The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Flores, Chair
Senator Joyner, Vice Chair

MEETING DATE: Thursday, February 16, 2012
TIME: 10:30 a.m.—12:45 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Flores, Chair; Senator Joyner, Vice Chair; Senators Braynon, Gardiner, Richter, Simmons, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1316** Health Regulation / Gaetz (Compare H 261, CS/CS/CS/H 385, H 477, CS/CS/H 653, CS/CS/H 943, H 1091, CS/CS/S 208, CS/S 320, CS/S 544, S 718, S 788, S 1014, CS/S 1506, CS/S 1884)	Health Care; Revising the fine that may be imposed against a home health agency for failing to timely submit certain information to the Agency for Health Care Administration; authorizing the agency to review and analyze information from sources other than Medicaid-enrolled providers for purposes of determining fraud, abuse, overpayment, or neglect; authorizing the agency and the Medicaid Fraud Control Unit to review certain records; requiring the agency to submit a report to the Legislature on adverse incident reports from assisted living facilities; revising the federal offenses for which the Department of Health must issue an emergency order suspending the license of certain health care professionals; revising certain prohibited acts regarding an optometrist conducting surgery and dispensing, administering, ordering, supplying, or selling certain drugs, etc. HR 01/31/2012 Temporarily Postponed HR 02/09/2012 Fav/CS JU 02/16/2012 Favorable BC	Favorable Yeas 5 Nays 2
2	**CS/SB 1506** Health Regulation / Thrasher (Compare H 261, CS/CS/CS/H 385, S 718, S 788, S 1014, CS/S 1316)	Health Care; Authorizing the Board of Optometry to adopt rules for the administration and prescription of ocular pharmaceutical agents; requiring that a certified optometrist complete a course and subsequent examination on general and ocular pharmacology; prohibiting the board, the Department of Health, or the State Surgeon General from deleting an oral pharmaceutical agent listed in the statutory formulary; requiring that adverse incidents in the practice of optometry be reported to the Department of Health; revising the definition of the term “practitioner” to include certified optometrists for purposes of the Florida Comprehensive Drug Abuse Prevention and Control Act, etc. HR 02/09/2012 Fav/CS JU 02/16/2012 Favorable BC	Favorable Yeas 5 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 292** Community Affairs / Bennett (Similar CS/CS/H 937, Compare CS/CS/CS/H 481, CS/S 860)	Legal Notices; Requiring that, after a specified date, if a legal notice is published in a newspaper, the newspaper publishing the notice shall also place the notice on a website maintained by the newspaper; revising physical requirements for proof of publication affidavits; authorizing electronic affidavits that meet specified requirements; limiting the rate that may be charged for government notices required to be published more than once in certain circumstances; requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements; making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline, etc. CA 01/12/2012 Fav/CS JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
4	**SB 782** Bennett (Compare CS/H 701)	Florida Evidence Code; Providing that certain specified spontaneous statements relating to a call to an emergency operations center, such as police, fire, or emergency rescue personnel, is admissible as evidence if the call is for the immediate dispatch of personnel for emergency purposes; providing that an excited utterance made by a victim to an emergency responder, including police, fire, or emergency personnel, is admissible if the victim or witness is under the stress or excitement of the event while the statement is being made; providing that a statement not specifically covered by any other hearsay exception, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that the interests of justice will be best served by admitting the statement into evidence, etc. JU 02/16/2012 Fav/CS MS	Fav/CS Yeas 7 Nays 0
5	**CS/SB 732** Criminal Justice / Bogdanoff (Similar H 561)	Sentences of Inmates; Revising the quantity of a controlled substance which a person must knowingly sell, purchase, manufacture, deliver, or bring into this state with the intent to distribute in order to be subject to the automatic imposition of a mandatory minimum term of imprisonment; providing the method for determining the weight of a controlled substance in a mixture that is a prescription drug, etc. CJ 01/25/2012 Workshop-Discussed CJ 01/31/2012 Fav/CS JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 1050** Banking and Insurance / Bogdanoff (Similar CS/H 823, CS/S 978, Compare CS/CS/H 505)	Fiduciaries; Requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; deleting a provision authorizing a trustee to release the power to adjust between principal and income if the trustee desires to convert the form of certain trusts, etc. BI 02/07/2012 Fav/CS JU 02/16/2012 Favorable	Favorable Yeas 7 Nays 0
7	**SB 1738** Garcia (Compare CS/HJR 169, CS/H 357, Link SJR 1740)	Homestead Exemptions For Seniors; Authorizing the board of county commissioners of any county or the governing authority of any municipality to adopt an ordinance granting an additional homestead tax exemption up to the assessed value of the property to an owner who has maintained permanent residency on the property for a specified duration, who has attained age 65, and whose household income does not exceed a specified amount; providing for annual cost-of-living adjustments of the household-income limitation relating to such additional homestead exemption, etc. CA 01/30/2012 Favorable JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
8	**SJR 1740** Garcia (Similar CS/HJR 169, Compare CS/H 357, Link S 1738)	Additional Homestead Tax Exemption; Proposing an amendment to the State Constitution to authorize the Legislature, by general law, to allow counties and municipalities to grant an additional homestead tax exemption not exceeding the assessed value of the property to an owner who has maintained permanent residency on the property for a specified duration, who has attained age 65, and whose household income does not exceed a specified amount, etc. CA 01/30/2012 Favorable JU 02/16/2012 Favorable BC	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/SB 1172** Criminal Justice / Detert (Identical CS/H 1285)	Criminal Conduct; Defining the term "mental injury" with respect to the offenses of abuse, aggravated abuse, and neglect of a child; requiring that a physician or psychologist acting as an expert witness in certain proceedings have certain credentials; redefining the term "crime" for purposes of crime victims compensation to include additional forms of injury; redefining the term "victim" to conform with the modified definition of the term "crime", etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
10	**CS/SB 2054** Children, Families, and Elder Affairs / Children, Families, and Elder Affairs (Compare H 7093)	Domestic Violence; Defining the term "coalition" as it relates to domestic violence; revising provisions relating to certification of domestic violence centers; providing specified additional duties for and authority of the Florida Coalition Against Domestic Violence; providing the duties of the coalition as it manages the delivery of services to the state's domestic violence program; requiring the coalition, rather than the department, to make a specified annual report; requiring the coalition, rather than the department, to perform certain duties relating to certification of domestic violence centers; revising provisions relating to expiration of a center's annual certificate; repealing provisions relating to the certification and monitoring of batterers' intervention programs, etc. CF 01/25/2012 Fav/CS JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
11	**CS/SB 1166** Regulated Industries / Simmons (Similar H 7095, Compare CS/CS/CS/H 481)	Clerks of Court; Requiring the Department of the Lottery to use the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptroller, Inc., to determine whether a prize winner owes outstanding fines, fees, or court costs to the state before it may pay certain prizes; requiring clerks of the circuit courts to use the Comprehensive Case Information System and to submit data to the system based on case types designated by the Supreme Court of Florida; providing that an action to collect any court costs, fees, or fines owed to the state may be commenced at any time; providing that convictions of certain types of criminal offenses which are reported to the Comprehensive Case Information System of the Florida Association of Clerks and Comptroller, Inc., are an immediate, serious danger to the public health, safety, or welfare, etc. RI 02/07/2012 Fav/CS JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 1830** Flores (Similar CS/H 921, Compare H 281, S 1082, CS/S 1182)	Landlords and Tenants; Providing application of certain eviction procedures under part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act"; revising and providing landlord disclosure requirements with respect to deposit money and advance rent; providing requirements for the disbursement of advance rents; providing a rebuttable presumption of receipt of security deposits and a limitation on liability with respect to such deposits; providing that a landlord is not required to notify a tenant of a mortgage default; providing that a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease, etc. JU 02/09/2012 Temporarily Postponed JU 02/16/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 1
13	**SB 106** Siplin (Similar H 81)	Postsecondary Student Fees; Providing an exemption from payment of nonresident tuition at a state university or a Florida College System institution for a student who meets specified requirements; requiring that the Board of Governors of the State University System adopt regulations and the State Board of Education adopt rules, etc. JU 02/16/2012 Unfavorable HE CJ BC	Unfavorable Yeas 3 Nays 4

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 Judiciary Committee

BILL: CS/SB 1316

INTRODUCER: Health Regulation Committee and Senator Gaetz

SUBJECT: Health Care

DATE: February 15, 2012 REVISED: 02/16/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/CS**
2.	Munroe	Cibula	JU	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill modifies existing statutory provisions relating to health care fraud, particularly in the Florida Medicaid program. These modifications include the following:

- Reducing the penalty for home health agencies that fail to timely file certain reports;
- Adding specified offenses for which persons rendering care under the Medicaid consumer-directed care program must be screened and rescreened;
- Requiring Medicaid providers to retain all medical and Medicaid-related records for 6 years, rather than the current 5-year retention period;
- Requiring Medicaid providers to report a change in any principal of the provider to the Agency for Health Care Administration (AHCA) in writing no later than 30 days after the change occurs;
- Defining the term “administrative fines” for purposes of liability of parties for payment of such fines in the event of a change of ownership;
- Authorizing the AHCA to conduct onsite inspections of the service location of a provider applying for a provider agreement, before entering into a provider agreement with that provider, to determine the provider’s ability to provide services in compliance with the Medicaid program and professional regulations;

- Amending the surety bond requirements for certain Medicaid providers to clarify that the additional bond required by the AHCA, if a provider's billing during the first year exceeds the bond amount, need not exceed $50,000 for certain providers;
- Removing certain exceptions to background screening requirements for Medicaid providers;
- Including participants in a Medicaid managed care provider network in the definition of "Medicaid provider" for purposes of oversight of the integrity of the Medicaid program;
- Authorizing the AHCA to review and analyze information from sources other than enrolled Medicaid providers in conducting investigations of potential fraud, abuse, overpayment or recipient neglect;
- Expanding the list of offenses for which the AHCA must terminate the participation of a Medicaid provider in the Medicaid program;
- Requiring the AHCA to impose the sanction of termination for cause against a provider that voluntarily relinquishes its Medicaid provider number under certain circumstances;
- Requiring the AHCA, when it is making a determination that an overpayment has occurred, to base its determination solely upon information available to it before issuance of the audit report and upon contemporaneous records;
- Removing a requirement that the AHCA pay interest at the rate of 10 percent a year on provider payments that have been withheld under suspicion of fraud or abuse, if it is determined that there was no fraud or abuse;
- Requiring overpayments and fines to be paid within 30 days after a final order;
- Clarifying the scope of the immunity from civil liability for persons who provide the state with information about fraud or suspected fraudulent acts by a Medicaid provider; and
- Modifying the grounds under which a professional board or the Department of Health (DOH) must refuse to admit a candidate to an examination and refuse to issue or renew a license, certificate, or registration of a health care practitioner.

The bill reinstates certain statutory provisions that previously were repealed. The reinstated provisions include:

- The submission by the AHCA of an annual report on adverse incidents reported by assisted living facilities; and
- Medical examinations and mental health evaluations of residents of assisted living facilities who appear to need care beyond that which the facility is licensed to provide.

The bill includes the following new provisions:

- Changes the definition of "accrediting organizations" for purposes of the regulation of hospitals and ambulatory surgical centers;
- Provides additional exemptions from licensure and regulation as a health care clinic for the following:
  - Pediatric cardiology or perinatology clinic facilities or anesthesia clinical facilities; and
  - Certain publicly traded entities;
- Imposes restrictions on the techniques used by Medicaid managed care plans to manage the use of prescribed drugs by enrollees;

- Requires allopathic and osteopathic physicians who perform certain liposuction procedures to register their offices with the DOH and be subject to inspection by the DOH;
- Authorizes a virtual inventory for certain prescription drugs that were purchased under the 340B program;
- Expands the types of ocular pharmaceutical agents that certified optometrists may administer and prescribe, including some controlled substances;
- Requires optometrists to report adverse incidents to the DOH;
- Authorizes optometrists to operate clinical laboratories;
- Requires clinical laboratories to accept specimens for examination from optometrists;
- Requires a medical negligence claimant to prove by clear and convincing evidence that the actions of a health care provider represented a breach of the prevailing professional standard of care in an action for damages based on death or personal injury which alleges that the death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests;
- Authorizes informal discovery to be used in ex parte interviews;
- Authorizes certain health care providers and their patients to enter into voluntary binding arbitration agreements and limit damages; and
- Requires the AHCA to report on the impact of the implementation of an expansion of managed care to new populations or the provision of new items and services.

This bill substantially amends the following sections of the Florida Statutes: 395.002, 400.474, 400.9905, 409.221, 409.907, 409.913, 409.920, 409.967, 429.23, 429.26, 456.036, 456.0635, 456.074, 458.309, 459.005, 463.002, 463.005, 463.0055, 463.0057, 463.006, 463.0135, 463.014, 483.035, 483.041, 483.181, 499.003, 766.102, 766.106, 893.02, and 893.05.

The bill also creates ss. 463.0141 and 766.1091, F.S., and one undesignated section of law.

II. Present Situation:

Regulation of Hospitals, Ambulatory Surgical Centers, and Mobile Surgical Facilities

Part I of ch. 395, F.S., provides for the licensure and regulation of hospitals, ambulatory surgical centers, and mobile surgical facilities by the AHCA. Section 395.0161, F.S., specifies the types of inspections and investigations of these facilities that the AHCA may conduct. The law requires the AHCA to accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization, provided the accreditation of the licensed facility is not provisional and provided the licensed facility authorizes release of, and the AHCA receives, the report of the accrediting organization. The law recognizes the following accrediting organizations for ch. 395, F.S.:

- Joint Commission on Accreditation of Healthcare Organizations;
- American Osteopathic Association;
- Commission on Accreditation of Rehabilitation Facilities; and
- Accreditation Association for Ambulatory Health Care, Inc.[1]

[1] *See* s. 395.002(1), F.S.

Section 1865(b)(1) of the Social Security Act permits Medicare providers and suppliers "accredited" by an approved national accreditation organization to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions. As of April 2011, the Centers for Medicare and Medicaid Services had approved the following accreditation organizations for hospitals and ambulatory surgical centers:

- Joint Commission;
- DNV Healthcare;
- American Osteopathic Association/Healthcare Facilities Accreditation Program;
- American Association for Accreditation of Ambulatory Surgery Facilities; and
- Accreditation Association for Ambulatory Health Care.[2]

Health Care Fraud

In 2009, the Legislature passed CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida. That bill increased the Medicaid program's authority to address fraud, particularly as it relates to home health services; increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida; and created disincentives to commit Medicaid fraud by increasing the administrative penalties for committing Medicaid fraud, posting sanctioned and terminated Medicaid providers on the AHCA website, and creating additional criminal felonies for committing health care fraud; among other anti-fraud provisions.[3]

With more than 2 years of experience with the implementation of CS/CS/CS/SB 1986, some changes have been identified which would enhance Florida's efforts to prevent health care fraud and abuse and to effectively counter fraud and abuse that does occur. This bill addresses some of the practical effects of CS/CS/CS/SB 1986, provisions that appear to be too onerous, gaps in enforcement authority, and consumer protections that were repealed that maybe should have been retained.

Home Health Agency Regulation

Home health agencies are licensed and regulated by the AHCA under the authority of part III of ch. 400, F.S. Section 400.474, F.S., authorizes the AHCA to deny, revoke, or suspend the license of a home health agency and requires the AHCA to impose a $5,000 fine against a home health agency that commits certain acts. One of these acts is the failure of the home health agency to submit a report, within 15 days after the end of each calendar quarter, which includes the following information:

- The number of insulin dependent diabetic patients receiving insulin-injection services from the home health agency;

[2] Centers for Medicare and Medicaid Services, *CMS-Approved Accreditation Organization Contact Information*, April 2011, *available at*: https://www.cms.gov/SurveyCertificationGenInfo/Downloads/AOContactInformation.pdf (last visited Feb. 14, 2012).
[3] *See* ch. 2009-223, Laws of Florida.

- The number of patients receiving both home health services from the home health agency and hospice services;
- The number of patients receiving home health services from that home health agency; and
- The names and license numbers of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health agency in excess of $25,000 during the calendar quarter.

These data items help identify possible fraud, such as billing for a high number of injection visits for insulin-dependent patients who could self-inject insulin, fraudulent billing for patients who did not receive the visits, possible duplicate payment for patients receiving both hospice and home health services, and nurses earning well above the average salary that could indicate false billing. The results of each quarter's reporting are shared with the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services' Medicare Program Integrity Miami Satellite Division, the AHCA's Medicaid Program Integrity Office, and the Medicare Fraud Investigations Manager at SafeGuard Services, LLC.

Regulation of Health Care Clinics

Health care clinics are regulated under part X of ch. 400, F.S. A clinic is defined as an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. Subsection 400.9905(4), F.S., creates a number of exemptions from the clinic licensure requirements.

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The AHCA is responsible for Medicaid. Medicaid serves approximately 3.19 million people in Florida. Estimated Medicaid expenditures for fiscal year 2011-2012 are approximately $20.3 billion. The statutory authority for the Medicaid program is contained in part III of ch. 409, F.S.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid. Section 409.907, F.S., establishes requirements for Medicaid provider agreements, which include, among other things, background screening requirements, notification requirements for change of ownership of a Medicaid provider, records retention requirements, authority for AHCA site-visits of provider service locations, and surety bond requirements.

Under s. 409.912(37), F.S., the AHCA is required to implement a Medicaid prescribed-drug spending-control program that includes a preferred drug list (PDL), which is a listing of cost-effective therapeutic options recommended by the Medicaid Pharmaceutical and Therapeutics Committee established pursuant to s. 409.91195, F.S. The PDL is used to inform clinicians of effective products that provide favorable net costs to Medicaid. The PDL educates clinicians about cost effective choices in prescribing for Medicaid recipients, but clinicians always retain

the option of selecting the drug product they feel is most appropriate for their patient by calling the Therapeutic Consultation Program. If the prescriber cannot readily obtain authorization the pharmacist may dispense a 72-hour supply. The pharmacist may also use his or her professional judgment if other situations arise that would necessitate a 72-hour emergency supply.[4]

Section 409.913, F.S., outlines provisions relating to the AHCA's responsibilities for oversight of the integrity of the Medicaid program, to ensure that fraudulent and abusive behavior and neglect of recipients occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate.

Sections 409.920, 409.9201, 409.9203, and 409.9205, F.S., contain provisions relating specifically to Medicaid fraud. One of these is a provision that provides immunity from civil liability for a person who provides the state with information about fraud or suspected fraud by a Medicaid provider, including a managed care organization.[5]

Part IV of ch. 409, F.S., requires all Medicaid recipients to enroll in a managed care plan unless they are specifically exempted. The statewide Medicaid managed care program includes the long-term care managed care program and the managed medical assistance program. The law directs the AHCA to begin implementation of the long-term care managed care program by July 1, 2012, with full implementation in all regions of the state by October 1, 2013. By January 1, 2013, the AHCA must begin implementation of the managed medical assistance program, with full implementation in all regions of the state by October 1, 2014.

Section 409.967, F.S., establishes requirements for the accountability of managed care plans in the new statewide Medicaid managed care program, including requirements regarding coverage of prescription drugs. The AHCA is required to establish standards relating to access to care, which include the following statements regarding prescription drugs:

- The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards.
- Each managed care plan must publish any prescribed drug formulary or preferred drug list on the plan's website in a manner that is accessible to and searchable by enrollees and providers.
- The plan must update the list within 24 hours after making a change.
- Each plan must ensure that the prior authorization process for prescribed drugs is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers.

These requirements will apply to all plans by October 1, 2014. Currently, operating Medicaid managed care plans may develop their own utilization and clinical protocols to manage drug costs, so long as they are ultimately no more restrictive than the Medicaid fee-for-service drug benefit. The contracts between the managed care plans and the AHCA specify requirements concerning access to the drug benefit.

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[4] Medicaid Pharmaceutical and Therapeutics Committee, Agency for Health Care Administration, *available at* http://ahca.myflorida.com/medicaid/Prescribed_Drug/pharm_thera/index.shtml (last visited Feb. 14, 2012).
[5] *See* s. 409.920(8), F.S.

Background Screening

Chapter 435, F.S., establishes standards for background screening for employment. Section 435.03, F.S., sets standards for Level 1 background screening. Level 1 background screening includes, but is not limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement and national criminal history records checks through the Federal Bureau of Investigation. They may also include local criminal records checks through local law enforcement agencies. Section 435.04(2), F.S., lists the offenses that will disqualify an applicant from employment.

Section 409.809, F.S., establishes background screening requirements and procedures for entities licensed by the AHCA. The AHCA must conduct Level 2 background screening for specified individuals. Each person subject to this section is subject to Level 2 background screening every 5 years. This section of law also specifies additional disqualifying offenses beyond those included in s. 435.04(2), F.S.

Florida Consumer-Directed Care Act

The Florida Consumer-Directed Care Act[6] requires the AHCA to establish the consumer-directed care program for persons with disabilities who need long-term care services and who are enrolled in one of the Medicaid home and community-based waiver programs. These types of waiver programs offer services that allow frail elders and people with disabilities to receive long-term-care services in their homes or in the community to keep them from needing care in a nursing facility or intermediate care facility for the developmentally disabled. The purpose of the consumer-directed care program is to allow enrolled persons to choose the providers of services and to direct the delivery of services, to best meet their long-term care needs.

All persons who render care in the program are required to undergo Level 2 background screening pursuant to ch. 435, F.S. The Florida Consumer-Directed Care Act does not currently require re-screening and authorizes persons who have been subject to background screening and who have not been unemployed for more than 90 days following such screening to not be required to be rescreened. They must attest to not having been convicted of a disqualifying offense since completing screening.

Regulation of Assisted Living Facilities

Assisted living facilities are regulated under part I of ch. 429, F.S. Section 429.23, F.S., requires assisted living facilities to submit to the AHCA, within 1 day after the occurrence of an adverse incident, a preliminary report concerning the incident. The assisted living facility is also required to provide a more detailed report to the AHCA within 15 days after the incident. The AHCA

[6] *See* s. 409.221, F.S.

collects and stores the data received from the adverse incident reports. The information is currently confidential and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the AHCA or appropriate regulatory board. However, the AHCA does fill public record's requests for statistical information, but detailed information on an adverse incident is not provided.

Section 429.26, F.S., establishes requirements relating to the appropriateness of placements of individuals in assisted living facilities and examinations of residents in an assisted living facility. The AHCA requires that residents be examined only at admission, every 3 years, and after a "significant change." A significant change is defined in Rule 58A-35.0131(33), F.A.C.,[7] to mean a sudden or major shift in behavior or mood, or deterioration in health status such as unplanned weight change, stroke, heart condition, or stage 2, 3, or 4 pressure sores. The facility administrator is responsible for determining the appropriateness of placement. If the AHCA determines a resident is not appropriate based on observations and facility documentation, a facility is cited for the violation and required to take appropriate action to discharge the resident to a facility that can meet the resident's needs.

Health Care Practitioner Licensure Authority of the Department of Health

The DOH is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture),
- Chapter 458 (medical practice),
- Chapter 459 (osteopathic medicine),
- Chapter 460 (chiropractic medicine),
- Chapter 461 (podiatric medicine),
- Chapter 462 (naturopathy),
- Chapter 463 (optometry),
- Chapter 464 (nursing),
- Chapter 465 (pharmacy),
- Chapter 466 (dentistry),
- Chapter 467 (midwifery),
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics),
- Chapter 478 (electrolysis),
- Chapter 480 (massage practice),
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists),
- Chapter 484 (dispensing of optical devices and hearing aids),

[7] Available at: https://www.flrules.org/gateway/RuleNo.asp?title=ASSISTED%20LIVING%20FACILITIES&ID=58A-5.0131 (last visited Feb. 14, 2012).

- Chapter 486 (physical therapy practice),
- Chapter 490 (psychological services), or
- Chapter 491 (clinical, counseling, and psychotherapy services)

Current law[8] prohibits the DOH and the medical boards within the DOH from allowing any person to sit for an examination who has been:

- Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S.,[9] ch. 817, F.S.,[10] ch. 893, F.S.,[11] 21 U.S.C. §§ 801-970,[12] or 42 U.S.C. §§ 1395-1396,[13] unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;
- Terminated for cause from the Florida Medicaid program, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years; or
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of application.

The DOH and the medical boards must refuse to issue or renew a license, certificate, or registration if an applicant or person affiliated with that applicant has violated any of the provisions listed above. The DOH applies the denial of licensure renewals to offenses occurring after July 1, 2009, when the new provisions requiring denial of renewals went into effect. Neither the boards nor the DOH currently deny initial licensure or licensure renewal based upon termination for cause from the Medicare program, because no such termination exists in federal law. Federal law references mandatory and permissive exclusions.

Any individual who is seeking licensure must apply for licensure and meet the current requirements regardless of whether the applicant previously held a Florida license. If an applicant is required to have passed a licensure examination within a certain number of years prior to licensure, then an applicant whose test scores have "expired" would be required to re-test and pass the licensure examination. Between July 1, 2009, and November 22, 2011, 91 licensees have been denied renewal under s. 456.0635, F.S.

Optometrists and Ophthalmologists

Optometrists are the primary health care professionals for the eye. Optometrists examine, diagnose, treat, and manage diseases and injuries of the visual system as well as identify

[8] *See* s. 456.0635, F.S.
[9] *See* ch. 409, F.S., "Social and Economic Assistance," is in Title XXX, "Social Welfare," and includes the Florida Medicaid and Kidcare programs, among other programs.
[10] *See* ch. 817, F.S., "Fraudulent Practices," is in Title XLVI, "Crimes."
[11] *See* ch. 893, F.S., "Drug Abuse Prevention and Control," is in Title XLVI, "Crimes."
[12] 21 U.S.C. §§ 801-970 create the Controlled Substances Act, which regulates the registration of manufacturers, distributors, and dispensers of controlled substances at the federal level.
[13] 42 U.S.C. §§ 1395-1396 create the federal Medicare, Medicaid, and Children's Health Insurance programs.

systemic conditions which affect visual health. Optometrists may prescribe certain medications, vision therapy, and corrective lenses but may not perform surgical procedures in Florida.[14]

Optometrist training involves an undergraduate degree and completion of a 4-year program at a college of optometry. Some optometrists complete residencies to gain more specialized knowledge, but residency training is not required for licensure or practice.[15]

Ophthalmologists are medical physicians who specialize in diseases of the eye. Ophthalmologists provide a full spectrum of eye care, from prescribing corrective lenses and medications to performing eye surgery. Ophthalmologists also care for patients with more advanced and complicated diseases than do optometrists. Ophthalmologist training involves an undergraduate degree, 4 years of medical school, and completion of at least 4 years of residency training in ophthalmology.[16]

Florida law requires optometrists who diagnose patients with certain diseases to refer such patients to ophthalmologists for further treatment.[17] Optometrists are also required to maintain the names of at least three physicians, clinics, or hospitals to which they may refer patients who experience adverse drug reactions.[18]

Administration of Medications by Optometrists

Licensed optometrists may administer and prescribe topical ocular pharmaceutical agents if they are appropriately certified by the Board of Optometry (the board). Such pharmaceuticals must be related to the diagnosis and treatment of ocular conditions and must not require surgery or other invasive techniques for administration. Medications approved for prescription by certified optometrists are listed in a formulary[19] maintained by the board.[20]

To be certified for prescribing privileges, an optometrist must:[21]

- Complete at least 100 hours of board-approved coursework and clinical training in general and ocular pharmacology at an accredited institution. Such training may have been part of an optometry training program;
- Complete at least 1 year of supervised experience in differential diagnosis of eye disorders, which may occur during training or clinical practice;
- Pass part II of the National Board of Examiners in Optometry examination;[22] and

[14] *See* s. 463.014(4), F.S.
[15] American Optometric Association, *What is a Doctor of Optometry? available at*: http://www.aoa.org/x4891.xml (last visited Feb. 11, 2102).
[16] American Academy of Ophthalmology, *About Ophthalmology and Eye M.D.s., available at:* http://www.aao.org/about/eyemds.cfm (last visited Feb. 14, 2012).
[17] Diagnoses which mandate a referral to an ophthalmologist include acute angle glaucoma, congenital or infantile glaucoma, infectious corneal diseases refractory to standard treatment, and retinal detachment.
[18] *See* s. 463.0135, F.S.
[19] The formulary is listed in Rule 64B13-18.002, F.A.C., and includes agents to dilate and constrict pupils, local anesthetics, antibiotics, anti-inflammatory agents, antihistamines, antivirals, and anti-glaucoma medications. All medications are for topical ocular use only.
[20] *See* s. 463.0055, F.S.
[21] Rule 64B13-10.001, F.A.C.

