandes in debate of bill and supports bill
11:07:26 AM Senator Thurston in debate of the bill and agrees in extending time of notification
11:08:00 AM Senator Thurston concerns regarding content and privacy issues
11:08:49 AM Senator Thurston says he will not support bill until that changes
11:08:58 AM Senator Baxley closes on bill
11:09:36 AM Roll call vote on SB 618 reported favorably
11:09:55 AM tab 1 CS/SB 164 by Senator Grimsley
11:10:40 AM 278860 amendment adopted
11:10:47 AM back on bill as amended
11:11:38 AM Roll call vote on CS/SB 164 reported favorably
11:12:07 AM tab 11 Senator Brandes
11:13:45 AM Roll call vote on SB 970, reported favorably
11:14:10 AM tab 7 by Senator Garcia, SB 894
11:15:15 AM strike all 101422 late filed adopted
11:15:25 AM back on bill as amended
11:15:52 AM Roll call vote on SB 894 reported favorably with CS
11:16:18 AM tab 12 SB 1776 by Senator Bradley
11:17:15 AM Ari Bargil, Institute for Justice, speaks in support of the bill
11:18:02 AM Mr. Rickets testimony being read for the record
11:19:29 AM Senator Lee ask question to Mr. Bargil
11:20:47 AM Senator Lee asks question regarding City laws
11:21:54 AM David Cruz, Florida League of Cities, speaks against bill
11:23:53 AM Senator Bradley closes on bill
11:25:39 AM Roll call vote on SB 1776 reported favorably
11:26:02 AM tab 9 SB 738 by Senator Perry
11:26:18 AM amendment 785894 withdrawn
11:26:32 AM roll call vote on SB 738 reported favorably
11:26:59 AM Chair turns over to Vice Chairman Braynon
11:27:10 AM tab 10 by Senator Perry SB 988
11:27:42 AM roll call vote on SB 988 reported favorably
11:28:01 AM tab 13 by CS/SB 8 by Senator Benacquisto
11:32:02 AM Jeff Scott Florida Medical Association speaks against bill

11:33:51 AM Senator Lee asks question of Mr. Scott
11:34:28 AM Mr. Scott speaks about supply issues of opioids
11:35:31 AM Senator Thurston asks question about exceptions to limits
11:36:29 AM Senator Thurston follow up
11:37:59 AM Senator Benacquisto gives further explanation of bill
11:39:07 AM Yvette DuBose, Heart Gallery of Florida, speaks on the bill
11:40:46 AM Senator Thurston asks question of Ms. DuBose
11:43:17 AM Senator Book makes motion for time certain vote at 11:55 am
11:44:07 AM Toni Large, Florida Orthopedic Society, speaks against bill
11:48:37 AM Jodi James, Florida Cannabis Action Network, speaks on the bill
11:51:29 AM debate on bill
11:51:37 AM Senator Brandes in debate
11:52:07 AM Senator Thurston in debate
11:53:02 AM Senator Benacquisto to close on bill
11:54:54 AM Roll call vote on CS/SB 8 reported favorably
11:55:19 AM Motion by Senator Flores
11:55:29 AM Senator Brandes moves we adjourn