- Pay a $500 fee.[23]

Certification for prescribing privileges is a required component of the general licensure process for optometrists and has been so for the last 25 years.[24] Optometrists who are not certified may use topical anesthetics for glaucoma examinations.[25]

Prescribing Controlled Substances

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice is tasked with monitoring controlled substances and preventing their abuse. Controlled substances fall into five categories, or schedules, depending on their addictive potential. Drug schedules are specified by the United States Department of Justice Drug Enforcement Administration (DEA) in 21 C.F.R. §§ 1308.11-15 and in s. 893.03, F.S.

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, lysergic acid diethylamide (LSD), and marijuana. Schedule II controlled substances have a high potential for abuse which may lead to severe psychological or physical dependence, including morphine and its derivatives, amphetamines, cocaine, and pentobarbital. Schedule III controlled substances have lower abuse potential than Schedule II substances but may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of codeine per dose (such as Tylenol #3), ketamine, and anabolic steroids. Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan). Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.[26]

Any health care professional wishing to prescribe controlled substances must apply for a prescribing number from the DEA. Prescribing numbers are linked to state licenses and may be suspended or revoked upon any disciplinary action taken against a licensee. The DEA will grant prescribing numbers to a wide range of health care professionals, including physicians, nurse practitioners, physician assistants, optometrists, dentists, and veterinarians, but such professionals may only prescribe controlled substances that have been authorized to them under state law. Prescribing numbers must be renewed every 3 years.[27]

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[22] This examination consists of 60 simulated patient cases to assess the examinee's performance in clinical practice situations *available at:* http://www.optometry.org/part_2_pam.cfm (last visited Feb. 14, 2012).
[23] Rule 64B13-6.001(9), F.A.C.
[24] *See* s. 463.006, F.S.; and Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 788*. A copy is on file with the Senate Health Regulation Committee.
[25] *See* s. 463.0055(1), F.S.
[26] DEA, Office of Diversion Control, *Controlled Substance Schedules, available at*: http://www.deadiversion.usdoj.gov/schedules/#define (last visited Feb. 14, 2012).
[27] DEA, *Questions and Answers available at*: http://www.deadiversion.usdoj.gov/drugreg/faq.htm (last visited Feb. 14, 2012).

In Florida, only licensed physicians, dentists, veterinarians, naturopaths, and podiatrists are currently permitted to prescribe controlled substances, and they may only prescribe medications within the scope of their own practices.[28]

Clinical Laboratories

A clinical laboratory is a location in which body fluids or tissues are analyzed for purposes of the diagnosis, assessment, or prevention of a medical condition. Clinical laboratories may be free-standing facilities, may be part of a hospital, or may be part of a private practitioner's office.[29] Practitioners authorized to operate their own clinical laboratories exclusively to diagnose and treat their own patients are physicians, chiropractors, podiatrists, naturopaths, and dentists. Laboratories must be biennially licensed and inspected by the AHCA to ensure quality standards in examination of specimens, equipment, sanitation, staffing, and other measures.[30]

A clinical laboratory may examine human specimens at the request of the following licensed practitioners:[31]

- Physicians
- Physician assistants
- Medical assistants
- Chiropractors
- Chiropractic assistants
- Chiropractic physician's assistants
- Podiatrists
- Naturopaths
- Dentists
- Nurse practitioners

Results of laboratory tests must be reported directly to the requesting practitioner. The same price must be charged regardless of what type of practitioner requests the testing.

Florida Drug and Cosmetic Act

Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act, is administered by the Department of Business and Professional Regulation to safeguard the health, safety, and welfare of Floridians from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics. Section 499.003, F.S., provides definitions for part I of ch. 499, F.S.
Section 499.003(54), F.S. defines "wholesale distribution" as distribution of prescription drugs to persons other than a consumer or patient.

The law provides certain exceptions. One of the exceptions is for the sale, purchase, trade, or other transfer of a prescription drug from or for any federal, state, or local government agency or

[28] *See* ss. 893.02 and 893.05, F.S.
[29] *See* s. 483.041, F.S.
[30] *See* s 483.051, F.S.
[31] *See* s. 483.181, F.S.

any entity eligible to purchase prescription drugs at public health services prices (known as 340B) to a contract provider or its subcontractor under certain conditions. One of these conditions is that a contract provider or subcontractor must maintain separate and apart from other prescription drug inventory any prescription drugs of the agency or entity in its possession.

Standard of Proof in Medical Malpractice Actions

In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that the death or injury resulted from the negligence of a health care provider, the claimant has the burden of proving by the greater weight of evidence that the alleged action of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[32] Nevertheless, s. 766.102(4), F.S., provides that the "failure of a health care provider to order, perform, or administer supplemental diagnostic tests shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care."

Greater weight of the evidence means the '"more persuasive and convincing force and effect of the entire evidence in the case."'[33] Other statutes, such as license disciplinary statutes involving the revocation or suspension of a license, require a heightened standard of proof called "clear and convincing evidence."[34] Clear and convincing evidence has been described as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.[35]

Medical Malpractice Presuit Investigation

Prior to the filing of a lawsuit, the person allegedly injured by medical negligence or a party bringing a wrongful death action arising from an alleged incidence of medical malpractice (the claimant) and the defendant (the health care professional or health care facility) are required to conduct presuit investigations to determine whether medical negligence occurred and what damages, if any, are appropriate.

The claimant is required to conduct an investigation[36] to ascertain that there are reasonable grounds to believe that:

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[32] *See* s. 766.102, F.S.
[33] *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So. 2d 1264, 1277 (Fla. 2003) (quoting Fla. Std. Jury Instr. (Civil) PL 5)).
[34] *See e.g.*, ss. 458.331(3), and 459.015(3), F.S.
[35] *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).
[36] *See* s. 766.203, F.S.

- A named defendant in the litigation was negligent in the care or treatment of the claimant; and
- The claimant was injured as a result of the negligence.

After completion of the presuit investigation and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant of intent to initiate litigation for medical negligence.[37] Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and an executed authorization for release of protected health information. The presuit notice is void if this authorization does not accompany the presuit notice.[38]

A suit may not be filed for a period of 90 days after notice is mailed to any prospective defendant. The statue of limitations is tolled during the 90-day period. During the 90-day period, the prospective defendant or the defendant's insurer or self-insurer shall conduct a presuit investigation to determine the liability of the defendant.

Before the defendant issues his or her response, the defendant or his or her insurer or self-insurer is required to ascertain whether there are reasonable grounds to believe that:

- The defendant was negligent in the care or treatment of the claimant; and
- The claimant was injured as a result of the negligence.

Corroboration of the lack of reasonable grounds for medical negligence litigation must be provided by submission of a verified written medical expert opinion that corroborates reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

At or before the end of the 90 days, the prospective defendant or the prospective defendant's insurer or self-insurer shall provide the claimant with a response:

- Rejecting the claim;
- Making a settlement offer; or
- Making an offer to arbitrate in which liability is deemed admitted and arbitration will be held only on the issue of damages. This offer may be made contingent upon a limit of general damages.

Failure of the prospective defendant or insurer or self-insurer to reply to the notice within 90 days after receipt is deemed a final rejection of the claim for purposes of this provision.

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[37] *See* s. 766.106, F.S.
[38] *See* s. 766.1065(1), F.S. If the authorization is revoked, the presuit notice is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

Discovery and Admissibility of Evidence

Statements, discussions, written documents, reports, or other work product generated by the presuit screening process are not discoverable or admissible in any civil action for any purpose by the opposing party.[39] All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process.[40]

Upon receipt by a prospective defendant of a notice of claim, the parties are required to make discoverable information available without undertaking formal discovery. Informal discovery may be used to obtain unsworn statements, the production of documents or things, and physical and mental examinations as follows:[41]

- Unsworn statements – Any party may require other parties to appear for the taking of an unsworn statement. Unsworn statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party.
- Documents or things – Any party may request discovery of documents or things. This includes medical records.
- Physical and mental examination – A prospective defendant may require an injured claimant to be examined by an appropriate health care provider. Unless otherwise impractical, a claimant is required to submit to only one examination of behalf of all potential defendants. The examination report is available to the parties and their attorney and may be used only for the purpose of presuit screening. Otherwise, the examination is confidential.
- Written questions – Any party may request answers to written questions.
- Unsworn statements of treating health care providers – The statements must be limited to those areas that are potentially relevant to the claim. Reasonable notice and an opportunity to be heard must be given to the claimant before taking unsworn statements. The claimant, or claimant's legal representative, has the right to attend the taking of these unsworn statements.

The failure to cooperate on the part of any party during the presuit investigation may be grounds to strike any claim made, or defense raised in the suit.[42]

Confidentiality of Patient Records

Section 456.057, F.S., provides that medical records are confidential and, absent certain exceptions, they cannot be shared with or provided to anyone without the consent of the patient. Subsection (7) identifies the circumstances when medical records may be released without written authorization from the patient. The circumstances are as follows:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent;

[39] However, the presuit expert witness opinions are subject to discovery under s. 766.203(4), F.S.
[40] *See* s. 766.106(5), F.S.
[41] *See* s. 766.106(6), F.S.
[42] *See* s. 766.106(7), F.S.

- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff;
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records; or
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

The Florida Supreme Court has addressed the issue of whether a health care provider, absent any of the above-referenced circumstances, may disclose confidential information contained in a patient's medical records as part of a medical malpractice action.[43] The Court ruled that, pursuant to s. 455.241, F.S., (the predecessor to current s. 456.057(7), F.S.), only a health care provider who is a defendant, or reasonably expects to become a defendant, in a medical malpractice action may discuss a patient's medical condition.[44] The Court also held that the health care provider may only discuss the patient's medical condition with his or her attorney in conjunction with the defense of the action.[45] The court determined that a defendant's attorney cannot have ex parte discussions about the patient's medical condition with any other treating health care provider.[46]

Arbitration Generally

For many years, courts and legislatures have utilized arbitration as an alternative method to resolve disputes between parties in an expedient, efficient, and inexpensive manner.[47] However, when parties agree to participate in arbitration, they concede some of the safeguards that are traditionally afforded to those who proceed to court, one of which is the right to have the evidence weighed in accordance with established legal principles.[48] Arbitration may be defined as "a process that allows parties voluntarily to refer their disputes to an impartial third person, an arbitrator, selected by them to determine the parties' rights and liabilities."[49] Typically, "a decision rendered by arbitrators is as binding and conclusive as the judgment of a court."[50] Because of the federal policy favoring and encouraging the use of arbitration to resolve disputes, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power, to use in many noncommercial consumer contracts.[51]

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[43] *Acosta v. Richter*, 671 So. 2d 149 (Fla. 1996).
[44] *Id*.
[45] *Id*.
[46] *Id*.
[47] Elizabeth K. Stanley, *Parties' Defenses to Binding Arbitration Agreements in the Health Care Field & the Operation of the McCarran-Ferguson Act*, 38 ST. MARY'S L.J. 591, 591-92 (2007).
[48] *Affiliated Marketing, Inc. v. Dyco Chemicals & Coatings, Inc*., 340 So. 2d 1240 (Fla. 2d DCA 1976).
[49] Stanley, *supra* note 47, at 592 (internal citations omitted).
[50] *Capital Factors, Inc. v. Alba Rent-A-Car, Inc*., 965 So. 2d 1178, 1182 (Fla. 4th DCA 2007) (quoting *Am. Renaissance Lines, Inc. v. Saxis Steamship Co.*, 502 F.2d 674, 678 (C.A.N.Y. 1974)).
[51] Stanley, *supra* note 47, at 592.

Florida Arbitration Code

Florida traditionally has favored arbitration. In 1957, the Legislature enacted the Florida Arbitration Code (FAC),[52] which prescribes a framework governing the rights and procedures under arbitration agreements, including the enforceability of arbitration agreements. The FAC governs arbitration clauses where interstate commerce is not implicated.[53] The FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, the appointment of arbitrators, the arbitration hearing process and procedure, the entry and enforcement of arbitration awards, and appeals.

Under the FAC, Florida courts have held that the determination of whether any dispute is subject to arbitration should be resolved in favor of arbitration.[54] A court's role in deciding whether to compel arbitration is limited to three gateway issues to determine the enforceability of an arbitration agreement: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived.[55] The FAC applies in arbitration cases only to the extent that it is not in conflict with federal law.[56]

Voluntary Binding Arbitration

Section 766.207, F.S., related to medical malpractice, establishes a procedure for voluntary binding arbitration of damages upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim. A proceeding for voluntary binding arbitration is an alternative to jury trial and does not supersede the right of any party to a jury trial.[57] Either party may initiate the election for voluntary binding arbitration of damages. A claimant's offer to arbitrate must be made to each defendant and each defendant's offer to arbitrate must be made to each claimant.[58] The arbitration panel's decision is subject to the limitations on damages which are provided in s. 766.207, F.S.

If the defendant refuses a claimant's offer of voluntary binding arbitration and the claimant proves medical negligence, the claimant is entitled to recover damages subject to the limitations in s. 766.118, F.S., prejudgment interest, and reasonable attorney's fees up to 25 percent of the award reduced to present value. If a claimant rejects a defendant's offer of voluntary binding arbitration, the damages awardable at trial are limited to net economic damages, plus noneconomic damages not to exceed $350,000 per incident.[59]

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[52] *See* ch. 682. F.S.
[53] *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).
[54] Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 20 (Nov. 2008) (citing *Waterhouse Constr. Group, Inc. v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).
[55] *Seifert v. U.S. Home Corp*., 750 So. 2d 633, 636 (Fla. 1999).
[56] *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999), *review denied*, 763 So. 2d 1044 (Fla. 2000), and *Florida Power Corp. v. Casselberry*, 793 So. 2d 1174, 1179 (Fla. 5th DCA 2001).
[57] *See* s. 766.209, F.S.
[58] *See* s. 766.207(7)(k), F.S.
[59] *See* s. 766.209, F.S.

Arbitration Agreements in Contracts for Medical Services

Insurance companies and physicians are more frequently requiring patients to enter into arbitration agreements regarding any potential medical malpractice claims resulting from the medical treatment or care.[60] Therefore, some patients may face a choice when seeking medical treatment or care – sign an arbitration agreement or forego treatment with a particular physician or other health care provider.[61] These arbitration agreements may apply to all medical negligence and professional malpractice claims arising out of the physician-patient relationship, and bind the patient, as well as the spouse and heirs of the patient.[62]

Some patients have challenged the enforceability of arbitration agreements in this context by asserting that the agreements are void as against public policy, are too broad, are essentially contracts of adhesion, and are unconscionable.[63] Generally, courts will closely scrutinize physician-patient arbitration agreements under general contract principles to determine if the agreements are unenforceable contracts of adhesion or contain illegal provisions that would make them void as against public policy.[64] In *Jonathan M. Frantz, M.D., P.A. v. Shedden*, a Florida eye patient brought a medical malpractice action against an eye clinic after complication arose from elective eye surgery.[65] The eye clinic moved to stay litigation and enforce arbitration. During a preoperative visit, the plaintiff had signed an arbitration agreement that was separate from other documents, was afforded the opportunity to review the agreement, and was advised that he could ask staff questions regarding the agreement. The court concluded that, because the agreement was neither procedurally nor substantively unconscionable, the litigation should be stayed in favor of arbitration.[66] In a recent First District Court of Appeal case, the court found that the arbitration clause in question afforded meaningful relief and was consistent with the legislative intent of ch. 766, F.S., which "imposes limitations on non-economic damages, and provides for arbitration as a means of dispute resolution."[67]

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[60] Jennifer Gillespie, *Physician-Patient Arbitration Agreements: Procedural Safeguards May Not Be Enough*, 1997 J. DISP. RESOL. 119, 119 (1997).
[61] *Id*.
[62] *Id*. at 120.
[63] *See Buraczynski v. Eyring*, 919 S.W.2d 314 (Tenn. 1996). In *Buraczynski*, a patient signed an arbitration agreement in the context of medical services prior to a knee-replacement operation. The agreement covered all medical negligence and malpractice claims arising out of the surgery, and provided that the patient would have 30 days to revoke the agreement by providing written notice to the physician. After a challenge by the patient's heirs to avoid participation in arbitration, the Tennessee Supreme Court found that the agreement was consistent with public policy, was not overly broad, and was an enforceable adhesion contract because it was supported by consideration and was not oppressive or unconscionable. *Id.* at 321.
[64] *See Broemmer v. Abortion Services of Phoenix Ltd.*, 840 P.2d 1013 (Ariz. 1992); *Leong by Leong v. Kaiser Foundation Hosp.*, 788 P.2d 164 (Haw. 1990); and *Obstetrics and Gynecologists William G. Wixted, M.D., Patrick M. Flanagan, M.D., William F. Robinson, M.D. Ltd. v. Pepper*, 693 P.2d 1259 (Nev. 1985).
[65] *Jonathan M. Frantz, M.D., P.A. v. Shedden*, 974 So. 2d 1193 (Fla. 2d DCA 2008).
[66] *Id*. at 1198.
[67] *Franks v. Bowers*, 62 So. 3d 16, 18 (Fla. 1st DCA 2011), *cert. granted*, 74 So. 3d 1083(2011). Cf., *Shotts v. OP Winter Haven, Inc.*, 2011 WL 5864830 (Fla. 2011) and *Gessa v. Manor Care of Florida, Inc.*, 2011 WL 5864823 (Fla. 2011) (The Florida Supreme Court recently held that arbitration agreements used in nursing home admissions containing limitations on damages/remedies of nursing home residents violated public policy. In *Shotts*, the Court stated "that the limitations of remedies provisions in this case violate public policy, for they directly undermine specific statutory remedies created by the Legislature." *Shotts* at *1).

III. Effect of Proposed Changes:

Section 1 amends s. 395.002, F.S., which provides definitions for the regulation of hospitals and ambulatory surgical centers, to define "accrediting organizations" to mean national accreditation organizations that are approved by the Centers for Medicare and Medicaid Services and whose standards incorporate comparable licensure regulations required by Florida. The bill deletes the names of four organizations that are currently included in the definition.

Section 2 amends s. 400.474, F.S., to reduce the fine that the AHCA currently must impose on a home health agency that fails to submit, within 15 days after the end of each calendar quarter, a report that includes certain fraud detection information. The bill changes the penalty to a mandatory $50 per day fine, with no maximum, instead of the current permissive denial, revocation, or suspension of the home health agency's license and a mandatory fine of $5,000. Thus, the amount of the fine will be substantially less for those agencies that are only a few days late submitting the report. However, reports more than 100 days late will exceed the existing fine of $5,000.

Section 3 amends s. 400.9905, F.S., to exempt pediatric cardiology or perinatology clinical facilities and anesthesia clinical facilities that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation from the definition of health care clinic and the clinic licensure requirements. The bill also creates a new exemption from the definition of clinic and the clinic licensure requirements for entities that are owned or controlled, directly or indirectly, by a publicly traded entity that has $100 million or more, in the aggregate, in total annual revenues derived from providing health care services by licensed health care practitioners who are employed or contracted by such an entity.

Section 4 amends s. 409.221, F.S., to require persons who render care under the Medicaid consumer-directed care program to undergo Level 2 background screening pursuant to the provisions of s. 408.809, F.S., in addition to the provisions of ch. 435, F.S. The effect is to require persons rendering care under the consumer-directed care program to be screened for additional disqualifying offenses and to be re-screened every 5 years.

Section 5 amends s. 409.907, F.S., relating to Medicaid provider agreements, to require Medicaid providers to retain all medical and Medicaid-related records for 6 years, rather than the current statutory retention period of 5 years, consistent with Health Insurance Portability and Accountability Act (HIPAA) of 1996 administrative simplification rules.[68]

The bill requires a Medicaid provider to report in writing any change of any principal of the provider to the AHCA no later than 30 days after the change occurs. The bill specifies who is included in the term "principal."

The bill amends the statutory provisions relating to the liability of Medicaid providers in a change of ownership for outstanding overpayments, administrative fines, and any other moneys owed to the AHCA. The bill defines "administrative fines" to include any amount identified in

[68] *See* 45 CFR 164.316(b)(2) *available at*: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=be9877c2440a17a8ebe3b02b0948a06a&rgn=div8&view=text&node=45:1.0.1.3.79.3.27.8&idno=45 (last visited on Feb. 14, 2012).

any notice of a monetary penalty or fine that has been issued by the AHCA or any other regulatory or licensing agency that governs the provider.

The requirement for the AHCA to conduct random onsite inspections of Medicaid providers' service locations within 60 days after receipt of a fully complete new provider's application and prior to making the first payment to the provider for Medicaid services is amended to authorize, rather than require, the AHCA to perform onsite inspections. The inspection would be conducted prior to the AHCA entering into a Medicaid provider agreement with the provider and would be used to determine the applicant's ability to provide services in compliance with the Medicaid program and professional regulations. The law currently only requires the AHCA to determine the applicant's ability to provide the services for which they will seek Medicaid payment. The bill also removes an exception to the current onsite-inspection requirement for a provider or program that is licensed by the AHCA, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Family Services, since the selection of providers for onsite inspections is no longer a random selection, but is left up to the discretion of the AHCA under the bill.

The bill amends existing surety bond requirements for certain Medicaid providers to clarify that the additional bond required by the AHCA, if a provider's billing during the first year exceeds the bond amount, need not exceed $50,000 for certain providers.

The bill amends the requirements for a criminal history record check of each Medicaid provider, or each principal of the provider, to remove an exemption from such checks for hospitals, nursing homes, hospices, and assisted living facilities. The bill specifies that for hospitals and nursing homes the principals of the provider are those who meet the definition of a controlling interest in s. 408.803, F.S.

The bill removes the provision that proof of compliance with Level 2 background screening under ch. 435, F.S., conducted within 12 months before the date the Medicaid provider application is submitted to the AHCA satisfies the requirements for a criminal history background check. This conforms to screening provisions in ch. 435, F.S., and ch. 408, F.S.

Section 6 amends s. 409.913, F.S., which relates to oversight of the integrity of the Medicaid program. The bill defines "Medicaid provider" or "provider" to include not only persons or entities that have a Medicaid provider agreement in effect with the AHCA and that are in good standing with the AHCA, but also, for purposes of oversight of the integrity of the Medicaid program, participants in a Medicaid managed care provider network.

The bill authorizes the AHCA, as part of its fraud and abuse detection efforts, to review and analyze information from sources other than enrolled Medicaid providers. Medicaid providers are required to retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for 6 years, rather than the current statutory retention period of 5 years.

The bill amends subsection (13) of s. 409.913, F.S., to remove a requirement that the AHCA *immediately* terminate participation of a Medicaid provider that has been convicted of certain offenses. In order to immediately terminate a provider, the AHCA must show an immediate harm

to the public health, which is not always possible. The AHCA still must terminate a Medicaid provider from participation in the Medicaid program, unless the AHCA determines that the provider did not participate or acquiesce in the offense.

The AHCA may seek civil remedies or impose administrative sanctions if a provider *has been convicted* of any of the following offenses.

- A criminal offense under federal law or the law of any state relating to the practice of the provider's profession.
- An offense listed in s. 409.907(10), F.S., relating to factors the AHCA may consider when reviewing an application for a Medicaid provider agreement, which includes:
  - Making a false representation or omission of any material fact in making an application for a provider agreement;
  - Exclusion, suspension, termination, or involuntary withdrawal from participation in any Medicaid program or other governmental or private health care or health insurance program;
  - Being convicted of a criminal offense relating to the delivery of any goods or services under Medicaid or Medicare or any other public or private health care or health insurance program including the performance of management or administrative services relating to the delivery of goods or services under any such program;
  - Being convicted of a criminal offense under federal or state law related to the neglect or abuse of a patient in connection with the delivery of any health care goods or services;
  - Being convicted of a criminal offense under federal or state law related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
  - Being convicted of any criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
  - Being convicted of a criminal offense under federal or state law punishable by imprisonment of 1 year or more which involves moral turpitude;
  - Being convicted in connection with the interference or obstruction of any investigation into any criminal offense listed above;
  - Violation of federal or state laws, rules, or regulations governing any Medicaid program, the Medicare program, or any other publicly funded federal or state health care or health insurance program, if they have been sanctioned accordingly;
  - Violation of the standards or conditions relating to professional licensure or certification or the quality of services provided; or
  - Failure to pay fines and overpayments under the Medicaid program.
- An offense listed in s. 408.809(4), F.S., relating to background screening of licensees, which includes the following offenses or any similar offense of another jurisdiction:
  - Any authorizing statutes, if the offense was a felony;
  - Chapter 408, F.S., if the offense was a felony;
  - Section 409.920, F.S., relating to Medicaid provider fraud;
  - Section 409.9201, F.S., relating to Medicaid fraud;
  - Section 741.28, F.S., relating to domestic violence;
  - Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems;
  - Section 817.234, F.S., relating to false and fraudulent insurance claims;
  - Section 817.505, F.S., relating to patient brokering;

  - Section 817.568, F.S., relating to criminal use of personal identification information;
  - Section 817.60, F.S., relating to obtaining a credit card through fraudulent means;
  - Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony;
  - Section 831.01, F.S., relating to forgery;
  - Section 831.02, F.S., relating to uttering forged instruments;
  - Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes;
  - Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes;
  - Section 831.30, F.S., relating to fraud in obtaining medicinal drugs; or
  - Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
- An offense listed in s. 435.04(2), F.S., relating to employee background screening, which includes the following offenses or any similar offense of another jurisdiction:
  - Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct;
  - Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct;
  - Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults;
  - Section 782.04, F.S., relating to murder;
  - Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child;
  - Section 782.071, F.S., relating to vehicular homicide;
  - Section 782.09, F.S., relating to killing of an unborn quick child by injury to the mother;
  - Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony;
  - Section 784.011, F.S., relating to assault, if the victim of the offense was a minor;
  - Section 784.03, F.S., relating to battery, if the victim of the offense was a minor;
  - Section 787.01, F.S., relating to kidnapping;
  - Section 787.02, F.S., relating to false imprisonment;
  - Section 787.025, F.S., relating to luring or enticing a child;
  - Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings;
  - Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person;
  - Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school;
  - Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property;
  - Section 794.011, F.S., relating to sexual battery;
  - Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority;
  - Section 794.05, F.S., relating to unlawful sexual activity with certain minors;
  - Chapter 796, F.S., relating to prostitution;
  - Section 798.02, F.S., relating to lewd and lascivious behavior;

- Chapter 800, F.S., relating to lewdness and indecent exposure;
- Section 806.01, F.S., relating to arson;
- Section 810.02, F.S., relating to burglary;
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony;
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony;
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony;
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony;
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult;
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony;
- Section 826.04, F.S., relating to incest;
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child;
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child;
- Former s. 827.05, F.S., relating to negligent treatment of children;
- Section 827.071, F.S., relating to sexual performance by a child;
- Section 843.01, F.S., relating to resisting arrest with violence;
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication;
- Section 843.12, F.S., relating to aiding in an escape;
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions;
- Chapter 847, F.S., relating to obscene literature;
- Section 874.05(1), F.S., relating to encouraging or recruiting another to join a criminal gang;
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor;
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct;
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm;
- Section 944.40, F.S., relating to escape;
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner;
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility;
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs; or
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

The bill amends subsection (15) of s. 409.913, F.S., relating to noncriminal actions of Medicaid providers for which the AHCA may impose sanctions, to include the act of *authorizing* certain services that are inappropriate, unnecessary, excessive, or harmful to the recipient or are of inferior quality, or *authorizing* certain requests and reports that contain materially false or incorrect information. The bill also adds that the AHCA may sanction a provider if the provider is charged by information or indictment with any offense referenced in subsection (13). (See above for a listing of the offenses.) The AHCA may impose sanctions under this subsection if the

provider or certain persons affiliated with the provider participated or acquiesced in the proscribed activity.

Subsection (16) of s. 409.913, F.S., relating to sanctions the AHCA may impose for the acts listed in subsection (15), is amended to state that, if a Medicaid provider voluntarily relinquishes its Medicaid provider number after receiving notice of an audit or investigation for which the sanction of suspension or termination will be imposed, the AHCA must impose the sanction of termination for cause against the provider. Currently, if a Medicaid provider receives notification that it is going to be suspended or terminated, the provider is able to voluntarily terminate their contract. By doing this, a provider has the ability to avoid sanctions of suspension or termination, which would affect the ability of the provider to reenter the program in the future. Existing language in this subsection gives the Secretary of the AHCA the authority to make a determination that imposition of a sanction is not in the best interest of the Medicaid program, in which case a sanction may not be imposed.

The bill amends subsection (21) of s. 409.913, F.S., to specify that when the AHCA is making a determination that an overpayment has occurred, the determination must be based solely upon information available to it before it issues the audit report and, in the case of documentation obtained to substantiate claims for Medicaid reimbursement, based solely upon contemporaneous records. Subsection (22) is amended to specify that testimony or evidence that is not based upon contemporaneous records or that was not furnished to the AHCA within 21 days after the issuance of the audit report is inadmissible in an administrative hearing on a Medicaid overpayment or an administrative sanction. Also, all documentation to be offered as evidence in an administrative hearing on an administrative sanction (in addition to Medicaid overpayments) must be exchanged by all parties at least 14 days before the administrative hearing or excluded from consideration.

Subsection (25) of s. 409.913, F.S., is amended to remove the requirement that the AHCA pay, interest at the rate of 10 percent a year on Medicaid payments that have been withheld from a provider based on suspected fraud or criminal activity, if it is determined that there was no fraud or that a crime did not occur. Also, payment arrangements for overpayments and fines owed to the AHCA must be made within 30 days after the date of the final order and are not subject to further appeal.

The bill amends subsection (28) of s. 409.913, F.S., to make Leon County the venue for all Medicaid program integrity cases, not just overpayment cases. However, the AHCA has discretion concerning venue. Subsection (29) is amended to authorize the AHCA and the Medicaid Fraud Control Unit of the Department of Legal Affairs to review a *person's*, in addition to a provider's, Medicaid-related and non-Medicaid-related records in order to determine the total output of a provider's practice to reconcile quantities of goods or services billed to Medicaid with quantities of goods or services used in the provider's total practice.

Subsection (30) of s. 409.913, F.S., is amended to require the AHCA to terminate a provider's participation in the Medicaid program if the provider fails to pay a fine within 30 days after the date of the final order imposing the fine. The time within which a provider must reimburse an overpayment is reduced from 35 to 30 days after the date of the final order. Subsection (31) is

amended to include fines, as well as overpayments, that are due upon the issuance of a final order at the conclusion of a requested administrative hearing.

Section 7 amends s. 409.920, F.S., relating to Medicaid provider fraud, to clarify that the existing immunity from civil liability extended to persons who provide information about fraud or suspected fraudulent acts is for civil liability for libel, slander, or any other relevant tort. The bill defines "fraudulent acts" for purposes of the immunity from civil liability to include actual or suspected fraud, abuse, or overpayment, including any fraud-related matters that a provider or health plan is required to report to the AHCA or a law enforcement agency. The immunity from civil liability extends to reports conveyed to the AHCA in any manner and includes all discussions subsequent to the report and subsequent inquiries from the AHCA, unless the person reporting acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information.

Section 8 amends s. 409.967, F.S., relating to Medicaid managed care plan accountability, to establish requirements for managed care plans relating to coverage of prescribed drugs, which do not currently exist for the Medicaid fee-for-service drug program or Medicaid managed care plans. With regard to standards for managed care plan networks, the bill states that exclusive use of mail-order pharmacies *is not sufficient* to meet network access standards. Current law states that exclusive use of mail-order pharmacies *may not be sufficient*. The effect is that managed care plans will be required to use some pharmacies that are not mail-order pharmacies.

The bill establishes the following requirements for managed care plans that use a prescribed drug formulary or preferred drug list. The plan must:

- Provide a broad range of therapeutic options for the treatment of disease states consistent with the general needs of an outpatient population, including at least two products in a therapeutic class whenever feasible;
- Include coverage via prior authorization for each new drug approved by the federal Food and Drug Administration until the plan's Pharmaceutical and Therapeutics Committee reviews the drug for inclusion on its formulary. The new drug must be reviewed by the committee for inclusion on the formulary at the next regularly scheduled meeting of the committee following 3 months of distribution of the drug to the general public; and
- Provide a response within 24 hours after receipt of all necessary information for a request for prior authorization and provide a procedure for escalating a delayed prior authorization request to the pharmacy management team for resolution or override of other medical management tools.

The bill requires a managed care plan to continue to permit an enrollee who was receiving a prescription drug that was on the plan's formulary and subsequently removed or changed to continue to receive that drug if the provider submits a written request that demonstrates that the drug is medically necessary, and the enrollee meets clinical criteria to receive the drug.

The bill establishes requirements for the use of step-therapy or fail-first protocols by managed care plans. Plans that impose step-therapy or a fail-first protocol must:

- Provide the prescriber with access to a clear and convenient process to expeditiously request a prior authorization that includes a procedure for escalation to the pharmacy management team if the request is not resolved in a timely manner;
- Expeditiously grant an escalation to the pharmacy management team if the prescriber can submit appropriate and complete medical documentation to the plan that the preferred treatment required under the step-therapy or fail-first protocol:
  - Has been ineffective in the treatment of the enrollee's disease or medical condition;
  - Is reasonably expected to be ineffective based on the known relevant physical or mental characteristics and medical history of the enrollee and known characteristics of the drug regimen; or
  - Will cause or will likely cause an adverse reaction or other physical harm to the enrollee.
- Require the pharmacy management team to work directly with the medical provider to bring the prior authorization request to a clinically appropriate, cost effective, and timely resolution.

The bill establishes prior authorization requirements relating to prescribed drugs.

- Each managed care plan must ensure that the prior authorization process is readily accessible to health care providers, including posting appropriate contact information on its website and providing timely responses to providers. (This is an existing statutory requirement that is being relocated.)
- If a drug is approved via prior authorization, the managed care plan must provide for sufficient refills to complete the duration of the prescription. If the medication is still clinically appropriate for ongoing therapy after the initial prior authorization expires, the plan must provide a process of expedited review to evaluate ongoing therapy.
- If a prescribed drug requires prior authorization, the managed care plan must reimburse the pharmacist for dispensing a 72-hour supply of oral maintenance medications to the enrollee and process the prior authorization request. Dispensing a 72-hour supply must be consistent with pharmacy practice laws and controlled substance laws. The managed care plan must process all prior authorization requests in as timely a manner as possible.

Section 9 amends s. 429.23, F.S., relating to adverse incident reporting requirements for assisted living facilities, to reestablish a requirement for the AHCA to annually submit a report on adverse incident reports by assisted living facilities. The requirement for an annual report was repealed July 1, 2009 (s. 63 of ch. 2009-223, Laws of Florida). The AHCA will once again be required to submit an annual report to the Legislature containing certain information, by county, about reported adverse incidents in assisted living facilities.

Section 10 amends s. 429.26, F.S., relating to appropriateness of placement of residents of assisted living facilities, to reestablish a requirement for physical examination or mental health evaluation of residents who appear to need care beyond that which the assisted living facility is licensed to provide. The requirement for such examinations or evaluations was repealed July 1, 2009 (s. 64 of ch. 2009-223, Laws of Florida).

If personnel of the AHCA question whether a resident needs care beyond that which the facility is licensed to provide, the AHCA may require the resident to be physically examined by a licensed physician, licensed physician assistant, or certified nurse practitioner. To the extent

possible, the examination must be performed by a health care provider who is preferred by the resident. The cost of the examination must be paid for by the resident with personal funds, except for certain low-income residents. The requirement for the AHCA to have such an examination conducted does not preclude the AHCA from imposing sanctions against an assisted living facility for violating its duty to determine the continuing appropriateness of placement of its residents.

Following the physical examination and based on a completed medical form submitted to the AHCA by the examining health care provider, a medical team designated by the AHCA must determine if the resident is appropriately residing in the facility. The AHCA may consult with the examining provider if necessary. A determination by the medical team that the resident's placement is not appropriate is final and binding upon the facility and the resident. A resident who is determined to be inappropriately residing in a facility must be given 30 days' written notice to relocate, unless the resident's continued residence in the facility presents an imminent danger to the health, safety, or welfare of the resident or a substantial probability exists that death or serious physical harm to the resident would result if the resident is allowed to remain in the facility.

If a mental health resident appears to have needs in addition to those identified in the community living support plan, the AHCA may require an evaluation by a mental health professional, as determined by the Department of Children and Family Services.

A facility may not be required to retain a resident who requires more services or care than the facility is able to provide in accordance with its policies and criteria for admission and continued residency.

Section 11 amends s. 456.0635, F.S., effective July 1, 2012, relating to disqualification for licensure, certification, or registration of health care practitioners for Medicaid fraud. The catch line is changed from "Medicaid fraud; disqualification for license, certificate, or registration," to "Health care fraud; disqualification for license, certificate, or registration." Other references in the statute to the general subject of "Medicaid fraud" are changed to "health care fraud." References to "candidate" vs. "candidate or applicant" are also standardized.

The bill separates the disqualifications for initial licensure, certification, or registration from those relating to licensure renewal into two different statutory subsections.

The bill requires a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S., ch. 817, F.S., ch. 893, F.S., *or similar felony offenses committed in another state or jurisdiction*. The bill deletes the provision in current law that nullifies the prohibition if the sentence and probation period ended more than 15 years prior to the date of application, and replaces it with the following provisions:

- For felonies of the first or second degree, the prohibition expires when the sentence and probation period have ended more than 15 years before the date of application.

- For felonies of the third degree, the prohibition expires when the sentence and probation period have ended more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.[69]
- For felonies of the third degree under s. 893.13(6)(a), F.S., the prohibition expires when the sentence and probation period have ended more than 5 years before the date of application.

An applicant or candidate who has been convicted of or pled guilty or nolo contendere to any state felony listed above is eligible for initial licensure without any prohibition if he or she successfully completes a drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed.

The bill moves into a new paragraph the requirement for a board or the DOH to refuse to admit a candidate to any examination and to refuse to issue a license to any applicant who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. §§ 801-970[70] or 42 U.S.C. §§ 1395-1396,[71] unless the sentence and any probation period for such conviction or plea ended more than 15 years before the date of the application.

The bill deletes reference to "terminated for cause" from the federal Medicare program as grounds for which a board or the DOH is required to deny a license and creates a new standard to exclude applicants currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

The bill specifies that the prohibitions above relating to examination, licensure, certification, or registration do not apply to applicants for initial licensure or certification who were enrolled in a DOH- or board-recognized educational or training program on or before July 1, 2009, and who applied for licensure after July 1, 2012.

The bill creates a new statutory subsection relating to license *renewal* that requires a board or the DOH to deny renewal to applicants who, after July 1, 2009, have been convicted of or pled guilty or nolo contendere to the same felony offenses listed under the subsection on initial licensure. The same 5, 10, and 15-year prohibition periods apply concerning eligibility for relicensure after a felony as for initial licensure after a felony. Applicants who have been convicted of or pled guilty or nolo contendere to specified state felonies are eligible for license renewal without any prohibition period if they are currently enrolled in a drug court program that allows the withdrawal of the plea for that felony upon successful completion of the program.

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[69] Section 893.13(6)(a), F.S., makes it unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or to be in actual or constructive possession of a controlled substance except as otherwise authorized by ch. 893, F.S.

[70] 21 U.S.C. §§ 801-970 relate to drug abuse prevention and control. It regulates the registration of manufacturers, distributors, and dispensers of controlled substances; provides for offenses and penalties; and regulates the import and export of controlled substances.

[71] 42 U.S.C. §§ 1395-1396 contain provisions relating to Medicare, Medicaid, and the Children's Health Insurance Program.

The bill also includes the same provisions for denying licensure renewal as those described above for initial examination, licensure, certification, and registration, relative to exclusion from the Medicare program and termination from Medicaid programs in Florida or in other states.

Section 12 amends s. 456.036, F.S., effective July 1, 2012, to authorize any person who has been denied renewal of licensure, certification, or registration under s. 456.0635(3), F.S., to regain licensure, certification, or registration by undergoing the procedure for initial licensure as defined by a board or the department. However, a person who was denied renewal between July 1, 2009 and June 30, 2012, is not required to retake any examinations that would otherwise be necessary for initial licensure.

Section 13 amends s. 456.074, F.S., relating to the immediate suspension of the license of certain health care practitioners who plead guilty to, are convicted or found guilty of, or who enter a plea of nolo contendere to, regardless of adjudication, certain offenses. The bill removes the limiting clause "relating to the Medicaid program" as it modifies a list of federal misdemeanor or felony offenses. The effect would be that the listed health care practitioners would be subject to immediate suspension of their license for the misdemeanor or felony offenses, whether or not the offense related to the Medicaid program.

Section 14 amends s. 458.309, F.S., to require an allopathic physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed to register his or her office with the DOH and be subject to inspection by the DOH.

Section 15 amends s. 459.005, F.S., to require an osteopathic physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed to register his or her office with the DOH and be subject to inspection by the DOH.

Section 16 amends s. 463.002, F.S., to allow certified optometrists to administer and prescribe any medications related to the diagnosis and treatment of ocular conditions, not just those which are topically applied to the eye.

Section 17 amends s. 463.005, F.S., to allow the Board of Optometry to promulgate rules related to administration and prescription of all ocular pharmaceutical agents, not only topical agents.

Section 18 amends s. 463.0055, F.S., to require a certified optometrist, before he or she prescribes oral pharmaceutical agents, to complete a course and subsequent examination on general and ocular pharmacology with particular emphasis on the ingestion and side effects of oral pharmaceuticals. The bill provides specifics concerning the format of the courses and examinations and requires the Florida Medical Association and the Florida Optometric Association to jointly develop and administer the course and examination.

The bill also alters the composition of the committee that maintains the formulary of topical drugs certified optometrists are permitted to prescribe to specify that the two optometrists on the committee must be certified optometrists. The bill specifies that the formulary of topical ocular pharmaceutical agents will consist of those topical agents that are appropriate to treat and diagnose ocular diseases and disorders. The bill also establishes a statutory formulary of oral pharmaceutical agents that certified optometrists are permitted to prescribe.

Section 19 amends s. 463.0057, F.S., to prohibit holders of faculty certificates from prescribing ocular pharmaceutical agents unless they take a course on general and ocular pharmacology, pass an examination, and are licensed and certified optometrists.

Section 20 amends s. 463.006, F.S., to require that the licensure examination for optometrists include questions on the use and side effects of all ocular pharmaceutical agents, not just topical agents. Anyone who passes this examination and fulfills other licensure and certification requirements will be permitted to administer and prescribe pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 21 amends s. 463.0135, F.S., to state that a certified optometrist shall administer and prescribe oral ocular pharmaceutical agents in a manner consistent with applicable preferred practice patterns of the American Academy of Ophthalmology. The bill also provides that optometrists who diagnose neovascular glaucoma, in addition to other types of glaucoma currently listed in statute, must promptly and without unreasonable delay refer the patient to a licensed physician skilled in diseases of the eye. In addition, an optometrist must timely refer to such a physician any patient who experiences progressive glaucoma due to failed pharmaceutical management by the optometrist.

The bill also requires co-management of post-operative care to be conducted pursuant to an established protocol that governs the relationship between the operating surgeon and the optometrist. The patient must be informed that either physician will be available for emergency care throughout the post-operative period, and the patient must consent to the co-management relationship in writing.

Section 22 amends s. 463.014, F.S., to prohibit optometrists from prescribing or otherwise distributing any drug for the purpose of treating a systemic disease, except that optometrists may use commonly-accepted methods to immediately treat anaphylaxis. The bill also further clarifies the definition of surgery in ch. 463, F.S., which prohibits optometrists from conducting surgery.

Section 23 creates s. 463.0141, F.S., to require and provide specifications for reporting of adverse incidents in the practice of optometry.

Section 24 amends s. 483.035, F.S., to include optometrists in the list of licensed practitioners who are permitted to operate clinical laboratories exclusively in connection with the diagnosis and treatment of their own patients.

Section 25 amends s. 483.041, F.S., to include optometrists in the definition of licensed practitioner with respect to clinical laboratories.

Section 26 amends s. 483.181, F.S., to require clinical laboratories to accept specimens for examination submitted by optometrists.

Section 27 amends s. 499.003, F.S., to delete the requirement that contractors and subcontractors that receive prescription drugs from an entity that purchased the drugs under the 340B program

(federal Public Health Services Act) maintain these drugs separate from any other prescription drugs in their possession.

Section 28 amends s. 766.102, F.S., to change the burden of proof for a claimant in an action alleging a breach of the prevailing professional standard of care in an action for damages based on death or personal injury that allegedly resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests. The burden of proof is increased from greater weight of the evidence to clear and convincing evidence.

Section 29 amends s. 766.106, F.S., to authorize a prospective defendant, or his or her legal representative, to conduct ex parte interviews of the claimant's treating health care providers without the presence of the claimant or the claimant's legal representative. Notice of any intended interviews must be provided to the claimant at least 10 days before the date of the interview.

Section 30 creates s. 766.1091, F.S., to authorize certain health care providers and a patient or prospective patient to agree in writing to submit to arbitration any claim for medical negligence that may currently exist or that may accrue in the future that would otherwise be brought under ch. 766, F.S., relating to medical malpractice. The health care providers include:

- Allopathic physicians;
- Osteopathic physicians;
- Certified optometrists;
- Dentists;
- Any entity owned in whole or in part by an allopathic physician, osteopathic physician, certified optometrist, or dentist; or
- A health care clinic licensed under part X of ch. 400, F.S.

An arbitration agreement entered into under this section would be governed by the FAC. Such an arbitration agreement may contain a provision that would limit the available damages in any arbitration award.

Section 31 amends s. 893.02, F.S., to include certified optometrists as authorized prescribers of controlled substances in Florida, if they hold valid federal controlled substance registry numbers.

Section 32 amends s. 893.05, F.S., to prohibit certified optometrists from prescribing any Schedule I or II controlled substances listed in the Florida Comprehensive Drug Abuse Prevention and Control Act.

Section 33 creates a new undesignated section of law to require the AHCA to prepare a report within 18 months after the implementation of an expansion of managed care to new populations or the provision of new items and services. The AHCA must post a draft of the report on its website and provide an opportunity for public comment. The final report must be submitted to the Legislature, along with a description of the process for public input. The report must include an assessment of:

- The impact of managed care on patient access to care, including any new barriers to the use of services or prescription drugs created by the use of medical management or cost-containment tools.
- The impact of managed care expansion on the utilization of services, quality of care, and patient outcomes.
- The use of prior authorization and other utilization management tools, including whether these tools pose an undue administrative burden for health care providers or create barriers to needed care.

Section 34 provides that the bill will take effect upon becoming a law, except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The change in the fine imposed on home health agencies will result in a reduction in the amount of the fines assessed, but the fiscal impact is indeterminate.

A resident in an assisted living facility may incur the cost of a medical examination if the AHCA questions whether a resident needs care beyond that which the facility is licensed to provide.

C. Government Sector Impact:

Department of Health
The Department of Health should experience little fiscal impact as certification procedures for optometrists are already in effect. There will be an increase in workload

relating to updating the formulary of drugs which certified optometrists may prescribe as well as non-recurring rulemaking costs which may be adequately absorbed with current resources.

The DOH will experience recurring and non-recurring increases in workload to implement the provisions of this bill, but current resources and budget authority are adequate to absorb the costs of these increases.

Agency for Health Care Administration
The Agency for Health Care Administration may experience an increase in applications for clinical laboratory licenses from optometrists, although this number is estimated to be small. There will also be a slightly increased workload related to additional inspections of such laboratories, which should be offset by an increase in revenues from licensure and renewal fees.[72]

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is not clear whether the intent of lines 676 – 680 is to terminate a Medicaid provider's participation in the Medicaid program only if the provider has been convicted of criminal offenses in the enumerated sections of statute or whether noncriminal actions in those sections of statute would also be grounds for termination from the Medicaid program.

The informal discovery options include taking unsworn statements of treating health care providers. In Section 29, lines 1802 and 1803 provide in existing law that the claimant or claimant's legal representative has the right to attend the taking of such unsworn statements. Lines 1806 – 1807 provide for ex parte interviews of treating health care providers without the presence of the claimant or the claimant's legal representative. Neither "unsworn statements" nor "ex parte interviews" are defined. To avoid inconsistency and potential litigation, it might be prudent to define or distinguish an unsworn statement and an ex parte interview.

According to the AHCA, the requirement in Section 33 for the AHCA to prepare a report within 18 months after implementation of an expansion of managed care is a duplication of federal requirements for the Section 1915(b) Long Term Care Managed Care Waiver and Section 1115 Research and Demonstration Waiver. The AHCA suggests that Section 33 is not necessary and should either be removed or revised to accurately reflect the federal requirements for waivers.[73]

[72] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 788*. A copy is on file with the Senate Health Regulation Committee.
[73] *See* Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 1316 – on file with the Senate Health Regulation Committee.

VIII. 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 Regulation on February 9, 2012:

The committee substitute:

- Changes the definition of "accrediting organizations" for purposes of the regulation of hospitals and ambulatory surgical centers;
- Provides additional exemptions from licensure and regulation as a health care clinic;
- Modifies the surety bond requirements for certain Medicaid providers;
- Modifies the requirements for managed care plans' management of prescribed drugs;
- Modifies the grounds under which a professional board or the DOH must refuse to admit a candidate to an examination and refuse to issue or renew a license, certificate, or registration of a health care practitioner;
- Expands the types of drugs that certified optometrists may administer and prescribe;
- Requires optometrists to report adverse incidents;
- Authorizes optometrists to operate a clinical laboratory exclusively in connection with the diagnosis and treatment of their own patients;
- Requires clinical laboratories to accept for examination specimens submitted by optometrists;
- Requires physicians who perform liposuction procedures in which more than 1,000 cubic centimeters of fat is removed to register with the DOH and be inspected by the DOH;
- Authorizes a virtual inventory for certain prescription drugs that were purchased under the 340B program;
- Requires a medical negligence claimant to prove by clear and convincing evidence that the actions of a health care provider represented a breach of the prevailing professional standard of care in an action for damages based on death or personal injury which alleges that the death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests;
- Authorizes ex parte interviews to be used in informal discovery; and
- Authorizes certain health care providers and their patients to enter into voluntary binding arbitration agreements and limit damages.

B. Amendments:

None.

By the Committee on Health Regulation; and Senator Gaetz

A bill to be entitled

An act relating to health care; amending s. 395.002, F.S.; redefining the term "accrediting organizations" as it applies to the regulation of hospitals and other licensed facilities; amending s. 400.474, F.S.; revising the fine that may be imposed against a home health agency for failing to timely submit certain information to the Agency for Health Care Administration; amending s. 400.9905, F.S.; revising the definition of the term "clinic" as it relates to the Health Care Clinic Act; amending s. 409.221, F.S.; revising the background screening requirements for persons rendering care in the consumer-directed care program administered by the Agency for Health Care Administration; amending s. 409.907, F.S.; extending the records-retention period for certain Medicaid provider records; revising the provider agreement to require Medicaid providers to report changes in any principal of the provider to the agency; defining the term "administrative fines" for purposes of revoking a Medicaid provider agreement due to changes of ownership; authorizing, rather than requiring, an onsite inspection of a Medicaid provider's service location before entering into a provider agreement; specifying the principals of a hospital or nursing home provider for the purposes of submitting fingerprints for background screening; removing certain providers from being subject to agency background checks; amending s. 409.913, F.S.; defining

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the term "Medicaid provider" or "provider" for purposes of oversight of the integrity of the Medicaid program; authorizing the agency to review and analyze information from sources other than Medicaid-enrolled providers for purposes of determining fraud, abuse, overpayment, or neglect; extending the records-retention period for certain Medicaid provider records; revising the grounds for terminating a provider from the Medicaid program; requiring the agency to base its overpayment audit reports on certain information; deleting a requirement that the agency pay interest on certain withheld Medicaid payments; requiring payment arrangements for overpayments and fines to be made within a certain time; specifying that the venue for all Medicaid program integrity cases lies in Leon County; authorizing the agency and the Medicaid Fraud Control Unit to review certain records; amending s. 409.920, F.S.; clarifying the applicability of immunity from civil liability extended to persons who provide information about fraud or suspected fraudulent acts by a Medicaid provider; amending s. 409.967, F.S.; specifying required components of a Medicaid managed care plan relating to the provisions of medications; amending s. 429.23, F.S.; requiring the agency to submit a report to the Legislature on adverse incident reports from assisted living facilities; amending s. 429.26, F.S.; authorizing the agency to require a resident of an assisted living facility to undergo a

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59 physical examination if the agency questions the
60 appropriateness of the resident's placement in that
61 facility; authorizing release of the results of the
62 examination to a medical review team to be used along
63 with additional information to determine whether the
64 resident's placement in the assisted living facility
65 is appropriate; providing for resident notification
66 and relocation if the resident's continued placement
67 in the facility is not appropriate; authorizing the
68 agency to require the evaluation of a mental health
69 resident by a mental health professional; authorizing
70 an assisted living facility to discharge a resident
71 who requires more services or care than the facility
72 is able to provide; amending s. 456.0635, F.S.;
73 revising the grounds under which the Department of
74 Health or corresponding board is required to refuse to
75 admit a candidate to an examination and refuse to
76 issue or renew a license, certificate, or registration
77 of a health care practitioner; providing an exception;
78 amending s. 456.036, F.S.; providing that all persons
79 who were denied renewal of licensure, certification,
80 or registration under s. 456.0635(3), F.S., may regain
81 licensure, certification, or registration only by
82 completing the application process for initial
83 licensure; providing an exception; amending s.
84 456.074, F.S.; revising the federal offenses for which
85 the Department of Health must issue an emergency order
86 suspending the license of certain health care
87 professionals; amending ss. 458.309 and 459.005, F.S.;

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88 requiring a physician or osteopathic physician who
89 performs certain medical procedures relating to
90 liposuction in an office setting to register the
91 office with the Department of Health unless that
92 office is licensed as a facility under ch. 395, F.S.,
93 relating to hospital licensing and regulation;
94 amending s. 463.002, F.S.; conforming provisions to
95 changes made by the act; amending s. 463.005, F.S.;
96 authorizing the Board of Optometry to adopt rules for
97 the administration and prescription of ocular
98 pharmaceutical agents; amending s. 463.0055, F.S.;
99 authorizing certified optometrists to administer and
100 prescribe pharmaceutical agents under certain
101 circumstances; requiring that a certified optometrist
102 complete a course and subsequent examination on
103 general and ocular pharmacology; providing
104 requirements for the course; requiring that the
105 Florida Medical Association and the Florida Optometric
106 Association jointly develop and administer the course
107 and examination; revising qualifications of certain
108 members of the formulary committee; providing for a
109 formulary of topical ocular pharmaceutical agents
110 which the committee may modify; specifying the agents
111 that make up the statutory formulary of oral
112 pharmaceutical agents; authorizing the deletion of an
113 oral pharmaceutical agent listed in the statutory
114 formulary under certain circumstances; prohibiting the
115 board, the Department of Health, or the State Surgeon
116 General from deleting an oral pharmaceutical agent

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117 listed in the statutory formulary; amending ss.
118 463.0057 and 463.006, F.S.; conforming provisions to
119 changes made by the act; amending s. 463.0135, F.S.;
120 requiring that a certified optometrist administer and
121 prescribe oral ocular pharmaceutical agents in a
122 certain manner; requiring that a licensed practitioner
123 who diagnoses a patient who has a neovascular form of
124 glaucoma or progressive glaucoma immediately refer the
125 patient to a physician who is skilled in the diseases
126 of the eye; requiring that comanagement of
127 postoperative care be conducted pursuant to an
128 established protocol; requiring that the patient be
129 informed that a physician will be available for
130 emergency care throughout the postoperative period;
131 requiring that the patient consent in writing to the
132 comanagement relationship; amending s. 463.014, F.S.;
133 revising certain prohibited acts regarding an
134 optometrist conducting surgery and dispensing,
135 administering, ordering, supplying, or selling certain
136 drugs; creating s. 463.0141, F.S.; requiring that
137 adverse incidents in the practice of optometry be
138 reported to the Department of Health; providing
139 requirements for notifying the department of an
140 adverse incident; providing a definition; requiring
141 that the department review each incident and determine
142 whether it involved conduct that is subject to
143 disciplinary action; requiring that the Board of
144 Optometry take disciplinary action if necessary;
145 amending s. 483.035, F.S., relating to licensure and

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146 regulation of clinical laboratories operated by
147 practitioners for exclusive use; providing
148 applicability to clinical laboratories operated by
149 practitioners licensed to practice optometry; amending
150 s. 483.041, F.S.; revising the definition of the term
151 “licensed practitioner” to include a practitioner
152 licensed under ch. 463, F.S.; amending s. 483.181,
153 F.S.; requiring clinical laboratories to accept human
154 specimens submitted by practitioners licensed to
155 practice under ch. 463, F.S.; amending s. 499.003,
156 F.S.; removing a requirement that a contract provider
157 or subcontractor maintain prescription drugs of the
158 agency or entity in its possession separate and apart
159 from other prescription drugs; amending s. 766.102,
160 F.S.; providing that the claimant has the burden of
161 proving by clear and convincing evidence that the
162 actions of a health care provider represented a breach
163 of the prevailing professional standard of care in an
164 action for damages based on death or personal injury
165 which alleges that the death or injury resulted from
166 the failure of a health care provider to order,
167 perform, or administer supplemental diagnostic tests;
168 amending s. 766.106, F.S.; authorizing a prospective
169 defendant to obtain informal discovery by conducting
170 ex parte interviews of treating health care providers;
171 requiring advance notice to the claimant of an ex
172 parte interview; creating s. 766.1091, F.S.;
173 authorizing a health care provider or health care
174 clinic and a patient to agree to submit a claim of

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175 medical negligence to arbitration; requiring that the
176 arbitration agreement be governed by ch. 682, F.S.;
177 authorizing the arbitration agreement to contain a
178 provision that limits an award of damages; amending s.
179 893.02, F.S.; revising the definition of the term
180 "practitioner" to include certified optometrists for
181 purposes of the Florida Comprehensive Drug Abuse
182 Prevention and Control Act; amending s. 893.05, F.S.;
183 prohibiting certified optometrists from administering
184 and prescribing certain controlled substances;
185 requiring the Agency for Health Care Administration to
186 prepare a report for public comment and submission to
187 the Legislature following the expansion of services to
188 new populations or of new services; providing
189 effective dates.
190
191 Be It Enacted by the Legislature of the State of Florida:
192
193 Section 1. Subsection (1) of section 395.002, Florida
194 Statutes, is amended to read:
195 395.002 Definitions.—As used in this chapter:
196 (1) "Accrediting organizations" means national
197 accreditation organizations that are approved by the Centers for
198 Medicare and Medicaid Services and whose standards incorporate
199 comparable licensure regulations required by the state ~~the Joint~~
200 ~~Commission on Accreditation of Healthcare Organizations, the~~
201 ~~American Osteopathic Association, the Commission on~~
202 ~~Accreditation of Rehabilitation Facilities, and the~~
203 ~~Accreditation Association for Ambulatory Health Care, Inc~~.

204 Section 2. Subsection (6) of section 400.474, Florida
205 Statutes, is amended, present subsection (7) of that section is
206 renumbered as subsection (8), and a new subsection (7) is added
207 to that section, to read:
208 400.474 Administrative penalties.—
209 (6) The agency may deny, revoke, or suspend the license of
210 a home health agency and shall impose a fine of $5,000 against a
211 home health agency that:
212 (a) Gives remuneration for staffing services to:
213 1. Another home health agency with which it has formal or
214 informal patient-referral transactions or arrangements; or
215 2. A health services pool with which it has formal or
216 informal patient-referral transactions or arrangements,
217
218 unless the home health agency has activated its comprehensive
219 emergency management plan in accordance with s. 400.492. This
220 paragraph does not apply to a Medicare-certified home health
221 agency that provides fair market value remuneration for staffing
222 services to a non-Medicare-certified home health agency that is
223 part of a continuing care facility licensed under chapter 651
224 for providing services to its own residents if each resident
225 receiving home health services pursuant to this arrangement
226 attests in writing that he or she made a decision without
227 influence from staff of the facility to select, from a list of
228 Medicare-certified home health agencies provided by the
229 facility, that Medicare-certified home health agency to provide
230 the services.
231 (b) Provides services to residents in an assisted living
232 facility for which the home health agency does not receive fair

233 market value remuneration.
234 (c) Provides staffing to an assisted living facility for
235 which the home health agency does not receive fair market value
236 remuneration.
237 (d) Fails to provide the agency, upon request, with copies
238 of all contracts with assisted living facilities which were
239 executed within 5 years before the request.
240 (e) Gives remuneration to a case manager, discharge
241 planner, facility-based staff member, or third-party vendor who
242 is involved in the discharge planning process of a facility
243 licensed under chapter 395, chapter 429, or this chapter from
244 whom the home health agency receives referrals.
245 ~~(f) Fails to submit to the agency, within 15 days after the~~
246 ~~end of each calendar quarter, a written report that includes the~~
247 ~~following data based on data as it existed on the last day of~~
248 ~~the quarter:~~
249 ~~1. The number of insulin-dependent diabetic patients~~
250 ~~receiving insulin-injection services from the home health~~
251 ~~agency;~~
252 ~~2. The number of patients receiving both home health~~
253 ~~services from the home health agency and hospice services;~~
254 ~~3. The number of patients receiving home health services~~
255 ~~from that home health agency; and~~
256 ~~4. The names and license numbers of nurses whose primary~~
257 ~~job responsibility is to provide home health services to~~
258 ~~patients and who received remuneration from the home health~~
259 ~~agency in excess of $25,000 during the calendar quarter.~~
260 (f) ~~(g)~~ Gives cash, or its equivalent, to a Medicare or
261 Medicaid beneficiary.

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262 (g) ~~(h)~~ Has more than one medical director contract in
263 effect at one time or more than one medical director contract
264 and one contract with a physician-specialist whose services are
265 mandated for the home health agency in order to qualify to
266 participate in a federal or state health care program at one
267 time.
268 (h) ~~(i)~~ Gives remuneration to a physician without a medical
269 director contract being in effect. The contract must:
270 1. Be in writing and signed by both parties;
271 2. Provide for remuneration that is at fair market value
272 for an hourly rate, which must be supported by invoices
273 submitted by the medical director describing the work performed,
274 the dates on which that work was performed, and the duration of
275 that work; and
276 3. Be for a term of at least 1 year.
277
278 The hourly rate specified in the contract may not be increased
279 during the term of the contract. The home health agency may not
280 execute a subsequent contract with that physician which has an
281 increased hourly rate and covers any portion of the term that
282 was in the original contract.
283 (i) ~~(j)~~ Gives remuneration to:
284 1. A physician, and the home health agency is in violation
285 of paragraph (g) ~~(h)~~ or paragraph (h) ~~(i)~~;
286 2. A member of the physician's office staff; or
287 3. An immediate family member of the physician,
288
289 if the home health agency has received a patient referral in the
290 preceding 12 months from that physician or physician's office

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291 staff.
292 (j) ~~(k)~~ Fails to provide to the agency, upon request, copies
293 of all contracts with a medical director which were executed
294 within 5 years before the request.
295 (k) ~~(l)~~ Demonstrates a pattern of billing the Medicaid
296 program for services to Medicaid recipients which are medically
297 unnecessary as determined by a final order. A pattern may be
298 demonstrated by a showing of at least two such medically
299 unnecessary services within one Medicaid program integrity audit
300 period.
301
302 Paragraphs (e) and (i) do not apply to or preclude ~~Nothing in~~
303 ~~paragraph (e) or paragraph (j) shall be interpreted as applying~~
304 ~~to or precluding~~ any discount, compensation, waiver of payment,
305 or payment practice permitted by 42 U.S.C. s. 1320a-7(b) or
306 regulations adopted thereunder, including 42 C.F.R. s. 1001.952
307 or s. 1395nn or regulations adopted thereunder.
308 (7) The agency shall impose a fine of $50 per day against a
309 home health agency that fails to submit to the agency, within 15
310 days after the end of each calendar quarter, a written report
311 that includes the following data based on data as it existed on
312 the last day of the quarter:
313 (a) The number of patients receiving both home health
314 services from the home health agency and hospice services;
315 (b) The number of patients receiving home health services
316 from the home health agency;
317 (c) The number of insulin-dependent diabetic patients
318 receiving insulin-injection services from the home health
319 agency; and

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320 (d) The names and license numbers of nurses whose primary
321 job responsibility is to provide home health services to
322 patients and who received remuneration from the home health
323 agency in excess of $25,000 during the calendar quarter.
324 Section 3. Paragraph (l) of subsection (4) of section
325 400.9905, Florida Statutes, is amended, and paragraph (m) is
326 added to that subsection, to read:
327 400.9905 Definitions.—
328 (4) "Clinic" means an entity at which health care services
329 are provided to individuals and which tenders charges for
330 reimbursement for such services, including a mobile clinic and a
331 portable equipment provider. For purposes of this part, the term
332 does not include and the licensure requirements of this part do
333 not apply to:
334 (l) Orthotic, ~~or~~ prosthetic, pediatric cardiology, or
335 perinatology clinical facilities or anesthesia clinical
336 facilities that are not otherwise exempt under paragraph (a) or
337 paragraph (k) and that are a publicly traded corporation or ~~that~~
338 are wholly owned, directly or indirectly, by a publicly traded
339 corporation. As used in this paragraph, a publicly traded
340 corporation is a corporation that issues securities traded on an
341 exchange registered with the United States Securities and
342 Exchange Commission as a national securities exchange.
343 (m) Entities that are owned or controlled, directly or
344 indirectly, by a publicly traded entity that has $100 million or
345 more, in the aggregate, in total annual revenues derived from
346 providing health care services by licensed health care
347 practitioners who are employed or contracted by an entity
348 described in this paragraph.

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349 Section 4. Paragraph (i) of subsection (4) of section
350 409.221, Florida Statutes, is amended to read:
351 409.221 Consumer-directed care program.—
352 (4) CONSUMER-DIRECTED CARE.—
353 (i) *Background screening requirements.*—All persons who
354 render care under this section must undergo level 2 background
355 screening pursuant to chapter 435 and s. 408.809. The agency
356 shall, as allowable, reimburse consumer-employed caregivers for
357 the cost of conducting such ~~background~~ screening ~~as required by~~
358 ~~this section~~. For purposes of this section, a person who has
359 undergone screening, who is qualified for employment under this
360 section and applicable rule, and who has not been unemployed for
361 more than 90 days following such screening is not required to be
362 rescreened. Such person must attest under penalty of perjury to
363 not having been convicted of a disqualifying offense since
364 completing such screening.
365 Section 5. Paragraph (c) of subsection (3) of section
366 409.907, Florida Statutes, is amended, paragraph (k) is added to
367 that subsection, and subsections (6), (7), and (8) of that
368 section are amended, to read:
369 409.907 Medicaid provider agreements.—The agency may make
370 payments for medical assistance and related services rendered to
371 Medicaid recipients only to an individual or entity who has a
372 provider agreement in effect with the agency, who is performing
373 services or supplying goods in accordance with federal, state,
374 and local law, and who agrees that no person shall, on the
375 grounds of handicap, race, color, or national origin, or for any
376 other reason, be subjected to discrimination under any program
377 or activity for which the provider receives payment from the

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378 agency.
379 (3) The provider agreement developed by the agency, in
380 addition to the requirements specified in subsections (1) and
381 (2), shall require the provider to:
382 (c) Retain all medical and Medicaid-related records for 6 ~~a~~
383 ~~period of 5~~ years to satisfy all necessary inquiries by the
384 agency.
385 (k) Report a change in any principal of the provider,
386 including any officer, director, agent, managing employee, or
387 affiliated person, or any partner or shareholder who has an
388 ownership interest equal to 5 percent or more in the provider,
389 to the agency in writing no later than 30 days after the change
390 occurs.
391 (6) A Medicaid provider agreement may be revoked, at the
392 option of the agency, due to ~~as the result of~~ a change of
393 ownership of any facility, association, partnership, or other
394 entity named as the provider in the provider agreement.
395 (a) In the event of a change of ownership, the transferor
396 remains liable for all outstanding overpayments, administrative
397 fines, and any other moneys owed to the agency before the
398 effective date of the change of ownership. ~~In addition to the~~
399 ~~continuing liability of the transferor,~~ The transferee is also
400 liable to the agency for all outstanding overpayments identified
401 by the agency on or before the effective date of the change of
402 ownership. ~~For purposes of this subsection, the term~~
403 ~~"outstanding overpayment" includes any amount identified in a~~
404 ~~preliminary audit report issued to the transferor by the agency~~
405 ~~on or before the effective date of the change of ownership.~~ In
406 the event of a change of ownership for a skilled nursing

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407 facility or intermediate care facility, the Medicaid provider
408 agreement shall be assigned to the transferee if the transferee
409 meets all other Medicaid provider qualifications. In the event
410 of a change of ownership involving a skilled nursing facility
411 licensed under part II of chapter 400, liability for all
412 outstanding overpayments, administrative fines, and any moneys
413 owed to the agency before the effective date of the change of
414 ownership shall be determined in accordance with s. 400.179.
415 (b) At least 60 days before the anticipated date of the
416 change of ownership, the transferor must ~~shall~~ notify the agency
417 of the intended change of ownership and the transferee must
418 ~~shall~~ submit to the agency a Medicaid provider enrollment
419 application. If a change of ownership occurs without compliance
420 with the notice requirements of this subsection, the transferor
421 and transferee are ~~shall be~~ jointly and severally liable for all
422 overpayments, administrative fines, and other moneys due to the
423 agency, regardless of whether the agency identified the
424 overpayments, administrative fines, or other moneys before or
425 after the effective date of the change of ownership. The agency
426 may not approve a transferee's Medicaid provider enrollment
427 application if the transferee or transferor has not paid or
428 agreed in writing to a payment plan for all outstanding
429 overpayments, administrative fines, and other moneys due to the
430 agency. This subsection does not preclude the agency from
431 seeking any other legal or equitable remedies available to the
432 agency for the recovery of moneys owed to the Medicaid program.
433 In the event of a change of ownership involving a skilled
434 nursing facility licensed under part II of chapter 400,
435 liability for all outstanding overpayments, administrative

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436 fines, and any moneys owed to the agency before the effective
437 date of the change of ownership shall be determined in
438 accordance with s. 400.179 if the Medicaid provider enrollment
439 application for change of ownership is submitted before the
440 change of ownership.
441 (c) As used in this subsection, the term:
442 1. "Administrative fines" includes any amount identified in
443 a notice of a monetary penalty or fine which has been issued by
444 the agency or other regulatory or licensing agency that governs
445 the provider.
446 2. "Outstanding overpayment" includes any amount identified
447 in a preliminary audit report issued to the transferor by the
448 agency on or before the effective date of a change of ownership.
449 (7) ~~The agency may require,~~ As a condition of participating
450 in the Medicaid program and before entering into the provider
451 agreement, the agency may require ~~that~~ the provider to submit
452 information, in an initial and any required renewal
453 applications, concerning the professional, business, and
454 personal background of the provider and permit an onsite
455 inspection of the provider's service location by agency staff or
456 other personnel designated by the agency to perform this
457 function. Before entering into a provider agreement, the agency
458 may ~~shall~~ perform an ~~a random~~ onsite inspection~~, within 60 days~~
459 ~~after receipt of a fully complete new provider's application,~~ of
460 the provider's service location ~~prior to making its first~~
461 ~~payment to the provider for Medicaid services~~ to determine the
462 applicant's ability to provide ~~the~~ services in compliance with
463 the Medicaid program and professional regulations ~~that the~~
464 ~~applicant is proposing to provide for Medicaid reimbursement~~.

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465 ~~The agency is not required to perform an onsite inspection of a~~
466 ~~provider or program that is licensed by the agency, that~~
467 ~~provides services under waiver programs for home and community-~~
468 ~~based services, or that is licensed as a medical foster home by~~
469 ~~the Department of Children and Family Services.~~ As a continuing
470 condition of participation in the Medicaid program, a provider
471 must ~~shall~~ immediately notify the agency of any current or
472 pending bankruptcy filing. Before entering into the provider
473 agreement, or as a condition of continuing participation in the
474 Medicaid program, the agency may also require that Medicaid
475 providers reimbursed on a fee-for-services basis or fee schedule
476 basis that ~~which~~ is not cost-based, post a surety bond not to
477 exceed $50,000 or the total amount billed by the provider to the
478 program during the current or most recent calendar year,
479 whichever is greater. For new providers, the amount of the
480 surety bond shall be determined by the agency based on the
481 provider's estimate of its first year's billing. If the
482 provider's billing during the first year exceeds the bond
483 amount, the agency may require the provider to acquire an
484 additional bond equal to the actual billing level of the
485 provider. A provider's bond need ~~shall~~ not exceed $50,000 if a
486 physician or group of physicians licensed under chapter 458,
487 chapter 459, or chapter 460 has a 50 percent or greater
488 ownership interest in the provider or if the provider is an
489 assisted living facility licensed under chapter 429. The bonds
490 permitted by this section are in addition to the bonds
491 referenced in s. 400.179(2)(d). If the provider is a
492 corporation, partnership, association, or other entity, the
493 agency may require the provider to submit information concerning

494 the background of that entity and of any principal of the
495 entity, including any partner or shareholder having an ownership
496 interest in the entity equal to 5 percent or greater, and any
497 treating provider who participates in or intends to participate
498 in Medicaid through the entity. The information must include:
499 (a) Proof of holding a valid license or operating
500 certificate, as applicable, if required by the state or local
501 jurisdiction in which the provider is located or if required by
502 the Federal Government.
503 (b) Information concerning any prior violation, fine,
504 suspension, termination, or other administrative action taken
505 under the Medicaid laws, rules, or regulations of this state or
506 of any other state or the Federal Government; any prior
507 violation of the laws, rules, or regulations relating to the
508 Medicare program; any prior violation of the rules or
509 regulations of any other public or private insurer; and any
510 prior violation of the laws, rules, or regulations of any
511 regulatory body of this or any other state.
512 (c) Full and accurate disclosure of any financial or
513 ownership interest that the provider, or any principal, partner,
514 or major shareholder thereof, may hold in any other Medicaid
515 provider or health care related entity or any other entity that
516 is licensed by the state to provide health or residential care
517 and treatment to persons.
518 (d) If a group provider, identification of all members of
519 the group and attestation that all members of the group are
520 enrolled in or have applied to enroll in the Medicaid program.
521 (8) ~~(a)~~ Each provider, or each principal of the provider if
522 the provider is a corporation, partnership, association, or

523 other entity, seeking to participate in the Medicaid program
524 must submit a complete set of his or her fingerprints to the
525 agency for the purpose of conducting a criminal history record
526 check. Principals of the provider include any officer, director,
527 billing agent, managing employee, or affiliated person, or any
528 partner or shareholder who has an ownership interest equal to 5
529 percent or more in the provider. However, for a hospital
530 licensed under chapter 395 or a nursing home licensed under
531 chapter 400, principals of the provider are those who meet the
532 definition of a controlling interest under s. 408.803. A
533 director of a not-for-profit corporation or organization is not
534 a principal for purposes of a background investigation as
535 required by this section if the director: serves solely in a
536 voluntary capacity for the corporation or organization, does not
537 regularly take part in the day-to-day operational decisions of
538 the corporation or organization, receives no remuneration from
539 the not-for-profit corporation or organization for his or her
540 service on the board of directors, has no financial interest in
541 the not-for-profit corporation or organization, and has no
542 family members with a financial interest in the not-for-profit
543 corporation or organization; and if the director submits an
544 affidavit, under penalty of perjury, to this effect to the
545 agency and the not-for-profit corporation or organization
546 submits an affidavit, under penalty of perjury, to this effect
547 to the agency as part of the corporation's or organization's
548 Medicaid provider agreement application.
549 (a) Notwithstanding the above, the agency may require a
550 background check for any person reasonably suspected by the
551 agency to have been convicted of a crime. This subsection does

552 not apply to:
553 ~~1. A hospital licensed under chapter 395;~~
554 ~~2. A nursing home licensed under chapter 400;~~
555 ~~3. A hospice licensed under chapter 400;~~
556 ~~4. An assisted living facility licensed under chapter 429;~~
557 1.~~5.~~ A unit of local government, except that requirements
558 of this subsection apply to nongovernmental providers and
559 entities contracting with the local government to provide
560 Medicaid services. The actual cost of the state and national
561 criminal history record checks must be borne by the
562 nongovernmental provider or entity; or
563 2.~~6.~~ Any business that derives more than 50 percent of its
564 revenue from the sale of goods to the final consumer, and the
565 business or its controlling parent is required to file a form
566 10-K or other similar statement with the Securities and Exchange
567 Commission or has a net worth of $50 million or more.
568 (b) Background screening shall be conducted in accordance
569 with chapter 435 and s. 408.809. The cost of the state and
570 national criminal record check shall be borne by the provider.
571 ~~(c) Proof of compliance with the requirements of level 2~~
572 ~~screening under chapter 435 conducted within 12 months before~~
573 ~~the date the Medicaid provider application is submitted to the~~
574 ~~agency fulfills the requirements of this subsection.~~
575 Section 6. Present paragraphs (e) and (f) of subsection (1)
576 of section 409.913, Florida Statutes, are redesignated as
577 paragraphs (f) and (g), respectively, a new paragraph (e) is
578 added to that subsection, and subsections (2), (9), (13), (15),
579 (16), (21), (22), (25), (28), (29), (30), and (31) of that
580 section are amended, to read:

581 409.913 Oversight of the integrity of the Medicaid
582 program.—The agency shall operate a program to oversee the
583 activities of Florida Medicaid recipients, and providers and
584 their representatives, to ensure that fraudulent and abusive
585 behavior and neglect of recipients occur to the minimum extent
586 possible, and to recover overpayments and impose sanctions as
587 appropriate. Beginning January 1, 2003, and each year
588 thereafter, the agency and the Medicaid Fraud Control Unit of
589 the Department of Legal Affairs shall submit a joint report to
590 the Legislature documenting the effectiveness of the state's
591 efforts to control Medicaid fraud and abuse and to recover
592 Medicaid overpayments during the previous fiscal year. The
593 report must describe the number of cases opened and investigated
594 each year; the sources of the cases opened; the disposition of
595 the cases closed each year; the amount of overpayments alleged
596 in preliminary and final audit letters; the number and amount of
597 fines or penalties imposed; any reductions in overpayment
598 amounts negotiated in settlement agreements or by other means;
599 the amount of final agency determinations of overpayments; the
600 amount deducted from federal claiming as a result of
601 overpayments; the amount of overpayments recovered each year;
602 the amount of cost of investigation recovered each year; the
603 average length of time to collect from the time the case was
604 opened until the overpayment is paid in full; the amount
605 determined as uncollectible and the portion of the uncollectible
606 amount subsequently reclaimed from the Federal Government; the
607 number of providers, by type, that are terminated from
608 participation in the Medicaid program as a result of fraud and
609 abuse; and all costs associated with discovering and prosecuting

610 cases of Medicaid overpayments and making recoveries in such
611 cases. The report must also document actions taken to prevent
612 overpayments and the number of providers prevented from
613 enrolling in or reenrolling in the Medicaid program as a result
614 of documented Medicaid fraud and abuse and must include policy
615 recommendations necessary to prevent or recover overpayments and
616 changes necessary to prevent and detect Medicaid fraud. All
617 policy recommendations in the report must include a detailed
618 fiscal analysis, including, but not limited to, implementation
619 costs, estimated savings to the Medicaid program, and the return
620 on investment. The agency must submit the policy recommendations
621 and fiscal analyses in the report to the appropriate estimating
622 conference, pursuant to s. 216.137, by February 15 of each year.
623 The agency and the Medicaid Fraud Control Unit of the Department
624 of Legal Affairs each must include detailed unit-specific
625 performance standards, benchmarks, and metrics in the report,
626 including projected cost savings to the state Medicaid program
627 during the following fiscal year.
628 (1) For the purposes of this section, the term:
629 (e) "Medicaid provider" or "provider" has the same meaning
630 as provided in s. 409.901 and, for purposes of oversight of the
631 integrity of the Medicaid program, also includes a participant
632 in a Medicaid managed care provider network.
633 (2) The agency shall conduct, or cause to be conducted by
634 contract or otherwise, reviews, investigations, analyses,
635 audits, or any combination thereof, to determine possible fraud,
636 abuse, overpayment, or recipient neglect in the Medicaid program
637 and ~~shall~~ report the findings of any overpayments in audit
638 reports as appropriate. At least 5 percent of all audits must

639 ~~shall~~ be conducted on a random basis. As part of its ongoing
640 fraud detection activities, the agency shall identify and
641 monitor, by contract or otherwise, patterns of overutilization
642 of Medicaid services based on state averages. The agency shall
643 track Medicaid provider prescription and billing patterns and
644 evaluate them against Medicaid medical necessity criteria and
645 coverage and limitation guidelines adopted by rule. Medical
646 necessity determination requires that service be consistent with
647 symptoms or confirmed diagnosis of illness or injury under
648 treatment and not in excess of the patient's needs. The agency
649 shall conduct reviews of provider exceptions to peer group norms
650 and ~~shall~~, using statistical methodologies, provider profiling,
651 and analysis of billing patterns, detect and investigate
652 abnormal or unusual increases in billing or payment of claims
653 for Medicaid services and medically unnecessary provision of
654 services. The agency may review and analyze information from
655 sources other than enrolled Medicaid providers in conducting its
656 activities under this subsection.
657 (9) A Medicaid provider shall retain medical, professional,
658 financial, and business records pertaining to services and goods
659 furnished to a Medicaid recipient and billed to Medicaid for 6 ~~a~~
660 ~~period of 5~~ years after the date of furnishing such services or
661 goods. The agency may investigate, review, or analyze such
662 records, which must be made available during normal business
663 hours. However, 24-hour notice must be provided if patient
664 treatment would be disrupted. The provider is responsible for
665 furnishing to the agency, and keeping the agency informed of the
666 location of, the provider's Medicaid-related records. The
667 authority of the agency to obtain Medicaid-related records from

668 a provider is neither curtailed nor limited during a period of
669 litigation between the agency and the provider.
670 (13) The agency shall ~~immediately~~ terminate participation
671 of a Medicaid provider in the Medicaid program and may seek
672 civil remedies or impose other administrative sanctions against
673 a Medicaid provider, if the provider or any principal, officer,
674 director, agent, managing employee, or affiliated person of the
675 provider, or any partner or shareholder having an ownership
676 interest in the provider equal to 5 percent or greater, has been
677 convicted of a criminal offense under federal law or the law of
678 any state relating to the practice of the provider's profession,
679 or an offense listed under s. 409.907(10), s. 408.809(4), or s.
680 435.04(2) ~~has been:~~
681 ~~(a) Convicted of a criminal offense related to the delivery~~
682 ~~of any health care goods or services, including the performance~~
683 ~~of management or administrative functions relating to the~~
684 ~~delivery of health care goods or services;~~
685 ~~(b) Convicted of a criminal offense under federal law or~~
686 ~~the law of any state relating to the practice of the provider's~~
687 ~~profession; or~~
688 ~~(c) Found by a court of competent jurisdiction to have~~
689 ~~neglected or physically abused a patient in connection with the~~
690 ~~delivery of health care goods or services~~. If the agency
691 determines that the ~~a~~ provider did not participate or acquiesce
692 in the ~~an~~ offense ~~specified in paragraph (a), paragraph (b), or~~
693 ~~paragraph (c)~~, termination will not be imposed. If the agency
694 effects a termination under this subsection, the agency shall
695 issue an immediate final order pursuant to s. 120.569(2)(n).
696 (15) The agency shall seek a remedy provided by law,

697 including, but not limited to, any remedy provided in
698 subsections (13) and (16) and s. 812.035, if:
699 (a) The provider's license has not been renewed, or has
700 been revoked, suspended, or terminated, for cause, by the
701 licensing agency of any state;
702 (b) The provider has failed to make available or has
703 refused access to Medicaid-related records to an auditor,
704 investigator, or other authorized employee or agent of the
705 agency, the Attorney General, a state attorney, or the Federal
706 Government;
707 (c) The provider has not furnished or has failed to make
708 available such Medicaid-related records as the agency has found
709 necessary to determine whether Medicaid payments are or were due
710 and the amounts thereof;
711 (d) The provider has failed to maintain medical records
712 made at the time of service, or prior to service if prior
713 authorization is required, demonstrating the necessity and
714 appropriateness of the goods or services rendered;
715 (e) The provider is not in compliance with provisions of
716 Medicaid provider publications that have been adopted by
717 reference as rules in the Florida Administrative Code; with
718 provisions of state or federal laws, rules, or regulations; with
719 provisions of the provider agreement between the agency and the
720 provider; or with certifications found on claim forms or on
721 transmittal forms for electronically submitted claims that are
722 submitted by the provider or authorized representative, as such
723 provisions apply to the Medicaid program;
724 (f) The provider or person who ordered, authorized, or
725 prescribed the care, services, or supplies has furnished, ~~or~~

726 ordered, or authorized the furnishing of~~,~~ goods or services to a
727 recipient which are inappropriate, unnecessary, excessive, or
728 harmful to the recipient or are of inferior quality;
729 (g) The provider has demonstrated a pattern of failure to
730 provide goods or services that are medically necessary;
731 (h) The provider or an authorized representative of the
732 provider, or a person who ordered, authorized, or prescribed the
733 goods or services, has submitted or caused to be submitted false
734 or a pattern of erroneous Medicaid claims;
735 (i) The provider or an authorized representative of the
736 provider, or a person who has ordered, authorized, or prescribed
737 the goods or services, has submitted or caused to be submitted a
738 Medicaid provider enrollment application, a request for prior
739 authorization for Medicaid services, a drug exception request,
740 or a Medicaid cost report that contains materially false or
741 incorrect information;
742 (j) The provider or an authorized representative of the
743 provider has collected from or billed a recipient or a
744 recipient's responsible party improperly for amounts that should
745 not have been so collected or billed by reason of the provider's
746 billing the Medicaid program for the same service;
747 (k) The provider or an authorized representative of the
748 provider has included in a cost report costs that are not
749 allowable under a Florida Title XIX reimbursement plan~~,~~ after
750 the provider or authorized representative had been advised in an
751 audit exit conference or audit report that the costs were not
752 allowable;
753 (l) The provider is charged by information or indictment
754 with fraudulent billing practices or any offense referenced in

755 subsection (13). The sanction applied for this reason is limited
756 to suspension of the provider's participation in the Medicaid
757 program for the duration of the indictment unless the provider
758 is found guilty pursuant to the information or indictment;
759 (m) The provider or a person who has ordered, authorized,
760 or prescribed the goods or services is found liable for
761 negligent practice resulting in death or injury to the
762 provider's patient;
763 (n) The provider fails to demonstrate that it had available
764 during a specific audit or review period sufficient quantities
765 of goods, or sufficient time in the case of services, to support
766 the provider's billings to the Medicaid program;
767 (o) The provider has failed to comply with the notice and
768 reporting requirements of s. 409.907;
769 (p) The agency has received reliable information of patient
770 abuse or neglect or of any act prohibited by s. 409.920; or
771 (q) The provider has failed to comply with an agreed-upon
772 repayment schedule.
773
774 A provider is subject to sanctions for violations of this
775 subsection as the result of actions or inactions of the
776 provider, or actions or inactions of any principal, officer,
777 director, agent, managing employee, or affiliated person of the
778 provider, or any partner or shareholder having an ownership
779 interest in the provider equal to 5 percent or greater, in which
780 the provider participated or acquiesced.
781 (16) The agency shall impose any of the following sanctions
782 or disincentives on a provider or a person for any of the acts
783 described in subsection (15):

784 (a) Suspension for a specific period of time of not more
785 than 1 year. Suspension precludes ~~shall preclude~~ participation
786 in the Medicaid program, which includes any action that results
787 in a claim for payment to the Medicaid program as a result of
788 furnishing, supervising a person who is furnishing, or causing a
789 person to furnish goods or services.
790 (b) Termination for a specific period of time of from more
791 than 1 year to 20 years. Termination precludes ~~shall preclude~~
792 participation in the Medicaid program, which includes any action
793 that results in a claim for payment to the Medicaid program as a
794 result of furnishing, supervising a person who is furnishing, or
795 causing a person to furnish goods or services.
796 (c) Imposition of a fine of up to $5,000 for each
797 violation. Each day that an ongoing violation continues, such as
798 refusing to furnish Medicaid-related records or refusing access
799 to records, is considered, for the purposes of this section, to
800 be a separate violation. Each instance of improper billing of a
801 Medicaid recipient; each instance of including an unallowable
802 cost on a hospital or nursing home Medicaid cost report after
803 the provider or authorized representative has been advised in an
804 audit exit conference or previous audit report of the cost
805 unallowability; each instance of furnishing a Medicaid recipient
806 goods or professional services that are inappropriate or of
807 inferior quality as determined by competent peer judgment; each
808 instance of knowingly submitting a materially false or erroneous
809 Medicaid provider enrollment application, request for prior
810 authorization for Medicaid services, drug exception request, or
811 cost report; each instance of inappropriate prescribing of drugs
812 for a Medicaid recipient as determined by competent peer

813 judgment; and each false or erroneous Medicaid claim leading to
814 an overpayment to a provider is considered, for the purposes of
815 this section, to be a separate violation.
816 (d) Immediate suspension, if the agency has received
817 information of patient abuse or neglect or of any act prohibited
818 by s. 409.920. Upon suspension, the agency must issue an
819 immediate final order under s. 120.569(2)(n).
820 (e) A fine, not to exceed $10,000, for a violation of
821 paragraph (15)(i).
822 (f) Imposition of liens against provider assets, including,
823 but not limited to, financial assets and real property, not to
824 exceed the amount of fines or recoveries sought, upon entry of
825 an order determining that such moneys are due or recoverable.
826 (g) Prepayment reviews of claims for a specified period of
827 time.
828 (h) Comprehensive followup reviews of providers every 6
829 months to ensure that they are billing Medicaid correctly.
830 (i) Corrective-action plans that ~~would~~ remain in effect ~~for~~
831 ~~providers~~ for up to 3 years and that are ~~would be~~ monitored by
832 the agency every 6 months while in effect.
833 (j) Other remedies as permitted by law to effect the
834 recovery of a fine or overpayment.
835
836 If a provider voluntarily relinquishes its Medicaid provider
837 number after receiving written notice that the agency is
838 conducting, or has conducted, an audit or investigation and the
839 sanction of suspension or termination will be imposed for
840 noncompliance discovered as a result of the audit or
841 investigation, the agency shall impose the sanction of

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842 termination for cause against the provider. The Secretary of
843 Health Care Administration may make a determination that
844 imposition of a sanction or disincentive is not in the best
845 interest of the Medicaid program, in which case a sanction or
846 disincentive may ~~shall~~ not be imposed.
847 (21) When making a determination that an overpayment has
848 occurred, the agency shall prepare and issue an audit report to
849 the provider showing the calculation of overpayments. The
850 agency's determination shall be based solely upon information
851 available to it before issuance of the audit report and, in the
852 case of documentation obtained to substantiate claims for
853 Medicaid reimbursement, based solely upon contemporaneous
854 records.
855 (22) The audit report, supported by agency work papers,
856 showing an overpayment to a provider constitutes evidence of the
857 overpayment. A provider may not present or elicit testimony,
858 ~~either~~ on direct examination or cross-examination in any court
859 or administrative proceeding, regarding the purchase or
860 acquisition by any means of drugs, goods, or supplies; sales or
861 divestment by any means of drugs, goods, or supplies; or
862 inventory of drugs, goods, or supplies, unless such acquisition,
863 sales, divestment, or inventory is documented by written
864 invoices, written inventory records, or other competent written
865 documentary evidence maintained in the normal course of the
866 provider's business. Testimony or evidence that is not based
867 upon contemporaneous records or that was not furnished to the
868 agency within 21 days after the issuance of the audit report is
869 inadmissible in an administrative hearing on a Medicaid
870 overpayment or an administrative sanction. Notwithstanding the

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871 applicable rules of discovery, all documentation to ~~that will~~ be
872 offered as evidence at an administrative hearing on a Medicaid
873 overpayment or an administrative sanction must be exchanged by
874 all parties at least 14 days before the administrative hearing
875 or ~~must be~~ excluded from consideration.
876 (25)(a) The agency shall withhold Medicaid payments, in
877 whole or in part, to a provider upon receipt of reliable
878 evidence that the circumstances giving rise to the need for a
879 withholding of payments involve fraud, willful
880 misrepresentation, or abuse under the Medicaid program, or a
881 crime committed while rendering goods or services to Medicaid
882 recipients. If it is determined that fraud, willful
883 misrepresentation, abuse, or a crime did not occur, the payments
884 withheld must be paid to the provider within 14 days after such
885 determination ~~with interest at the rate of 10 percent a year~~.
886 ~~Any money withheld in accordance with this paragraph shall be~~
887 ~~placed in a suspended account, readily accessible to the agency,~~
888 ~~so that any payment ultimately due the provider shall be made~~
889 ~~within 14 days.~~
890 (b) The agency shall deny payment, or require repayment, if
891 the goods or services were furnished, supervised, or caused to
892 be furnished by a person who has been suspended or terminated
893 from the Medicaid program or Medicare program by the Federal
894 Government or any state.
895 (c) Overpayments owed to the agency bear interest at the
896 rate of 10 percent per year from the date of determination of
897 the overpayment by the agency, and payment arrangements
898 regarding overpayments and fines must be made within 30 days
899 after the date of the final order and are not subject to further

900 appeal ~~at the conclusion of legal proceedings~~. ~~A provider who~~
901 ~~does not enter into or adhere to an agreed-upon repayment~~
902 ~~schedule may be terminated by the agency for nonpayment or~~
903 ~~partial payment.~~
904 (d) The agency, upon entry of a final agency order, a
905 judgment or order of a court of competent jurisdiction, or a
906 stipulation or settlement, may collect the moneys owed by all
907 means allowable by law, including, but not limited to, notifying
908 any fiscal intermediary of Medicare benefits that the state has
909 a superior right of payment. Upon receipt of such written
910 notification, the Medicare fiscal intermediary shall remit to
911 the state the sum claimed.
912 (e) The agency may institute amnesty programs to allow
913 Medicaid providers the opportunity to voluntarily repay
914 overpayments. The agency may adopt rules to administer such
915 programs.
916 (28) Venue for all Medicaid program integrity ~~overpayment~~
917 cases lies ~~shall lie~~ in Leon County, at the discretion of the
918 agency.
919 (29) Notwithstanding other provisions of law, the agency
920 and the Medicaid Fraud Control Unit of the Department of Legal
921 Affairs may review a person's or provider's Medicaid-related and
922 non-Medicaid-related records in order to determine the total
923 output of a provider's practice to reconcile quantities of goods
924 or services billed to Medicaid with quantities of goods or
925 services used in the provider's total practice.
926 (30) The agency shall terminate a provider's participation
927 in the Medicaid program if the provider fails to reimburse an
928 overpayment or pay a fine that has been determined by final

929 order, not subject to further appeal, within 30 ~~35~~ days after
930 the date of the final order, unless the provider and the agency
931 have entered into a repayment agreement.
932 (31) If a provider requests an administrative hearing
933 pursuant to chapter 120, such hearing must be conducted within
934 90 days following assignment of an administrative law judge,
935 absent exceptionally good cause shown as determined by the
936 administrative law judge or hearing officer. Upon issuance of a
937 final order, the outstanding balance of the amount determined to
938 constitute the overpayment and fines is ~~shall become~~ due. If a
939 provider fails to make payments in full, fails to enter into a
940 satisfactory repayment plan, or fails to comply with the terms
941 of a repayment plan or settlement agreement, the agency shall
942 withhold ~~medical assistance~~ reimbursement payments for Medicaid
943 services until the amount due is paid in full.
944 Section 7. Subsection (8) of section 409.920, Florida
945 Statutes, is amended to read:
946 409.920 Medicaid provider fraud.—
947 (8) A person who provides the state, any state agency, any
948 of the state's political subdivisions, or any agency of the
949 state's political subdivisions with information about fraud or
950 suspected fraudulent acts ~~fraud~~ by a Medicaid provider,
951 including a managed care organization, is immune from civil
952 liability for libel, slander, or any other relevant tort for
953 providing any ~~the~~ information about fraud or suspected
954 fraudulent acts, unless the person acted with knowledge that the
955 information was false or with reckless disregard for the truth
956 or falsity of the information. For purposes of this subsection,
957 the term "fraudulent acts" includes actual or suspected fraud,

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958 abuse, or overpayment, including any fraud-related matters that
959 a provider or health plan is required to report to the agency or
960 a law enforcement agency. The immunity from civil liability
961 extends to reports of fraudulent acts conveyed to the agency in
962 any manner, including any forum and with any audience as
963 directed by the agency, and includes all discussions subsequent
964 to the report and subsequent inquiries from the agency, unless
965 the person acted with knowledge that the information was false
966 or with reckless disregard for the truth or falsity of the
967 information.
968 Section 8. Paragraph (c) of subsection (2) of section
969 409.967, Florida Statutes, is amended to read:
970 409.967 Managed care plan accountability.—
971 (2) The agency shall establish such contract requirements
972 as are necessary for the operation of the statewide managed care
973 program. In addition to any other provisions the agency may deem
974 necessary, the contract must require:
975 (c) *Access.*—
976 1. Providers.—The agency shall establish specific standards
977 for the number, type, and regional distribution of providers in
978 managed care plan networks to ensure access to care for both
979 adults and children. Each plan must maintain a regionwide
980 network of providers in sufficient numbers to meet the access
981 standards for specific medical services for all recipients
982 enrolled in the plan. The exclusive use of mail-order pharmacies
983 is ~~may~~ not ~~be~~ sufficient to meet network access standards.
984 Consistent with the standards established by the agency,
985 provider networks may include providers located outside the
986 region. A plan may contract with a new hospital facility before

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987 the date the hospital becomes operational if the hospital has
988 commenced construction, will be licensed and operational by
989 January 1, 2013, and a final order has issued in any civil or
990 administrative challenge. Each plan shall establish and maintain
991 an accurate and complete electronic database of contracted
992 providers, including information about licensure or
993 registration, locations and hours of operation, specialty
994 credentials and other certifications, specific performance
995 indicators, and such other information as the agency deems
996 necessary. The database must be available online to both the
997 agency and the public and have the capability to compare the
998 availability of providers to network adequacy standards and to
999 accept and display feedback from each provider's patients. Each
1000 plan shall submit quarterly reports to the agency identifying
1001 the number of enrollees assigned to each primary care provider.
1002 2. Prescribed drugs.—
1003 a. If establishing a prescribed drug formulary or preferred
1004 drug list, a managed care plan must:
1005 (I) Provide a broad range of therapeutic options for the
1006 treatment of disease states consistent with the general needs of
1007 an outpatient population. Whenever feasible, the formulary or
1008 preferred drug list should include at least two products in a
1009 therapeutic class;
1010 (II) Include coverage via prior authorization for each drug
1011 newly approved by the federal Food and Drug Administration until
1012 the plan's Pharmaceutical and Therapeutics Committee reviews
1013 such drug for inclusion on the formulary. The timing of the
1014 formulary review must comply with s. 409.91195; and
1015 (III) Provide a response within 24 hours after receipt of

1016 all necessary information from the medical provider for a
1017 request for prior authorization and provide a procedure for
1018 escalating a delayed prior authorization request to the pharmacy
1019 management team for resolution or to override other medical
1020 management tools.
1021 b. Each managed care plan shall ~~must~~ publish any prescribed
1022 drug formulary or preferred drug list on the plan's website in a
1023 manner that is accessible to and searchable by enrollees and
1024 providers. The plan must update the list within 24 hours after
1025 making a change. ~~Each plan must ensure that the prior~~
1026 ~~authorization process for prescribed drugs is readily accessible~~
1027 ~~to health care providers, including posting appropriate contact~~
1028 ~~information on its website and providing timely responses to~~
1029 ~~providers.~~
1030 c. The managed care plan must continue to permit an
1031 enrollee who was receiving a prescription drug that was on the
1032 plan's formulary and subsequently removed or changed to continue
1033 to receive that drug if the provider submits a written request
1034 that demonstrates that the drug is medically necessary, and the
1035 enrollee meets clinical criteria to receive the drug.
1036 d. A managed care plan that imposes a step-therapy or a
1037 fail-first protocol must do so in accordance with the following:
1038 (I) If prescribed drugs for the treatment of a medical
1039 condition are restricted for use by the plan through a step-
1040 therapy or fail-first protocol, the plan must provide the
1041 prescriber with access to a clear and convenient process to
1042 expeditiously request a prior authorization that includes a
1043 procedure for escalation to the pharmacy management team if not
1044 resolved in a timely manner.

1045 (II) Escalation to the pharmacy management team must be
1046 expeditiously granted by the plan if the prescriber can submit
1047 appropriate and complete medical documentation to the plan that
1048 the preferred treatment required under the step-therapy or fail-
1049 first protocol:
1050 (A) Has been ineffective in the treatment of the enrollee's
1051 disease or medical condition;
1052 (B) Is reasonably expected to be ineffective based on the
1053 known relevant physical or mental characteristics and medical
1054 history of the enrollee and known characteristics of the drug
1055 regimen; or
1056 (C) Will cause or will likely cause an adverse reaction or
1057 other physical harm to the enrollee.
1058 (III) The pharmacy management team shall work directly with
1059 the medical provider to bring the prior-authorization request to
1060 a clinically appropriate, cost-effective, and timely resolution.
1061 e. For enrollees ~~Medicaid recipients~~ diagnosed with
1062 hemophilia who have been prescribed anti-hemophilic-factor
1063 replacement products, the agency shall provide for those
1064 products and hemophilia overlay services through the agency's
1065 hemophilia disease management program.
1066 3. Prior authorization.—
1067 a. Each managed care plan must ensure that the prior
1068 authorization process for prescribed drugs is readily accessible
1069 to health care providers, including posting appropriate contact
1070 information on its website and providing timely responses to
1071 providers.
1072 b. If a drug, determined to be medically necessary and
1073 prescribed for an enrollee by a physician using sound clinical

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1074 judgment, is subject to prior authorization and approved, the
1075 managed care plan must provide for sufficient refills to
1076 complete the duration of the prescription. If the medication is
1077 still clinically appropriate for ongoing therapy after the
1078 initial prior authorization expires, the plan must provide a
1079 process of expedited review to evaluate ongoing therapy.
1080 c. If a prescribed drug requires prior authorization, the
1081 managed care plan shall reimburse the pharmacist for dispensing
1082 a 72-hour supply of oral maintenance medications to the enrollee
1083 and process the prior authorization request. Dispensing a 72-
1084 hour supply must be consistent with laws that govern pharmacy
1085 practice and controlled substances. The managed care plan shall
1086 process all prior authorization requests in as timely a manner
1087 as possible.
1088 d.~~3.~~ Managed care plans, and their fiscal agents or
1089 intermediaries, must accept prior authorization requests for
1090 prescribed drugs ~~any service~~ electronically.
1091 Section 9. Subsection (11) is added to section 429.23,
1092 Florida Statutes, to read:
1093 429.23 Internal risk management and quality assurance
1094 program; adverse incidents and reporting requirements.—
1095 (11) The agency shall annually submit a report to the
1096 Legislature on adverse incident reports by assisted living
1097 facilities. The report must include the following information
1098 arranged by county:
1099 (a) A total number of adverse incidents;
1100 (b) A listing, by category, of the type of adverse
1101 incidents occurring within each category and the type of staff
1102 involved;

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1103 (c) A listing, by category, of the types of injuries, if
1104 any, and the number of injuries occurring within each category;
1105 (d) Types of liability claims filed based on an adverse
1106 incident report or reportable injury; and
1107 (e) Disciplinary action taken against staff, categorized by
1108 the type of staff involved.
1109 Section 10. Present subsections (9), (10), and (11) of
1110 section 429.26, Florida Statutes, are renumbered as subsections
1111 (12), (13), and (14), respectively, and new subsections (9),
1112 (10), and (11) are added to that section, to read:
1113 429.26 Appropriateness of placements; examinations of
1114 residents.—
1115 (9) If, at any time after admission to a facility, agency
1116 personnel question whether a resident needs care beyond that
1117 which the facility is licensed to provide, the agency may
1118 require the resident to be physically examined by a licensed
1119 physician, licensed physician assistant, or certified nurse
1120 practitioner. To the extent possible, the examination must be
1121 performed by the resident's preferred physician, physician
1122 assistant, or nurse practitioner and paid for by the resident
1123 with personal funds, except as provided in s. 429.18(2). This
1124 subsection does not preclude the agency from imposing sanctions
1125 for violations of subsection (1).
1126 (a) Following examination, the examining physician,
1127 physician assistant, or nurse practitioner shall complete and
1128 sign a medical form provided by the agency. The completed
1129 medical form must be submitted to the agency within 30 days
1130 after the date the facility owner or administrator was notified
1131 by the agency that a physical examination is required.

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1132 (b) A medical review team designated by the agency shall
1133 determine whether the resident is appropriately residing in the
1134 facility based on the completed medical form and, if necessary,
1135 consultation with the physician, physician assistant, or nurse
1136 practitioner who performed the examination. Members of the
1137 medical review team making the determination may not include the
1138 agency personnel who initially questioned the appropriateness of
1139 the resident's placement. The medical review team shall base its
1140 decision on a comprehensive review of the resident's physical
1141 and functional status. A determination that the resident's
1142 placement is not appropriate is final and binding upon the
1143 facility and the resident.
1144 (c) A resident who is determined by the medical review team
1145 to be inappropriately residing in a facility shall be given 30
1146 days' written notice to relocate by the owner or administrator,
1147 unless the resident's continued residence in the facility
1148 presents an imminent danger to the health, safety, or welfare of
1149 the resident or a substantial probability exists that death or
1150 serious physical harm to the resident would result if the
1151 resident is allowed to remain in the facility.
1152 (10) If a mental health resident appears to have needs in
1153 addition to those identified in the community living support
1154 plan, the agency may require an evaluation by a mental health
1155 professional, as determined by the Department of Children and
1156 Family Services.
1157 (11) A facility may not be required to retain a resident
1158 who requires more services or care than the facility is able to
1159 provide in accordance with its policies and criteria for
1160 admission and continued residency.

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1161 Section 11. Effective July 1, 2012, section 456.0635,
1162 Florida Statutes, is amended to read:
1163 456.0635 Health care ~~Medicaid~~ fraud; disqualification for
1164 license, certificate, or registration.—
1165 (1) Health care ~~Medicaid~~ fraud in the practice of a health
1166 care profession is prohibited.
1167 (2) Each board under ~~within~~ the jurisdiction of the
1168 department, or the department if there is no board, shall refuse
1169 to admit a candidate to an ~~any~~ examination and refuse to issue
1170 ~~or renew~~ a license, certificate, or registration to an ~~any~~
1171 applicant if the candidate or applicant or any principal,
1172 officer, agent, managing employee, or affiliated person of the
1173 applicant~~, has been~~:
1174 (a) Has been convicted of, or entered a plea of guilty or
1175 nolo contendere to, regardless of adjudication, a felony under
1176 chapter 409, chapter 817, or chapter 893, or a similar felony
1177 offense committed in another state or jurisdiction, unless the
1178 candidate or applicant has successfully completed a drug court
1179 program for that felony and provides proof that the plea has
1180 been withdrawn or the charges have been dismissed. Any such
1181 conviction or plea shall exclude the applicant or candidate from
1182 licensure, examination, certification, or registration ~~21 U.S.C.~~
1183 ~~ss. 801-970, or 42 U.S.C. ss. 1395-1396,~~ unless the sentence and
1184 any subsequent period of probation for such conviction or plea
1185 ~~pleas~~ ended: ~~more than 15 years prior to the date of the~~
1186 ~~application;~~
1187 1. For felonies of the first or second degree, more than 15
1188 years before the date of application.
1189 2. For felonies of the third degree, more than 10 years

1190 before the date of application, except for felonies of the third
1191 degree under s. 893.13(6)(a).
1192 3. For felonies of the third degree under s. 893.13(6)(a),
1193 more than 5 years before the date of application.
1194 (b) Has been convicted of, or entered a plea of guilty or
1195 nolo contendere to, regardless of adjudication, a felony under
1196 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the
1197 sentence and any subsequent period of probation for such
1198 conviction or plea ended more than 15 years before the date of
1199 the application.
1200 (c) ~~(b)~~ Has been terminated for cause from the Florida
1201 Medicaid program pursuant to s. 409.913, unless the candidate or
1202 applicant has been in good standing with the Florida Medicaid
1203 program for the most recent 5 years.~~;~~
1204 (d) ~~(c)~~ Has been terminated for cause, pursuant to the
1205 appeals procedures established by the state ~~or Federal~~
1206 ~~Government~~, from any other state Medicaid program ~~or the federal~~
1207 ~~Medicare program~~, unless the candidate or applicant has been in
1208 good standing with that ~~a~~ state Medicaid program ~~or the federal~~
1209 ~~Medicare program~~ for the most recent 5 years and the termination
1210 occurred at least 20 years before ~~prior to~~ the date of the
1211 application.
1212 (e) Is currently listed on the United States Department of
1213 Health and Human Services Office of Inspector General's List of
1214 Excluded Individuals and Entities.
1215
1216 This subsection does not apply to candidates or applicants for
1217 initial licensure or certification who were enrolled in an
1218 educational or training program on or before July 1, 2009, which

1219 was recognized by a board or, if there is no board, recognized
1220 by the department, and who applied for licensure after July 1,
1221 2012.
1222 (3) The department shall refuse to renew a license,
1223 certificate, or registration of any applicant if the applicant
1224 or any principal, officer, agent, managing employee, or
1225 affiliated person of the applicant:
1226 (a) Has been convicted of, or entered a plea of guilty or
1227 nolo contendere to, regardless of adjudication, a felony under
1228 chapter 409, chapter 817, or chapter 893, or a similar felony
1229 offense committed in another state or jurisdiction, unless the
1230 applicant is currently enrolled in a drug court program that
1231 allows the withdrawal of the plea for that felony upon
1232 successful completion of that program. Any such conviction or
1233 plea excludes the applicant or candidate from licensure,
1234 examination, certification, or registration unless the sentence
1235 and any subsequent period of probation for such conviction or
1236 plea ended:
1237 1. For felonies of the first or second degree, more than 15
1238 years before the date of application.
1239 2. For felonies of the third degree, more than 10 years
1240 before the date of application, except for felonies of the third
1241 degree under s. 893.13(6)(a).
1242 3. For felonies of the third degree under s. 893.13(6)(a),
1243 more than 5 years before the date of application.
1244 (b) Has been convicted of, or entered a plea of guilty or
1245 nolo contendere to, regardless of adjudication, a felony under
1246 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396 since July 1,
1247 2009, unless the sentence and any subsequent period of probation

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1248 for such conviction or plea ended more than 15 years before the
1249 date of the application.
1250 (c) Has been terminated for cause from the Florida Medicaid
1251 program pursuant to s. 409.913, unless the applicant has been in
1252 good standing with the Florida Medicaid program for the most
1253 recent 5 years.
1254 (d) Has been terminated for cause, pursuant to the appeals
1255 procedures established by the state, from any other state
1256 Medicaid program, unless the applicant has been in good standing
1257 with that state Medicaid program for the most recent 5 years and
1258 the termination occurred at least 20 years before the date of
1259 the application.
1260 (e) Is currently listed on the United States Department of
1261 Health and Human Services Office of Inspector General's List of
1262 Excluded Individuals and Entities.
1263 (4) ~~(3)~~ Licensed health care practitioners shall report
1264 allegations of health care ~~Medicaid~~ fraud to the department,
1265 regardless of the practice setting in which the alleged health
1266 care ~~Medicaid~~ fraud occurred.
1267 (5) ~~(4)~~ The acceptance by a licensing authority of a
1268 licensee's ~~candidate's~~ relinquishment of a license which is
1269 offered in response to or anticipation of the filing of
1270 administrative charges alleging health care ~~Medicaid~~ fraud or
1271 similar charges constitutes the permanent revocation of the
1272 license.
1273 Section 12. Effective July 1, 2012, present subsections
1274 (14) and (15) of section 456.036, Florida Statutes, are
1275 renumbered as subsections (15) and (16), respectively, and a new
1276 subsection (14) is added to that section, to read:

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1277 456.036 Licenses; active and inactive status; delinquency.—
1278 (14) A person who has been denied license renewal,
1279 certification, or registration under s. 456.0635(3) may regain
1280 licensure, certification, or registration only by meeting the
1281 qualifications and completing the application process for
1282 initial licensure as defined by the board, or the department if
1283 there is no board. However, a person who was denied renewal of
1284 licensure, certification, or registration under s. 24 of chapter
1285 2009-223, Laws of Florida, between July 1, 2009, and June 30,
1286 2012, is not required to retake and pass examinations applicable
1287 for initial licensure, certification, or registration.
1288 Section 13. Subsection (1) of section 456.074, Florida
1289 Statutes, is amended to read:
1290 456.074 Certain health care practitioners; immediate
1291 suspension of license.—
1292 (1) The department shall issue an emergency order
1293 suspending the license of any person licensed under chapter 458,
1294 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
1295 chapter 464, chapter 465, chapter 466, or chapter 484 who pleads
1296 guilty to, is convicted or found guilty of, or who enters a plea
1297 of nolo contendere to, regardless of adjudication~~, to~~:
1298 (a) A felony under chapter 409, chapter 817, or chapter 893
1299 or under 21 U.S.C. ss. 801-970 or ~~under~~ 42 U.S.C. ss. 1395-1396;
1300 or
1301 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.
1302 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.
1303 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b~~, relating to the~~
1304 ~~Medicaid program~~.
1305 Section 14. Subsection (3) of section 458.309, Florida

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1306 Statutes, is amended to read:
1307 458.309 Rulemaking authority.—
1308 (3) A physician ~~All physicians~~ who performs liposuction
1309 procedures in which more than 1,000 cubic centimeters of
1310 supernatant fat is removed, ~~perform~~ level 2 procedures lasting
1311 more than 5 minutes, and all level 3 surgical procedures in an
1312 office setting must register the office with the department
1313 unless that office is licensed as a facility under ~~pursuant to~~
1314 chapter 395. The department shall inspect the physician's office
1315 annually unless the office is accredited by a nationally
1316 recognized accrediting agency or an accrediting organization
1317 subsequently approved by the Board of Medicine. The actual costs
1318 for registration and inspection or accreditation shall be paid
1319 by the person seeking to register and operate the office setting
1320 in which office surgery is performed.
1321 Section 15. Subsection (2) of section 459.005, Florida
1322 Statutes, is amended to read:
1323 459.005 Rulemaking authority.—
1324 (2) A physician ~~All physicians~~ who performs liposuction
1325 procedures in which more than 1,000 cubic centimeters of
1326 supernatant fat is removed, ~~perform~~ level 2 procedures lasting
1327 more than 5 minutes, and all level 3 surgical procedures in an
1328 office setting must register the office with the department
1329 unless that office is licensed as a facility under ~~pursuant to~~
1330 chapter 395. The department shall inspect the physician's office
1331 annually unless the office is accredited by a nationally
1332 recognized accrediting agency or an accrediting organization
1333 subsequently approved by the Board of Osteopathic Medicine. The
1334 actual costs for registration and inspection or accreditation

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1335 shall be paid by the person seeking to register and operate the
1336 office setting in which office surgery is performed.
1337 Section 16. Subsections (3), (4), and (5) of section
1338 463.002, Florida Statutes, are amended to read:
1339 463.002 Definitions.—As used in this chapter, the term:
1340 (3)(a) "Licensed practitioner" means a person who is a
1341 primary health care provider licensed to engage in the practice
1342 of optometry under the authority of this chapter.
1343 (b) A licensed practitioner who is not a certified
1344 optometrist shall be required to display at her or his place of
1345 practice a sign which states, "I am a Licensed Practitioner, not
1346 a Certified Optometrist, and I am not able to prescribe ~~topical~~
1347 ocular pharmaceutical agents."
1348 (c) All practitioners initially licensed after July 1,
1349 1993, must be certified optometrists.
1350 (4) "Certified optometrist" means a licensed practitioner
1351 authorized by the board to administer and prescribe ~~topical~~
1352 ocular pharmaceutical agents.
1353 (5) "Optometry" means the diagnosis of conditions of the
1354 human eye and its appendages; the employment of any objective or
1355 subjective means or methods, including the administration of
1356 ~~topical ocular~~ pharmaceutical agents, for the purpose of
1357 determining the refractive powers of the human eyes, or any
1358 visual, muscular, neurological, or anatomic anomalies of the
1359 human eyes and their appendages; and the prescribing and
1360 employment of lenses, prisms, frames, mountings, contact lenses,
1361 orthoptic exercises, light frequencies, and any other means or
1362 methods, including ~~topical ocular~~ pharmaceutical agents, for the
1363 correction, remedy, or relief of any insufficiencies or abnormal

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1364 conditions of the human eyes and their appendages.
1365 Section 17. Paragraph (g) of subsection (1) of section
1366 463.005, Florida Statutes, is amended to read:
1367 463.005 Authority of the board.—
1368 (1) The Board of Optometry has authority to adopt rules
1369 pursuant to ss. 120.536(1) and 120.54 to implement the
1370 provisions of this chapter conferring duties upon it. Such rules
1371 shall include, but not be limited to, rules relating to:
1372 (g) Administration and prescription of ~~topical~~ ocular
1373 pharmaceutical agents.
1374 Section 18. Section 463.0055, Florida Statutes, is amended
1375 to read:
1376 463.0055 Administration and prescription of ~~topical~~ ocular
1377 pharmaceutical agents; committee.—
1378 (1)(a) Certified optometrists may administer and prescribe
1379 ~~topical ocular~~ pharmaceutical agents as provided in this section
1380 for the diagnosis and treatment of ocular conditions of the
1381 human eye and its appendages without the use of surgery or other
1382 invasive techniques. However, a licensed practitioner who is not
1383 certified may use topically applied anesthetics solely for the
1384 purpose of glaucoma examinations~~,~~ but is otherwise prohibited
1385 from administering or prescribing ~~topical ocular~~ pharmaceutical
1386 agents.
1387 (b) Before a certified optometrist may administer or
1388 prescribe oral ocular pharmaceutical agents, the certified
1389 optometrist must complete a course and subsequent examination on
1390 general and ocular pharmacology which have a particular emphasis
1391 on the ingestion of oral pharmaceutical agents and the side
1392 effects of those agents. For certified optometrists licensed

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1393 before January 1, 1990, the course shall consist of 50 contact
1394 hours and 25 of those hours shall be Internet-based. For
1395 certified optometrists licensed on or after January 1, 1990, the
1396 course shall consist of 20 contact hours and 10 of those hours
1397 shall be Internet-based. The first course and examination shall
1398 be presented by January 1, 2013, and shall thereafter be
1399 administered at least annually. The Florida Medical Association
1400 and the Florida Optometric Association shall jointly develop and
1401 administer a course and examination for such purpose and jointly
1402 determine the site or sites for the course and examination.
1403 (2)(a) There is ~~hereby~~ created a committee composed of two
1404 certified optometrists licensed pursuant to this chapter,
1405 appointed by the Board of Optometry, two board-certified
1406 ophthalmologists licensed pursuant to chapter 458 or chapter
1407 459, appointed by the Board of Medicine, and one additional
1408 person with a doctorate degree in pharmacology who is not
1409 licensed pursuant to chapter 458, chapter 459, or this chapter,
1410 appointed by the State Surgeon General. The committee shall
1411 review requests for additions to, deletions from, or
1412 modifications of a formulary of topical ocular pharmaceutical
1413 agents for administration and prescription by certified
1414 optometrists and shall provide to the board advisory opinions
1415 and recommendations on such requests. The formulary of topical
1416 ocular pharmaceutical agents shall consist of those topical
1417 ~~ocular pharmaceutical~~ agents that are appropriate to treat and
1418 diagnose ocular diseases and disorders and that ~~which~~ the
1419 certified optometrist is qualified to use in the practice of
1420 optometry. The board shall establish, add to, delete from, or
1421 modify the formulary by rule. Notwithstanding any provision of

1422 chapter 120 to the contrary, the formulary rule shall become
1423 effective 60 days from the date it is filed with the Secretary
1424 of State.
1425 (b) The topical formulary may be added to, deleted from, or
1426 modified according to the procedure described in paragraph (a).
1427 Any person who requests an addition, deletion, or modification
1428 of an authorized topical ~~ocular pharmaceutical~~ agent shall have
1429 the burden of proof to show cause why such addition, deletion,
1430 or modification should be made.
1431 (c) The State Surgeon General shall have standing to
1432 challenge any rule or proposed rule of the board pursuant to s.
1433 120.56. In addition to challenges for any invalid exercise of
1434 delegated legislative authority, the administrative law judge,
1435 upon such a challenge by the State Surgeon General, may declare
1436 all or part of a rule or proposed rule invalid if it:
1437 1. Does not protect the public from any significant and
1438 discernible harm or damages;
1439 2. Unreasonably restricts competition or the availability
1440 of professional services in the state or in a significant part
1441 of the state; or
1442 3. Unnecessarily increases the cost of professional
1443 services without a corresponding or equivalent public benefit.
1444
1445 However, there shall not be created a presumption of the
1446 existence of any of the conditions cited in this subsection in
1447 the event that the rule or proposed rule is challenged.
1448 (d) Upon adoption of the topical formulary required by this
1449 section, and upon each addition, deletion, or modification to
1450 the topical formulary, the board shall mail a copy of the

1451 amended topical formulary to each certified optometrist and to
1452 each pharmacy licensed by the state.
1453 (3) In addition to the formulary of topical ocular
1454 pharmaceutical agents in subsection (2), there is created a
1455 statutory formulary of oral pharmaceutical agents, which include
1456 the following agents:
1457 (a) The following analgesics, or their generic or
1458 therapeutic equivalents, which may not be administered or
1459 prescribed for more than 72 hours without consultation with a
1460 physician licensed under chapter 458 or chapter 459 who is
1461 skilled in diseases of the eye:
1462 1. Tramadol hydrochloride.
1463 2. Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg.
1464 (b) The following antibiotics, or their generic or
1465 therapeutic equivalents:
1466 1. Amoxicillin.
1467 2. Azithromycin.
1468 3. Ciprofloxacin.
1469 4. Dicloxacillin.
1470 5. Doxycycline.
1471 6. Keflex.
1472 7. Minocycline.
1473 (c) The following antivirals, or their generic or
1474 therapeutic equivalents:
1475 1. Acyclovir.
1476 2. Famciclovir.
1477 3. Valacyclovir.
1478 (d) The following oral anti-glaucoma agents, or their
1479 generic or therapeutic equivalents, which may not be

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1480 administered or prescribed for more than 72 hours without
1481 consultation with a physician licensed under chapter 458 or
1482 chapter 459 who is skilled in diseases of the eye:
1483 1. Acetazolamide.
1484 2. Methazolamide.
1485
1486 Any oral pharmaceutical agent listed in the statutory formulary
1487 set forth in this subsection which is subsequently determined by
1488 the United States Food and Drug Administration to be unsafe for
1489 administration or prescription shall be considered to have been
1490 deleted from the formulary of oral pharmaceutical agents. The
1491 oral pharmaceutical agents on the statutory formulary set forth
1492 in this subsection may not otherwise be deleted by the board,
1493 the department, or the State Surgeon General.
1494 (4) ~~(3)~~ A certified optometrist shall be issued a prescriber
1495 number by the board. Any prescription written by a certified
1496 optometrist for a ~~topical ocular~~ pharmaceutical agent pursuant
1497 to this section shall have the prescriber number printed
1498 thereon.
1499 Section 19. Subsection (3) of section 463.0057, Florida
1500 Statutes, is amended to read:
1501 463.0057 Optometric faculty certificate.—
1502 (3) The holder of a faculty certificate may engage in the
1503 practice of optometry as permitted by this section~~,~~ but may not
1504 administer or prescribe ~~topical~~ ocular pharmaceutical agents
1505 unless the certificateholder has satisfied the requirements of
1506 ss. 463.0055(1)(b) and ~~s.~~ 463.006(1)(b)4. and 5.
1507 Section 20. Subsections (2) and (3) of section 463.006,
1508 Florida Statutes, are amended to read:

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1509 463.006 Licensure and certification by examination.—
1510 (2) The examination shall consist of the appropriate
1511 subjects, including applicable state laws and rules and general
1512 and ocular pharmacology with emphasis on the use ~~topical~~
1513 ~~application~~ and side effects of ocular pharmaceutical agents.
1514 The board may by rule substitute a national examination as part
1515 or all of the examination and may by rule offer a practical
1516 examination in addition to the written examination.
1517 (3) Each applicant who successfully passes the examination
1518 and otherwise meets the requirements of this chapter is entitled
1519 to be licensed as a practitioner and to be certified to
1520 administer and prescribe ~~topical ocular~~ pharmaceutical agents in
1521 the diagnosis and treatment of ocular conditions.
1522 Section 21. Subsections (1) and (2) of section 463.0135,
1523 Florida Statutes, are amended, and subsection (10) is added to
1524 that section, to read:
1525 463.0135 Standards of practice.—
1526 (1) A licensed practitioner shall provide that degree of
1527 care which conforms to that level of care provided by medical
1528 practitioners in the same or similar communities. A certified
1529 optometrist shall administer and prescribe oral ocular
1530 pharmaceutical agents in a manner consistent with applicable
1531 preferred practice patterns of the American Academy of
1532 Ophthalmology. A licensed practitioner shall advise or assist
1533 her or his patient in obtaining further care when the service of
1534 another health care practitioner is required.
1535 (2) A licensed practitioner diagnosing angle closure,
1536 neovascular, infantile, or congenital forms of glaucoma shall
1537 promptly and without unreasonable delay refer the patient to a

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1538 physician skilled in diseases of the eye and licensed under
1539 chapter 458 or chapter 459. In addition, a licensed practitioner
1540 shall timely refer any patient who experiences progressive
1541 glaucoma due to failed pharmaceutical intervention to a
1542 physician who is skilled in diseases of the eye and licensed
1543 under chapter 458 or chapter 459.
1544 (10) Comanagement of postoperative care shall be conducted
1545 pursuant to an established protocol that governs the
1546 relationship between the operating surgeon and the optometrist.
1547 The patient shall be informed that either physician will be
1548 available for emergency care throughout the postoperative
1549 period, and the patient shall consent in writing to the
1550 comanagement relationship.
1551 Section 22. Subsections (3) and (4) of section 463.014,
1552 Florida Statutes, are amended to read:
1553 463.014 Certain acts prohibited.—
1554 (3) Prescribing, ordering, dispensing, administering,
1555 supplying, selling, or giving any ~~systemic~~ drugs for the purpose
1556 of treating a systemic disease by a licensed practitioner is
1557 prohibited. However, a certified optometrist is permitted to use
1558 commonly accepted means or methods to immediately address
1559 incidents of anaphylaxis.
1560 (4) Surgery of any kind, including the use of lasers, is
1561 expressly prohibited. For purposes of this subsection, the term
1562 "surgery" means a procedure using an instrument, including
1563 lasers, scalpels, or needles, in which human tissue is cut,
1564 burned, or vaporized by incision, injection, ultrasound, laser,
1565 or radiation. The term includes procedures using instruments
1566 that require closing by suturing, clamping, or another such

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1567 device. Certified optometrists may remove superficial foreign
1568 bodies. For the purposes of this subsection, the term
1569 "superficial foreign bodies" means any foreign matter that is
1570 embedded in the conjunctiva or cornea but which has not
1571 penetrated the globe.
1572 Section 23. Section 463.0141, Florida Statutes, is created
1573 to read:
1574 463.0141 Reports of adverse incidents in the practice of
1575 optometry.—
1576 (1) Any adverse incident that occurs on or after January 1,
1577 2013, in the practice of optometry must be reported to the
1578 department in the accordance with this section.
1579 (2) The required notification to the department must be
1580 submitted in writing by certified mail and postmarked within 15
1581 days after the occurrence of the adverse incident.
1582 (3) For purposes of notification to the department, the
1583 term "adverse incident," as used in this section, means an event
1584 that is associated in whole or in part with the prescribing of
1585 an oral ocular pharmaceutical agent and that results in one of
1586 the following:
1587 (a) Any condition that requires the transfer of a patient
1588 to a hospital licensed under chapter 395;
1589 (b) Any condition that requires the patient to obtain care
1590 from a physician licensed under chapter 458 or chapter 459,
1591 other than a referral or a consultation required under this
1592 chapter;
1593 (c) Permanent physical injury to the patient;
1594 (d) Partial or complete permanent loss of sight by the
1595 patient; or

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1596 (e) Death of the patient.
1597 (4) The department shall review each incident and determine
1598 whether it potentially involved conduct by the licensed
1599 practitioner which may be subject to disciplinary action, in
1600 which case s. 456.073 applies. Disciplinary action, if any,
1601 shall be taken by the board.
1602 Section 24. Subsection (1) of section 483.035, Florida
1603 Statutes, is amended to read:
1604 483.035 Clinical laboratories operated by practitioners for
1605 exclusive use; licensure and regulation.—
1606 (1) A clinical laboratory operated by one or more
1607 practitioners licensed under chapter 458, chapter 459, chapter
1608 460, chapter 461, chapter 462, chapter 463, or chapter 466,
1609 exclusively in connection with the diagnosis and treatment of
1610 their own patients, must be licensed under this part and must
1611 comply with the provisions of this part, except that the agency
1612 shall adopt rules for staffing, for personnel, including
1613 education and training of personnel, for proficiency testing,
1614 and for construction standards relating to the licensure and
1615 operation of the laboratory based upon and not exceeding the
1616 same standards contained in the federal Clinical Laboratory
1617 Improvement Amendments of 1988 and the federal regulations
1618 adopted thereunder.
1619 Section 25. Subsection (7) of section 483.041, Florida
1620 Statutes, is amended to read:
1621 483.041 Definitions.—As used in this part, the term:
1622 (7) "Licensed practitioner" means a physician licensed
1623 under chapter 458, chapter 459, chapter 460, ~~or~~ chapter 461, or
1624 chapter 463; a dentist licensed under chapter 466; a person

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1625 licensed under chapter 462; or an advanced registered nurse
1626 practitioner licensed under part I of chapter 464; or a duly
1627 licensed practitioner from another state licensed under similar
1628 statutes who orders examinations on materials or specimens for
1629 nonresidents of the State of Florida, but who reside in the same
1630 state as the requesting licensed practitioner.
1631 Section 26. Subsection (5) of section 483.181, Florida
1632 Statutes, is amended to read:
1633 483.181 Acceptance, collection, identification, and
1634 examination of specimens.—
1635 (5) A clinical laboratory licensed under this part must
1636 accept a human specimen submitted for examination by a
1637 practitioner licensed under chapter 458, chapter 459, chapter
1638 460, chapter 461, chapter 462, chapter 463, s. 464.012, or
1639 chapter 466, if the specimen and test are the type performed by
1640 the clinical laboratory. A clinical laboratory may only refuse a
1641 specimen based upon a history of nonpayment for services by the
1642 practitioner. A clinical laboratory shall not charge different
1643 prices for tests based upon the chapter under which a
1644 practitioner submitting a specimen for testing is licensed.
1645 Section 27. Paragraph (a) of subsection (54) of section
1646 499.003, Florida Statutes, is amended to read:
1647 499.003 Definitions of terms used in this part.—As used in
1648 this part, the term:
1649 (54) "Wholesale distribution" means distribution of
1650 prescription drugs to persons other than a consumer or patient,
1651 but does not include:
1652 (a) Any of the following activities, which is not a
1653 violation of s. 499.005(21) if such activity is conducted in

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1654 accordance with s. 499.01(2)(g):
1655 1. The purchase or other acquisition by a hospital or other
1656 health care entity that is a member of a group purchasing
1657 organization of a prescription drug for its own use from the
1658 group purchasing organization or from other hospitals or health
1659 care entities that are members of that organization.
1660 2. The sale, purchase, or trade of a prescription drug or
1661 an offer to sell, purchase, or trade a prescription drug by a
1662 charitable organization described in s. 501(c)(3) of the
1663 Internal Revenue Code of 1986, as amended and revised, to a
1664 nonprofit affiliate of the organization to the extent otherwise
1665 permitted by law.
1666 3. The sale, purchase, or trade of a prescription drug or
1667 an offer to sell, purchase, or trade a prescription drug among
1668 hospitals or other health care entities that are under common
1669 control. For purposes of this subparagraph, "common control"
1670 means the power to direct or cause the direction of the
1671 management and policies of a person or an organization, whether
1672 by ownership of stock, by voting rights, by contract, or
1673 otherwise.
1674 4. The sale, purchase, trade, or other transfer of a
1675 prescription drug from or for any federal, state, or local
1676 government agency or any entity eligible to purchase
1677 prescription drugs at public health services prices pursuant to
1678 Pub. L. No. 102-585, s. 602 to a contract provider or its
1679 subcontractor for eligible patients of the agency or entity
1680 under the following conditions:
1681 a. The agency or entity must obtain written authorization
1682 for the sale, purchase, trade, or other transfer of a

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1683 prescription drug under this subparagraph from the State Surgeon
1684 General or his or her designee.
1685 b. The contract provider or subcontractor must be
1686 authorized by law to administer or dispense prescription drugs.
1687 c. In the case of a subcontractor, the agency or entity
1688 must be a party to and execute the subcontract.
1689 ~~d. A contract provider or subcontractor must maintain~~
1690 ~~separate and apart from other prescription drug inventory any~~
1691 ~~prescription drugs of the agency or entity in its possession.~~
1692 d.~~e.~~ The contract provider and subcontractor must maintain
1693 and produce immediately for inspection all records of movement
1694 or transfer of all the prescription drugs belonging to the
1695 agency or entity, including, but not limited to, the records of
1696 receipt and disposition of prescription drugs. Each contractor
1697 and subcontractor dispensing or administering these drugs must
1698 maintain and produce records documenting the dispensing or
1699 administration. Records that are required to be maintained
1700 include, but are not limited to, a perpetual inventory itemizing
1701 drugs received and drugs dispensed by prescription number or
1702 administered by patient identifier, which must be submitted to
1703 the agency or entity quarterly.
1704 e.~~f.~~ The contract provider or subcontractor may administer
1705 or dispense the prescription drugs only to the eligible patients
1706 of the agency or entity or must return the prescription drugs
1707 for or to the agency or entity. The contract provider or
1708 subcontractor must require proof from each person seeking to
1709 fill a prescription or obtain treatment that the person is an
1710 eligible patient of the agency or entity and must, at a minimum,
1711 maintain a copy of this proof as part of the records of the

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1712 contractor or subcontractor required under sub-subparagraph e.
1713 f.~~g.~~ In addition to the departmental inspection authority
1714 set forth in s. 499.051, the establishment of the contract
1715 provider and subcontractor and all records pertaining to
1716 prescription drugs subject to this subparagraph shall be subject
1717 to inspection by the agency or entity. All records relating to
1718 prescription drugs of a manufacturer under this subparagraph
1719 shall be subject to audit by the manufacturer of those drugs,
1720 without identifying individual patient information.
1721 Section 28. Subsection (4) of section 766.102, Florida
1722 Statutes, is amended to read:
1723 766.102 Medical negligence; standards of recovery; expert
1724 witness.—
1725 (4)(a) The Legislature is cognizant of the changing trends
1726 and techniques for the delivery of health care in this state and
1727 the discretion that is inherent in the diagnosis, care, and
1728 treatment of patients by different health care providers. The
1729 failure of a health care provider to order, perform, or
1730 administer supplemental diagnostic tests is ~~shall~~ not ~~be~~
1731 actionable if the health care provider acted in good faith and
1732 with due regard for the prevailing professional standard of
1733 care.
1734 (b) The claimant has the burden of proving by clear and
1735 convincing evidence that the alleged actions of the health care
1736 provider represent a breach of the prevailing professional
1737 standard of care in an action for damages based on death or
1738 personal injury which alleges that the death or injury resulted
1739 from the failure of a health care provider to order, perform, or
1740 administer supplemental diagnostic tests.

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1741 Section 29. Paragraph (b) of subsection (6) of section
1742 766.106, Florida Statutes, is amended to read:
1743 766.106 Notice before filing action for medical negligence;
1744 presuit screening period; offers for admission of liability and
1745 for arbitration; informal discovery; review.—
1746 (6) INFORMAL DISCOVERY.—
1747 (b) Informal discovery may be used by a party to obtain
1748 unsworn statements, the production of documents or things, ~~and~~
1749 physical and mental examinations, <u>and ex parte interviews,</u> as
1750 follows:
1751 1. Unsworn statements.—Any party may require other parties
1752 to appear for the taking of an unsworn statement. Such
1753 statements may be used only for the purpose of presuit screening
1754 and are not discoverable or admissible in any civil action for
1755 any purpose by any party. A party desiring to take the unsworn
1756 statement of any party must give reasonable notice in writing to
1757 all parties. The notice must state the time and place for taking
1758 the statement and the name and address of the party to be
1759 examined. Unless otherwise impractical, the examination of any
1760 party must be done at the same time by all other parties. Any
1761 party may be represented by counsel at the taking of an unsworn
1762 statement. An unsworn statement may be recorded electronically,
1763 stenographically, or on videotape. The taking of unsworn
1764 statements is subject to the provisions of the Florida Rules of
1765 Civil Procedure and may be terminated for abuses.
1766 2. Documents or things.—Any party may request discovery of
1767 documents or things. The documents or things must be produced,
1768 at the expense of the requesting party, within 20 days after the
1769 date of receipt of the request. A party is required to produce

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1770 discoverable documents or things within that party's possession
1771 or control. Medical records shall be produced as provided in s.
1772 766.204.
1773 3. Physical and mental examinations.—A prospective
1774 defendant may require an injured claimant to appear for
1775 examination by an appropriate health care provider. The
1776 prospective defendant shall give reasonable notice in writing to
1777 all parties as to the time and place for examination. Unless
1778 otherwise impractical, a claimant is required to submit to only
1779 one examination on behalf of all potential defendants. The
1780 practicality of a single examination must be determined by the
1781 nature of the claimant's condition, as it relates to the
1782 liability of each prospective defendant. Such examination report
1783 is available to the parties and their attorneys upon payment of
1784 the reasonable cost of reproduction and may be used only for the
1785 purpose of presuit screening. Otherwise, such examination report
1786 is confidential and exempt from the provisions of s. 119.07(1)
1787 and s. 24(a), Art. I of the State Constitution.
1788 4. Written questions.—Any party may request answers to
1789 written questions, the number of which may not exceed 30,
1790 including subparts. A response must be made within 20 days after
1791 receipt of the questions.
1792 5. Unsworn statements of treating health care providers.—A
1793 prospective defendant or his or her legal representative may
1794 also take unsworn statements of the claimant's treating health
1795 care providers. The statements must be limited to those areas
1796 that are potentially relevant to the claim of personal injury or
1797 wrongful death. Subject to the procedural requirements of
1798 subparagraph 1., a prospective defendant may take unsworn

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1799 statements from a claimant's treating physicians. Reasonable
1800 notice and opportunity to be heard must be given to the claimant
1801 or the claimant's legal representative before taking unsworn
1802 statements. The claimant or claimant's legal representative has
1803 the right to attend the taking of such unsworn statements.
1804 6. Ex parte interviews of treating health care providers.—A
1805 prospective defendant or his or her legal representative may
1806 interview the claimant's treating health care providers without
1807 the presence of the claimant or the claimant's legal
1808 representative. If a prospective defendant or his or her legal
1809 representative intends to interview a claimant's health care
1810 providers, the prospective defendant must provide the claimant
1811 with notice of such interview at least 10 days before the date
1812 of the interview.
1813 Section 30. Section 766.1091, Florida Statutes, is created
1814 to read:
1815 766.1091 Voluntary binding arbitration; damages.—
1816 (1) A health care provider licensed under chapter 458,
1817 chapter 459, chapter 463, or chapter 466; any entity owned in
1818 whole or in part by a health care provider licensed under
1819 chapter 458, chapter 459, chapter 463, or chapter 466; or any
1820 health care clinic licensed under part X of chapter 400, and a
1821 patient or prospective patient, may agree in writing to submit
1822 to arbitration any claim for medical negligence which may
1823 currently exist or may accrue in the future and would otherwise
1824 be brought pursuant to this chapter. Any arbitration agreement
1825 entered into pursuant to this section shall be governed by
1826 chapter 682.
1827 (2) Any arbitration agreement entered into pursuant to

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1828 subsection (1) may contain a provision that limits the available
1829 damages in an arbitration award.
1830 Section 31. Subsection (21) of section 893.02, Florida
1831 Statutes, is amended to read:
1832 893.02 Definitions.—The following words and phrases as used
1833 in this chapter shall have the following meanings, unless the
1834 context otherwise requires:
1835 (21) "Practitioner" means a physician licensed pursuant to
1836 chapter 458, a dentist licensed pursuant to chapter 466, a
1837 veterinarian licensed pursuant to chapter 474, an osteopathic
1838 physician licensed pursuant to chapter 459, a naturopath
1839 licensed pursuant to chapter 462, a certified optometrist
1840 licensed under chapter 463, or a podiatric physician licensed
1841 pursuant to chapter 461, provided such practitioner holds a
1842 valid federal controlled substance registry number.
1843 Section 32. Subsection (1) of section 893.05, Florida
1844 Statutes, is amended to read:
1845 893.05 Practitioners and persons administering controlled
1846 substances in their absence.—
1847 (1) A practitioner, in good faith and in the course of his
1848 or her professional practice only, may prescribe, administer,
1849 dispense, mix, or otherwise prepare a controlled substance, or
1850 the practitioner may cause the same to be administered by a
1851 licensed nurse or an intern practitioner under his or her
1852 direction and supervision only. A veterinarian may so prescribe,
1853 administer, dispense, mix, or prepare a controlled substance for
1854 use on animals only~~,~~ and may cause it to be administered by an
1855 assistant or orderly under the veterinarian's direction and
1856 supervision only. A certified optometrist licensed under chapter

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1857 463 may not administer or prescribe pharmaceutical agents in
1858 Schedule I or Schedule II of the Florida Comprehensive Drug
1859 Abuse Prevention and Control Act.
1860 Section 33. The Agency for Health Care Administration shall
1861 prepare a report within 18 months after the implementation of an
1862 expansion of managed care to new populations or the provision of
1863 new items and services. The agency shall post a draft of the
1864 report on its website and provide an opportunity for public
1865 comment. The final report shall be submitted to the Legislature,
1866 along with a description of the process for public input. The
1867 report must include an assessment of:
1868 (1) The impact of managed care on patient access to care,
1869 including an evaluation of any new barriers to the use of
1870 services and prescription drugs, created by the use of medical
1871 management or cost-containment tools.
1872 (2) The impact of the increased managed care expansion on
1873 the utilization of services, quality of care, and patient
1874 outcomes.
1875 (3) The use of prior authorization and other utilization
1876 management tools, including an assessment of whether these tools
1877 pose an undue administrative burden for health care providers or
1878 create barriers to needed care.
1879 Section 34. Except as otherwise expressly provided in this
1880 act, this act shall take effect upon becoming a law.

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CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: 2/16/2012 10:32:54 AM
Ends: 2/16/2012 12:45:21 PM **Length: 02:12:28**

10:32:57 AM	Meeting Called to Order
10:33:07 AM	Roll Call
10:34:58 AM	SB 1316 by Senator Gaetz
10:42:45 AM	Dr. Scott Hopes representing FL. Optometric Assoc.
10:44:15 AM	Jeff Scott representing FL. Medical Assoc.
11:00:36 AM	Alexander Clem representing the People of FL.
11:11:24 AM	Ken Sobel representing FL. Justice Assoc.
11:21:16 AM	CS/SB 1316 - Favorable
11:21:38 AM	CS/SB 1506 by Senator Thrasher
11:22:53 AM	Bob Harris representing Trial lawyers Section of the FL. Bar
11:28:35 AM	CS/SB 1506 Roll Call
11:29:44 AM	CS/SB 1506 - Favorable
11:30:10 AM	SB 1166 by Senator Simmons
11:31:47 AM	CS/SB 1166 Roll Call
11:32:14 AM	CS/SB 1166 - Favorable
11:32:35 AM	CS/SB by Senator Detert
11:32:59 AM	CS/SB 1172 by Senator Detert
11:35:39 AM	Bob Dillinger representing FL. Public Defender Assoc.
11:37:10 AM	CS/SB 1172 Roll Call
11:37:23 AM	CS/SB 1172 - Favorable
11:37:39 AM	CS/SB 2054 by Senator Storms
11:39:21 AM	CS/SB 2054 Roll Call
11:39:38 AM	CS/SB 2054 - Favorable
11:40:03 AM	CS/SB 732 by Senator Bogdanoff
11:44:39 AM	Lorri Hall representing self
11:48:30 AM	Shannon MacGillis representing self
11:52:14 AM	Bob Dillinger representing self
11:57:09 AM	CS/SB 732 Roll Call
11:58:09 AM	CS/SB 732 - Favorable
11:58:41 AM	CS/SB 1050 by Senator Bogdanoff
11:59:21 AM	CS/SB 1050 Roll Call
11:59:34 AM	CS/SB 1050 - Favorable
11:59:49 AM	CS/SB 292 by Senator Bennett
12:02:50 PM	CS/SB 292 Roll Call
12:03:51 PM	CS/SB 292 - Favorable
12:04:07 PM	SB 782 by Senator Bennett
12:05:41 PM	SB 782 Roll Call
12:05:51 PM	SB 782 - Favorable as a CS
12:06:11 PM	SJR 1740 by Senator Garcia
12:06:53 PM	SJR 1740 Roll Call
12:07:06 PM	SJR 1740 - Favorable
12:07:21 PM	SB 1738 by Senator Garcia
12:07:42 PM	SB 1738 Roll Call
12:08:03 PM	SB 1738 - Favorable as a CS
12:09:13 PM	SB 1830 by Senator Flores
12:13:32 PM	Alice Vickers representing FL. Consumer Action Network
12:15:27 PM	SB 1830 Roll Call
12:15:42 PM	SB 1830 - Favorable as a CS
12:16:03 PM	SB 106 by Senator Siplin
12:23:43 PM	Peter Casalvilla representing We are FL.
12:26:34 PM	Leonardo Yepez representing Students Working for Equal Rights
12:29:09 PM	Edwin Ramos representing We are FL.

12:31:12 PM	Edwin Ramos representing We are FL.
12:32:29 PM	Nanci Palacios representing We are FL.
12:35:34 PM	Leody De Los Santos representing self
12:36:55 PM	Candy Herrera representing We are FL.
12:43:42 PM	SB 106 Roll Call
12:44:42 PM	SB 106 - Failed
12:45:04 PM	Meeting Adjourned

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 Judiciary Committee

BILL: CS/SB 1506

INTRODUCER: Health Regulation Committee and Senator Thrasher

SUBJECT: Health Care

DATE: February 15, 2012 REVISED: 2/16/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/CS**
2.	O'Connor	Cibula	JU	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill authorizes certified optometrists to administer and prescribe oral, in addition to topical, ocular medications related to the diagnosis and treatment of ocular conditions. Certified optometrists are authorized to prescribe controlled substances other than Schedule I or II substances, if they hold a valid federal controlled substance registry number. Before a certified optometrist may administer or prescribe oral ocular medications, he or she must complete a course and subsequent examination on general and ocular pharmacology.

The bill alters the composition of the committee that maintains the formulary of topical drugs certified optometrists are permitted to prescribe to specify that the two optometrists on the committee must be certified optometrists. The bill creates a statutory formulary of oral ocular medications that certified optometrists may prescribe. The standards of practice of optometry are amended to include requirements related to the administration and prescription of oral ocular medications, co-management of post-operative care, and referral of patients to physicians in certain situations. The bill also requires optometrists to report adverse incidents to the Department of Health.

With respect to clinical laboratories, the bill includes optometrists in the list of licensed practitioners who are permitted to operate such laboratories, adds optometrists to the definition of licensed practitioner, and requires laboratories to accept specimens for examination from optometrists.

The bill changes the burden of proof for a claimant in an action alleging a breach of the prevailing professional standard of care in an action for damages based on death or personal injury that allegedly resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests. The burden of proof is increased from a greater weight of the evidence to clear and convincing evidence.

The bill also authorizes a prospective defendant, or his or her legal representative, to conduct ex parte interviews of the claimant's treating health care providers without the presence of the claimant or the claimant's legal representative. Notice of any intended interviews must be provided to the claimant at least 10 days before the date of the interview.

The bill authorizes certain health care providers and a patient or prospective patient to agree in writing to submit to arbitration any claim for medical negligence which may currently exist or which may accrue in the future which would otherwise be brought under ch. 766, F.S., relating to medical malpractice. An arbitration agreement entered into under this section would be governed by the Florida Arbitration Code. Such an arbitration agreement may contain a provision that would limit the available damages in any arbitration award.

This bill substantially amends the following sections of the Florida Statutes: 463.002, 463.005, 463.0055, 463.0057, 463.006, 463.0135, 463.014, 483.035, 483.041, 483.181, 766.102, 766.106, 893.02, and 893.05. The bill creates ss. 463.0141 and 766.1091, F.S.

II. Present Situation:

Optometrists and Ophthalmologists

Optometrists are the primary health care professionals for the eye. Optometrists examine, diagnose, treat, and manage diseases and injuries of the visual system as well as identify systemic conditions that affect visual health. Optometrists may prescribe certain medications, vision therapy, and corrective lenses but may not perform surgical procedures in Florida.[1]

Optometrist training involves an undergraduate degree and completion of a 4-year program at a college of optometry. Some optometrists complete residencies to gain more specialized knowledge, but residency training is not required for licensure or practice.[2]

Ophthalmologists are medical physicians who specialize in diseases of the eye. Ophthalmologists provide a full spectrum of eye care, from prescribing corrective lenses and other medications to performing eye surgery. Ophthalmologists also care for patients with more advanced and complicated diseases than do optometrists. Ophthalmologist training involves an undergraduate

[1] Section 463.014(4), F.S.
[2] American Optometric Association, *What is a Doctor of Optometry?* Found at: <http://www.aoa.org/x4891.xml> (Last visited on February 10, 2102).

degree, 4 years of medical school, and completion of at least 4 years of residency training in ophthalmology.[3]

Florida law requires optometrists who diagnose patients with certain diseases to refer such patients to ophthalmologists for further treatment.[4] Optometrists are also required to maintain the names of at least three physicians, clinics, or hospitals to which they may refer patients who experience adverse drug reactions.[5]

Administration of Medications by Optometrists

Licensed optometrists may administer and prescribe topical ocular pharmaceutical agents if they are appropriately certified by the Board of Optometry (the board). Such pharmaceuticals must be related to the diagnosis and treatment of ocular conditions and must not require surgery or other invasive techniques for administration. Medications approved for prescription by certified optometrists are listed in a formulary maintained by the board.[6,7]

To be certified for prescribing privileges, an optometrist must satisfy all of the following:[8]

- Complete at least 100 hours of board-approved coursework and clinical training in general and ocular pharmacology at an accredited institution. Such training may have been part of an optometry training program.
- Complete at least 1 year of supervised experience in differential diagnosis of eye disorders, which may occur during training or clinical practice.
- Pass part II of the National Board of Examiners in Optometry examination.[9]
- Pay a $500 fee.[10]

Certification for prescribing privileges is a required component of the general licensure process for optometrists and has been so for the last 25 years.[11, 12] Optometrists who are not certified may use topical anesthetics for glaucoma examinations.[13]

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[3] American Academy of Ophthalmology, *About Ophthalmology and Eye M.D.s*. Found at: <http://www.aao.org/about/eyemds.cfm> (Last visited on February 10, 2012).
[4] Diagnoses which mandate a referral to an ophthalmologist include acute angle glaucoma, congenital or infantile glaucoma, infectious corneal diseases refractory to standard treatment, and retinal detachment.
[5] Section 463.0135, F.S.
[6] Section 463.0055, F.S.
[7] The formulary is listed in Rule 64B13-18.002, F.A.C., and includes agents to dilate and constrict pupils, local anesthetics, antibiotics, anti-inflammatory agents, antihistamines, antivirals, and anti-glaucoma medications. All medications are for topical ocular use only.
[8] Rule 64B13-10.001, F.A.C.
[9] This examination consists of 60 simulated patient cases to assess the examinee's performance in clinical practice situations. Found at: <http://www.optometry.org/part_2_pam.cfm> (Last visited on February 10, 2012).
[10] Rule 64B13-6.001(9), F.A.C.
[11] Section 463.006, F.S.
[12] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 788*. A copy is on file with the Senate Health Regulation Committee.
[13] Section 463.0055(1), F.S.

Prescribing Controlled Substances

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice is tasked with monitoring controlled substances and preventing their abuse. Controlled substances fall into five categories, or schedules, depending on their addictive potential. Drug schedules are specified by the United States Department of Justice Drug Enforcement Administration in 21 C.F.R. ss. 1308.11-15 and in s. 893.03, F.S.

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, lysergic acid diethylamide (LSD), and marijuana. Schedule II controlled substances have a high potential for abuse which may lead to severe psychological or physical dependence, including morphine and its derivatives, amphetamines, cocaine, and pentobarbital. Schedule III controlled substances have lower abuse potential than Schedule II substances but may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of codeine per dose (such as Tylenol #3), ketamine, and anabolic steroids. Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan). Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.[14]

Any health care professional wishing to prescribe controlled substances must apply for a prescribing number from the DEA. Prescribing numbers are linked to state licenses and may be suspended or revoked upon any disciplinary action taken against a licensee. The DEA will grant prescribing numbers to a wide range of health care professionals, including physicians, nurse practitioners, physician assistants, optometrists, dentists, and veterinarians, but such professionals may only prescribe controlled substances that have been authorized to them under state law. Prescribing numbers must be renewed every 3 years.[15]

In Florida, only licensed physicians, dentists, veterinarians, naturopaths, and podiatrists are currently permitted to prescribe controlled substances, and they may only prescribe medications within the scope of their own practices.[16]

Clinical Laboratories

A clinical laboratory is a location in which body fluids or tissues are analyzed for purposes of the diagnosis, assessment, or prevention of a medical condition. Clinical laboratories may be free-standing facilities, may be part of a hospital, or may be part of a private practitioner's office.[17] Practitioners authorized to operate their own clinical laboratories exclusively to diagnose and treat their own patients are physicians, chiropractors, podiatrists, naturopaths, and dentists.

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[14] DEA, Office of Diversion Control, *Controlled Substance Schedules.* Found at: <http://www.deadiversion.usdoj.gov/schedules/#define> (Last visited on February 10, 2012).
[15] DEA, *Questions and Answers.* Found at: <http://www.deadiversion.usdoj.gov/drugreg/faq.htm> (Last visited on February 10, 2012).
[16] Sections 893.02 and 893.05, F.S.
[17] Section 483.041, F.S.

Laboratories must be biennially licensed and inspected by the Agency for Health Care Administration to ensure quality standards in examination of specimens, equipment, sanitation, staffing, and other measures.[18]

A clinical laboratory may examine human specimens at the request of the following licensed practitioners:[19]

- Physicians
- Physician assistants
- Medical assistants
- Chiropractors
- Chiropractic assistants
- Chiropractic physician's assistants
- Podiatrists
- Naturopaths
- Dentists
- Nurse practitioners

Results of laboratory tests must be reported directly to the requesting practitioner. The same price must be charged regardless of what type of practitioner requests the testing.

Standard of Proof in Medical Malpractice Actions

In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that the death or injury resulted from the negligence of a health care provider, the claimant has the burden of proving by the greater weight of evidence that the alleged action of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[20] Nevertheless, s. 766.102(4), F.S., provides that the "failure of a health care provider to order, perform, or administer supplemental diagnostic tests shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care."

Greater weight of the evidence means the "more persuasive and convincing force and effect of the entire evidence in the case."[21] Other statutes, such as license disciplinary statutes involving the revocation or suspension of a license, require a heightened standard of proof called "clear and convincing evidence."[22] Clear and convincing evidence has been described as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony

[18] Section 483.051, F.S.
[19] Section 483.181, F.S.
[20] Section 766.102, F.S.
[21] *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So. 2d 1264, 1277 (Fla. 2003).
[22] *See e.g.*, ss. 458.331(3), and 459.015(3), F.S.

> must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.[23]

Medical Malpractice Presuit Investigation

Prior to the filing of a lawsuit, the person allegedly injured by medical negligence or a party bringing a wrongful death action arising from an alleged incidence of medical malpractice (the claimant) and the defendant (the health care professional or health care facility) are required to conduct presuit investigations to determine whether medical negligence occurred and what damages, if any, are appropriate.

The claimant is required to conduct an investigation[24] to ascertain that there are reasonable grounds to believe that:

- A named defendant in the litigation was negligent in the care or treatment of the claimant; and
- The claimant was injured as the result of negligence.

After completion of the presuit investigation and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant of intent to initiate litigation for medical negligence.[25] Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and an executed authorization for release of protected health information. The presuit notice is void if this authorization does not accompany the presuit notice.[26]

A suit may not be filed for a period of 90 days after notice is mailed to any prospective defendant. The statue of limitations is tolled during the 90-day period. During the 90-day period, the prospective defendant or the defendant's insurer or self-insurer shall conduct a presuit investigation to determine the liability of the defendant.

Before the defendant issues his or her response, the defendant or his or her insurer or self-insurer is required to ascertain whether there are reasonable grounds to believe that:

- The defendant was negligent in the care or treatment of the claimant; and
- The claimant was injured as a result of negligence.

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[23] *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).
[24] Section 766.203, F.S.
[25] Section 766.106, F.S.
[26] Section 766.1065(1), F.S. If the authorization is revoked, the presuit notice is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

Corroboration of the lack of reasonable grounds for medical negligence litigation must be provided by submission of a verified written medical expert opinion which corroborates reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

At or before the end of the 90 days, the prospective defendant or the prospective defendant's insurer or self-insurer shall provide the claimant with a response:

- Rejecting the claim;
- Making a settlement offer; or
- Making an offer to arbitrate in which liability is deemed admitted and arbitration will be held only on the issue of damages. This offer may be made contingent upon a limit of general damages.

Failure of the prospective defendant, insurer, or self-insurer to reply to the notice within 90 days after receipt is deemed a final rejection of the claim for purposes of this provision.

Discovery and Admissibility of Evidence

Statements, discussions, written documents, reports, or other work product generated by the presuit screening process are not discoverable or admissible in any civil action for any purpose by the opposing party.[27] All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process.[28]

Upon receipt by a prospective defendant of a notice of claim, the parties are required to make discoverable information available without undertaking formal discovery. Informal discovery may be used to obtain unsworn statements, the production of documents or things, and physical and mental examinations as follows:[29]

- Unsworn statements – Any party may require other parties to appear for the taking of an unsworn statement. Unsworn statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party.
- Documents or things – Any party may request discovery of documents or things. This includes medical records.
- Physical and mental examination – A prospective defendant may require an injured claimant to be examined by an appropriate health care provider. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The examination report is available to the parties and their attorneys and may be used only for the purpose of presuit screening. Otherwise the examination is confidential.
- Written questions – Any party may request answers to written questions.

[27] However, the presuit expert witness opinions are subject to discovery under s. 766.203(4), F.S.
[28] Section 766.106(5), F.S.
[29] Section 766.106(6), F.S.

- Unsworn statements of treating health care providers – The statements must be limited to those areas that are potentially relevant to the claim. Reasonable notice and an opportunity to be heard must be given to the claimant before taking unsworn statements. The claimant, or claimant's legal representative, has the right to attend the taking of these unsworn statements.

The failure to cooperate on the part of any party during the presuit investigation may be grounds to strike any claim made, or defense raised in the suit.[30]

Arbitration Generally

For many years, courts and legislatures have utilized arbitration as an alternative method to resolve disputes between parties in an expedient, efficient, and inexpensive manner.[31] However, when parties agree to participate in arbitration, they concede some of the safeguards that are traditionally afforded to those who proceed to court, one of which is the right to have the evidence weighed in accordance with established legal principles.[32] Arbitration may be defined as "a process that allows parties voluntarily to refer their disputes to an impartial third person, an arbitrator, selected by them to determine the parties' rights and liabilities."[33] Typically, a decision rendered by arbitrators is as binding and conclusive as the judgment of a court.[34] Because of the federal policy favoring and encouraging the use of arbitration to resolve disputes, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power, to use in many noncommercial consumer contracts.[35]

Florida Arbitration Code

Florida traditionally has favored arbitration. In 1957, the Legislature enacted the Florida Arbitration Code (FAC),[36] which prescribes a framework governing the rights and procedures under arbitration agreements, including the enforceability of arbitration agreements. The FAC governs arbitration clauses where interstate commerce is not implicated.[37] The FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, the appointment of arbitrators, the arbitration hearing process and procedure, the entry and enforcement of arbitration awards, and appeals.

Under the FAC, Florida courts have held that the determination of whether any dispute is subject to arbitration should be resolved in favor of arbitration.[38] A court's role in deciding whether to compel arbitration is limited to three gateway issues to determine the enforceability of an arbitration agreement: (1) whether a valid written agreement to arbitrate exists; (2) whether an

[30] Section 766.106(7), F.S.
[31] Elizabeth K. Stanley, *Parties' Defenses to Binding Arbitration Agreements in the Health Care Field & the Operation of the McCarran-Ferguson Act*, 38 ST. MARY'S L.J. 591, 591-92 (2007).
[32] *Affiliated Marketing, Inc. v. Dyco Chemicals & Coatings, Inc*., 340 So. 2d 1240 (Fla. 2d DCA 1976).
[33] Stanley, *supra* note 31, at 592 (internal citations omitted).
[34] *Capital Factors, Inc. v. Alba Rent-A-Car, Inc*., 965 So. 2d 1178, 1182 (Fla. 4th DCA 2007).
[35] Stanley, *supra* note 31, at 592.
[36] *See* ch. 682. F.S.
[37] *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).
[38] Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 20 (Nov. 2008) (citing *Waterhouse Constr. Group, Inc. v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).

arbitrable issue exists; and (3) whether the right to arbitration has been waived.[39] The FAC applies in arbitration cases only to the extent that it is not in conflict with federal law.[40]

Voluntary Binding Arbitration

Section 766.207, F.S., related to medical malpractice, establishes a procedure for voluntary binding arbitration of damages upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim. A proceeding for voluntary binding arbitration is an alternative to jury trial and does not supersede the right of any party to a jury trial.[41] Either party may initiate the election for voluntary binding arbitration of damages. A claimant's offer to arbitrate must be made to each defendant and each defendant's offer to arbitrate must be made to each claimant.[42] The arbitration panel's decision is subject to the limitations on damages that are provided in s. 766.207, F.S.

If the defendant refuses a claimant's offer of voluntary binding arbitration and the claimant proves medical negligence, the claimant is entitled to recover damages subject to the limitations in s. 766.118, F.S., prejudgment interest, and reasonable attorney's fees up to 25 percent of the award reduced to present value. If a claimant rejects a defendant's offer of voluntary binding arbitration, the damages awardable at trial are limited to net economic damages, plus noneconomic damages not to exceed $350,000 per incident.[43]

Arbitration Agreements in Contracts for Medical Services

Insurance companies and physicians are more frequently requiring patients to enter into arbitration agreements regarding any potential medical malpractice claims resulting from the medical treatment or care.[44] Therefore, some patients may face a choice when seeking medical treatment or care—sign an arbitration agreement or forego treatment with a particular physician or other health care provider.[45] These arbitration agreements may apply to all medical negligence and professional malpractice claims arising out of the physician-patient relationship, and bind the patient, as well as the spouse and heirs of the patient.[46]

Some patients have challenged the enforceability of arbitration agreements in this context by asserting that the agreements are void as against public policy, are too broad, are essentially contracts of adhesion, and are unconscionable.[47] Generally, courts will closely scrutinize

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[39] *Seifert v. U.S. Home Corp*., 750 So. 2d 633, 636 (Fla. 1999).
[40] *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999), *review denied*, 763 So. 2d 1044 (Fla. 2000), and *Florida Power Corp. v. Casselberry*, 793 So. 2d 1174, 1179 (Fla. 5th DCA 2001).
[41] Section 766.209, F.S.
[42] Section 766.207(7)(k), F.S.
[43] Section 766.209, F.S.
[44] Jennifer Gillespie, *Physician-Patient Arbitration Agreements: Procedural Safeguards May Not Be Enough*, 1997 J. DISP. RESOL. 119, 119 (1997).
[45] *Id*.
[46] *Id*. at 120.
[47] *See Buraczynski v. Eyring*, 919 S.W.2d 314 (Tenn. 1996). In *Buraczynski*, a patient signed an arbitration agreement in the context of medical services prior to a knee-replacement operation. The agreement covered all medical negligence and malpractice claims arising out of the surgery, and provided that the patient would have 30 days to revoke the agreement by providing written notice to the physician. After a challenge by the patient's heirs to avoid participation in arbitration, the Tennessee Supreme Court found that the agreement was consistent with public policy, was not overly broad, and was an

physician-patient arbitration agreements under general contract principles to determine if the agreements are unenforceable contracts of adhesion.[48] In *Jonathan M. Frantz, M.D., P.A. v. Shedden*, a Florida eye patient brought a medical malpractice action against an eye clinic after complication arose from elective eye surgery.[49] The eye clinic moved to stay litigation and enforce arbitration. During a preoperative visit, the plaintiff had signed an arbitration agreement that was separate from other documents, was afforded the opportunity to review the agreement, and was advised that he could ask staff questions regarding the agreement. The court concluded that, because the agreement was neither procedurally nor substantively unconscionable, the litigation should be stayed in favor of arbitration.[50] In a recent First District Court of Appeal case, the court found that the arbitration clause in question afforded meaningful relief and was consistent with the legislative intent of ch. 766, F.S., which "imposes limitations on non-economic damages, and provides for arbitration as a means of dispute resolution."[51]

Medical Malpractice Insurance & Claims

The Office of Insurance Regulation (OIR) publishes a report annually on medical malpractice insurance and claims.[52] According to the most recent report of 2010 data that was published on October 1, 2011:

- In 2010, the Florida medical malpractice insurance companies reported 2,520 closed claims in Florida. This continues the annual decline in the number of closed claims reported by Florida medical malpractice insurance companies. For 2009, 2087 closed claims were reported; for 2008, 3,336 were reported; for 2007, 3,553 were reported; and for 2006, 3,811 closed claims were reported. [53]
- As in previous reports, the most commonly reported claims location was hospital inpatient facilities with 1,204 claims closed. The emergency room ranked third in the injury location with 318 closed claims (see page 44).

III. Effect of Proposed Changes:

Section 1 amends s. 463.002, F.S., to allow certified optometrists to administer and prescribe oral medications related to the diagnosis and treatment of ocular conditions, not just those which are topically applied to the eye.

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enforceable adhesion contract because it was supported by consideration and was not oppressive or unconscionable. *Id.* at 321.

[48] *See Broemmer v. Abortion Services of Phoenix Ltd.*, 840 P.2d 1013 (Ariz. 1992); *Leong by Leong v. Kaiser Foundation Hosp.*, 788 P.2d 164 (Haw. 1990); and *Obstetrics and Gynecologists William G. Wixted, M.D., Patrick M. Flanagan, M.D., William F. Robinson, M.D. Ltd. v. Pepper*, 693 P.2d 1259 (Nev. 1985).

[49] *Jonathan M. Frantz, M.D., P.A. v. Shedden*, 974 So. 2d 1193 (Fla. 2d DCA 2008).

[50] *Id*. at 1198.

[51] *Franks v. Bowers*, 62 So. 3d 16, 18 (Fla 1st DCA 2011), *cert. granted*, 74 So. 3d 1083(2011).

[52] Florida OIR 2011 Annual Report – October 1, 2011 *Medical Malpractice Financial Information Closed Claim Database and Rate Filings*, available at: <http://www.floir.com/siteDocuments/MedicalMalReport10012011.pdf > (Last visited on February 8, 2012).

[53] Florida OIR 2010 Annual Report – October 1, 2010 *Medical Malpractice Financial Information Closed Claim Database and Rate Filings*, available at: < http://www.floir.com/siteDocuments/MedicalMalReport10012010.pdf> (Last visited on February 10, 2012). *See also* Senate Bill *Analysis and Fiscal Impact Statement for SB 1474* (2010), available at: <http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2010&billnum=1474> (Last visited on February 10, 2012).

Section 2 amends s. 463.005, F.S., to allow the Board of Optometry to promulgate rules related to administration of all ocular pharmaceutical agents, not only topical agents.

Section 3 amends s. 463.0055, F.S., to require a certified optometrist, before he or she prescribes oral pharmaceutical agents, to complete a course and subsequent examination on general and ocular pharmacology with particular emphasis on the ingestion and side effects of oral pharmaceuticals. The bill provides specifics concerning the format of the courses and examinations and requires the Florida Medical Association and the Florida Optometric Association to jointly develop and administer the course and examination.

The bill also alters the composition of the committee that maintains the formulary of topical drugs such optometrists are permitted to prescribe to specify that the two optometrists on the committee must be certified optometrists. The bill specifies that the formulary of topical ocular pharmaceutical agents will consist of those topical agents that are appropriate to treat and diagnose ocular diseases and disorders. The bill also establishes a statutory formulary of oral pharmaceutical agents that certified optometrists are permitted to prescribe.

Section 4 amends s. 463.0057, F.S., to prohibit holders of faculty certificates from prescribing ocular pharmaceutical agents unless they take a course on general and ocular pharmacology, pass an examination, and are licensed and certified optometrists.

Section 5 amends s. 463.006, F.S., to require that the licensure examination for optometrists include questions on the use and side effects of all ocular pharmaceutical agents, not just topical agents. Anyone who passes this examination and fulfills other licensure and certification provisions will be permitted to administer and prescribe pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 6 amends s. 463.0135, F.S., to state that a certified optometrist shall administer and prescribe oral ocular pharmaceutical agents in a manner consistent with applicable preferred practice patterns of the American Academy of Ophthalmology. The bill also provides that optometrists who diagnose neovascular glaucoma, in addition to other types of glaucoma currently listed in statute, must promptly and without unreasonable delay refer the patient to a licensed physician skilled in diseases of the eye. In addition, an optometrist must timely refer to such a physician any patient who experiences progressive glaucoma due to failed pharmaceutical management by the optometrist.

The bill also requires co-management of post-operative care to be conducted pursuant to an established protocol which governs the relationship between the operating surgeon and the optometrist. The patient must be informed that either physician will be available for emergency care throughout the post-operative period, and the patient must consent to the co-management relationship in writing.

Section 7 amends s. 463.014, F.S., to prohibit optometrists from prescribing or otherwise distributing any drug for the purpose of treating a systemic disease, except that optometrists may use commonly-accepted methods to immediately treat anaphylaxis. The bill also further clarifies the definition of surgery in ch. 463, F.S., which prohibits optometrists from conducting surgery.

Section 8 creates s. 463.0141, F.S., to require and provide specifications for reporting of adverse incidents in the practice of optometry.

Section 9 amends s. 483.035, F.S., to include optometrists in the list of licensed practitioners who are permitted to operate clinical laboratories exclusively in connection with the diagnosis and treatment of their own patients.

Section 10 amends s. 483.041, F.S., to include optometrists in the definition of licensed practitioner with respect to clinical laboratories.

Section 11 amends s. 483.181, F.S., to require clinical laboratories to accept specimens for examination submitted by optometrists.

Section 12 amends s. 766.102, F.S., to change the burden of proof for a claimant in an action alleging a breach of the prevailing professional standard of care in an action for damages based on death or personal injury that allegedly resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests. The burden of proof is increased from greater weight of the evidence to clear and convincing evidence.

Section 13 amends s. 766.106, F.S., to authorize a prospective defendant, or his or her legal representative, to conduct ex parte interviews of the claimant's treating health care providers without the presence of the claimant or the claimant's legal representative. Notice of any intended interviews must be provided to the claimant at least 10 days before the date of the interview.

Section 14 creates s. 766.1091, F.S., to authorize certain health care providers and a patient or prospective patient to agree in writing to submit to arbitration any claim for medical negligence that may currently exist or that may accrue in the future that would otherwise be brought under ch. 766, F.S., relating to medical malpractice. The health care providers include:

- Allopathic physicians;
- Osteopathic physicians;
- Certified optometrists;
- Dentists;
- Any entity owned in whole or in part by an allopathic physician, osteopathic physician, certified optometrist, or dentist; or
- A health care clinic licensed under part X of ch. 400, F.S.

An arbitration agreement entered into under this section would be governed by the FAC. Such an arbitration agreement may contain a provision that would limit the available damages in any arbitration award.

Section 15 amends s. 893.02, F.S., to include certified optometrists as authorized prescribers of controlled substances in the state, provided that they hold valid federal controlled substance registry numbers.

Section 16 amends s. 893.05, F.S., to prohibit certified optometrists from prescribing any Schedule I or II controlled substances listed in the Florida Comprehensive Drug Abuse Prevention and Control Act.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certified optometrists will be able to prescribe additional types of medication related to the diagnosis and treatment of ocular conditions.

C. Government Sector Impact:

The Department of Health should experience little fiscal impact as certification procedures for optometrists are already in effect. There will be an increase in workload relating to updating the formulary of drugs which certified optometrists may prescribe as well as non-recurring rulemaking costs which may be adequately absorbed with current resources.

The Agency for Health Care Administration may experience an increase in applications for clinical laboratory licenses from optometrists, although this number is estimated to be small. There will also be a slightly increased workload related to additional inspections of

such laboratories, which should be offset by an increase in revenues from licensure and renewal fees.[54]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The informal discovery options include taking unsworn statements of treating health care providers. Lines 484 and 485 provide in existing law that the claimant or claimant's legal representative has the right to attend the taking of such unsworn statements. Lines 486 – 494 provide for ex parte interviews of treating health care providers without the presence of the claimant or the claimant's legal representative. Neither "unsworn statements" nor "ex parte interviews" are defined. To avoid inconsistency and potential litigation, it might be prudent to define or distinguish an unsworn statement and an ex parte interview.

VIII. 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 Regulation on February 9, 2012:
The committee substitute:

- Expands the types of ocular pharmaceutical agents that certified optometrist may administer and prescribe, including some controlled substances;
- Requires optometrists to report adverse incidents to the Department of Health;
- Authorizes optometrists to operate clinical laboratories;
- Requires clinical laboratories to accept specimens for examination from optometrists;
- Authorizes certain health care providers and their patients to enter into voluntary binding arbitration agreements and limit damages; and
- Removes the part of the bill extending sovereign immunity to emergency health care providers.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[54] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 788*. A copy is on file with the Senate Health Regulation Committee.

By the Committee on Health Regulation; and Senator Thrasher

588-03226-12 20121506c1

A bill to be entitled

An act relating to health care; amending s. 463.002, F.S.; conforming provisions to changes made by the act; amending s. 463.005, F.S.; authorizing the Board of Optometry to adopt rules for the administration and prescription of ocular pharmaceutical agents; amending s. 463.0055, F.S.; authorizing certified optometrists to administer and prescribe pharmaceutical agents under certain circumstances; requiring that a certified optometrist complete a course and subsequent examination on general and ocular pharmacology; providing requirements for the course; requiring that the Florida Medical Association and the Florida Optometric Association jointly develop and administer the course and examination; revising qualifications of certain members of the formulary committee; providing for a formulary of topical ocular pharmaceutical agents which the committee may modify; specifying the agents that make up the statutory formulary of oral pharmaceutical agents; authorizing the deletion of an oral pharmaceutical agent listed in the statutory formulary under certain circumstances; prohibiting the board, the Department of Health, or the State Surgeon General from deleting an oral pharmaceutical agent listed in the statutory formulary; amending ss. 463.0057 and 463.006, F.S.; conforming provisions to changes made by the act; amending s. 463.0135, F.S.; requiring that a certified optometrist administer and prescribe oral ocular pharmaceutical agents in a

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

588-03226-12 20121506c1

certain manner; requiring that a licensed practitioner who diagnoses a patient who has a neovascular form of glaucoma or progressive glaucoma immediately refer the patient to a physician who is skilled in the diseases of the eye; requiring that comanagement of postoperative care be conducted pursuant to an established protocol; requiring that the patient be informed that a physician will be available for emergency care throughout the postoperative period; requiring that the patient consent in writing to the comanagement relationship; amending s. 463.014, F.S.; revising certain prohibited acts regarding an optometrist conducting surgery and dispensing, administering, ordering, supplying, or selling certain drugs; creating s. 463.0141, F.S.; requiring that adverse incidents in the practice of optometry be reported to the Department of Health; providing requirements for notifying the department of an adverse incident; providing a definition; requiring that the department review each incident and determine whether it involved conduct that is subject to disciplinary action; requiring that the Board of Optometry take disciplinary action if necessary; amending s. 483.035, F.S., relating to licensure and regulation of clinical laboratories operated by practitioners for exclusive use; providing applicability to clinical laboratories operated by practitioners licensed to practice optometry; amending s. 483.041, F.S.; revising the definition of the term

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

59 "licensed practitioner" to include a practitioner
60 licensed under ch. 463, F.S.; amending s. 483.181,
61 F.S.; requiring clinical laboratories to accept human
62 specimens submitted by practitioners licensed to
63 practice under ch. 463, F.S.; amending s. 766.102,
64 F.S.; providing that the claimant has the burden of
65 proving by clear and convincing evidence that the
66 actions of a health care provider represented a breach
67 of the prevailing professional standard of care in an
68 action for damages based on death or personal injury
69 which alleges that the death or injury resulted from
70 the failure of a health care provider to order,
71 perform, or administer supplemental diagnostic tests;
72 amending s. 766.106, F.S.; authorizing a prospective
73 defendant to obtain informal discovery by conducting
74 ex parte interviews of treating health care providers;
75 requiring advance notice to the claimant of an ex
76 parte interview; creating s. 766.1091, F.S.;
77 authorizing a health care provider or health care
78 clinic and a patient or prospective patient to agree
79 to submit a current or future claim of medical
80 negligence to arbitration; requiring that the
81 arbitration agreement be governed by ch. 682, F.S.;
82 authorizing the arbitration agreement to contain a
83 provision that limits an award of damages; amending s.
84 893.02, F.S.; revising the definition of the term
85 "practitioner" to include certified optometrists for
86 purposes of the Florida Comprehensive Drug Abuse
87 Prevention and Control Act; amending s. 893.05, F.S.;

88 prohibiting certified optometrists from administering
89 and prescribing certain controlled substances;
90 providing an effective date.
91
92 Be It Enacted by the Legislature of the State of Florida:
93
94 Section 1. Subsections (3), (4), and (5) of section
95 463.002, Florida Statutes, are amended to read:
96 463.002 Definitions.—As used in this chapter, the term:
97 (3)(a) "Licensed practitioner" means a person who is a
98 primary health care provider licensed to engage in the practice
99 of optometry under the authority of this chapter.
100 (b) A licensed practitioner who is not a certified
101 optometrist shall be required to display at her or his place of
102 practice a sign which states, "I am a Licensed Practitioner, not
103 a Certified Optometrist, and I am not able to prescribe ~~topical~~
104 ocular pharmaceutical agents."
105 (c) All practitioners initially licensed after July 1,
106 1993, must be certified optometrists.
107 (4) "Certified optometrist" means a licensed practitioner
108 authorized by the board to administer and prescribe ~~topical~~
109 ocular pharmaceutical agents.
110 (5) "Optometry" means the diagnosis of conditions of the
111 human eye and its appendages; the employment of any objective or
112 subjective means or methods, including the administration of
113 ~~topical ocular~~ pharmaceutical agents, for the purpose of
114 determining the refractive powers of the human eyes, or any
115 visual, muscular, neurological, or anatomic anomalies of the
116 human eyes and their appendages; and the prescribing and

117 employment of lenses, prisms, frames, mountings, contact lenses,
118 orthoptic exercises, light frequencies, and any other means or
119 methods, including ~~topical ocular~~ pharmaceutical agents, for the
120 correction, remedy, or relief of any insufficiencies or abnormal
121 conditions of the human eyes and their appendages.
122 Section 2. Paragraph (g) of subsection (1) of section
123 463.005, Florida Statutes, is amended to read:
124 463.005 Authority of the board.—
125 (1) The Board of Optometry has authority to adopt rules
126 pursuant to ss. 120.536(1) and 120.54 to implement the
127 provisions of this chapter conferring duties upon it. Such rules
128 shall include, but not be limited to, rules relating to:
129 (g) Administration and prescription of ~~topical~~ ocular
130 pharmaceutical agents.
131 Section 3. Section 463.0055, Florida Statutes, is amended
132 to read:
133 463.0055 Administration and prescription of ~~topical~~ ocular
134 pharmaceutical agents; committee.—
135 (1)(a) Certified optometrists may administer and prescribe
136 ~~topical ocular~~ pharmaceutical agents as provided in this section
137 for the diagnosis and treatment of ocular conditions of the
138 human eye and its appendages without the use of surgery or other
139 invasive techniques. However, a licensed practitioner who is not
140 certified may use topically applied anesthetics solely for the
141 purpose of glaucoma examinations~~,~~ but is otherwise prohibited
142 from administering or prescribing ~~topical ocular~~ pharmaceutical
143 agents.
144 (b) Before a certified optometrist may administer or
145 prescribe oral ocular pharmaceutical agents, the certified

146 optometrist must complete a course and subsequent examination on
147 general and ocular pharmacology which have a particular emphasis
148 on the ingestion of oral pharmaceutical agents and the side
149 effects of those agents. For certified optometrists licensed
150 before January 1, 1990, the course shall consist of 50 contact
151 hours and 25 of those hours shall be Internet-based. For
152 certified optometrists licensed on or after January 1, 1990, the
153 course shall consist of 20 contact hours and 10 of those hours
154 shall be Internet-based. The first course and examination shall
155 be presented by January 1, 2013, and shall thereafter be
156 administered at least annually. The Florida Medical Association
157 and the Florida Optometric Association shall jointly develop and
158 administer a course and examination for such purpose and jointly
159 determine the site or sites for the course and examination.
160 (2)(a) There is ~~hereby~~ created a committee composed of two
161 certified optometrists licensed pursuant to this chapter,
162 appointed by the Board of Optometry, two board-certified
163 ophthalmologists licensed pursuant to chapter 458 or chapter
164 459, appointed by the Board of Medicine, and one additional
165 person with a doctorate degree in pharmacology who is not
166 licensed pursuant to chapter 458, chapter 459, or this chapter,
167 appointed by the State Surgeon General. The committee shall
168 review requests for additions to, deletions from, or
169 modifications of a formulary of topical ocular pharmaceutical
170 agents for administration and prescription by certified
171 optometrists and shall provide to the board advisory opinions
172 and recommendations on such requests. The formulary of topical
173 ocular pharmaceutical agents shall consist of those topical
174 ~~ocular pharmaceutical~~ agents that are appropriate to treat and

175 diagnose ocular diseases and disorders and that ~~which~~ the
176 certified optometrist is qualified to use in the practice of
177 optometry. The board shall establish, add to, delete from, or
178 modify the formulary by rule. Notwithstanding any provision of
179 chapter 120 to the contrary, the formulary rule shall become
180 effective 60 days from the date it is filed with the Secretary
181 of State.
182 (b) The topical formulary may be added to, deleted from, or
183 modified according to the procedure described in paragraph (a).
184 Any person who requests an addition, deletion, or modification
185 of an authorized topical ~~ocular pharmaceutical~~ agent shall have
186 the burden of proof to show cause why such addition, deletion,
187 or modification should be made.
188 (c) The State Surgeon General shall have standing to
189 challenge any rule or proposed rule of the board pursuant to s.
190 120.56. In addition to challenges for any invalid exercise of
191 delegated legislative authority, the administrative law judge,
192 upon such a challenge by the State Surgeon General, may declare
193 all or part of a rule or proposed rule invalid if it:
194 1. Does not protect the public from any significant and
195 discernible harm or damages;
196 2. Unreasonably restricts competition or the availability
197 of professional services in the state or in a significant part
198 of the state; or
199 3. Unnecessarily increases the cost of professional
200 services without a corresponding or equivalent public benefit.
201
202 However, there shall not be created a presumption of the
203 existence of any of the conditions cited in this subsection in

204 the event that the rule or proposed rule is challenged.
205 (d) Upon adoption of the topical formulary required by this
206 section, and upon each addition, deletion, or modification to
207 the topical formulary, the board shall mail a copy of the
208 amended topical formulary to each certified optometrist and to
209 each pharmacy licensed by the state.
210 (3) In addition to the formulary of topical ocular
211 pharmaceutical agents in subsection (2), there is created a
212 statutory formulary of oral pharmaceutical agents, which include
213 the following agents:
214 (a) The following analgesics, or their generic or
215 therapeutic equivalents, which may not be administered or
216 prescribed for more than 72 hours without consultation with a
217 physician licensed under chapter 458 or chapter 459 who is
218 skilled in diseases of the eye:
219 1. Tramadol hydrochloride.
220 2. Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg.
221 (b) The following antibiotics, or their generic or
222 therapeutic equivalents:
223 1. Amoxicillin.
224 2. Azithromycin.
225 3. Ciproflaxacin.
226 4. Dicloxacillin.
227 5. Doxycycline.
228 6. Keflex.
229 7. Minocycline.
230 (c) The following antivirals, or their generic or
231 therapeutic equivalents:
232 1. Acyclovir.

2. Famciclovir.

3. Valacyclovir.

(d) The following oral anti-glaucoma agents, or their generic or therapeutic equivalents, which may not be administered or prescribed for more than 72 hours without consultation with a physician licensed under chapter 458 or chapter 459 who is skilled in diseases of the eye:

1. Acetazolamide.

2. Methazolamide.

Any oral pharmaceutical agent that is listed in the statutory formulary set forth in this subsection and that is subsequently determined by the United States Food and Drug Administration to be unsafe for administration or prescription shall be considered to have been deleted from the formulary of oral pharmaceutical agents. The oral pharmaceutical agents on the statutory formulary set forth in this subsection may not otherwise be deleted by the board, the department, or the State Surgeon General.

(4) ~~(3)~~ A certified optometrist shall be issued a prescriber number by the board. Any prescription written by a certified optometrist for a ~~topical ocular~~ pharmaceutical agent pursuant to this section shall have the prescriber number printed thereon.

Section 4. Subsection (3) of section 463.0057, Florida Statutes, is amended to read:

463.0057 Optometric faculty certificate.—

(3) The holder of a faculty certificate may engage in the practice of optometry as permitted by this section~~,~~ but may not

administer or prescribe ~~topical~~ ocular pharmaceutical agents unless the certificateholder has satisfied the requirements of ss. 463.0055(1)(b) and ~~s.~~ 463.006(1)(b)4. and 5.

Section 5. Subsections (2) and (3) of section 463.006, Florida Statutes, are amended to read:

463.006 Licensure and certification by examination.—

(2) The examination shall consist of the appropriate subjects, including applicable state laws and rules and general and ocular pharmacology with emphasis on the use ~~topical application~~ and side effects of ocular pharmaceutical agents. The board may by rule substitute a national examination as part or all of the examination and may by rule offer a practical examination in addition to the written examination.

(3) Each applicant who successfully passes the examination and otherwise meets the requirements of this chapter is entitled to be licensed as a practitioner and to be certified to administer and prescribe ~~topical ocular~~ pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 6. Subsections (1) and (2) of section 463.0135, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

463.0135 Standards of practice.—

(1) A licensed practitioner shall provide that degree of care which conforms to that level of care provided by medical practitioners in the same or similar communities. A certified optometrist shall administer and prescribe oral ocular pharmaceutical agents in a manner consistent with applicable preferred practice patterns of the American Academy of Ophthalmology. A licensed practitioner shall advise or assist

291 her or his patient in obtaining further care when the service of
292 another health care practitioner is required.
293 (2) A licensed practitioner diagnosing angle closure,
294 neovascular, infantile, or congenital forms of glaucoma shall
295 promptly and without unreasonable delay refer the patient to a
296 physician skilled in diseases of the eye and licensed under
297 chapter 458 or chapter 459. In addition, a licensed practitioner
298 shall timely refer any patient who experiences progressive
299 glaucoma due to failed pharmaceutical intervention to a
300 physician who is skilled in diseases of the eye and licensed
301 under chapter 458 or chapter 459.
302 (10) Comanagement of postoperative care shall be conducted
303 pursuant to an established protocol that governs the
304 relationship between the operating surgeon and the optometrist.
305 The patient shall be informed that either physician will be
306 available for emergency care throughout the postoperative
307 period, and the patient shall consent in writing to the
308 comanagement relationship.
309 Section 7. Subsections (3) and (4) of section 463.014,
310 Florida Statutes, are amended to read:
311 463.014 Certain acts prohibited.—
312 (3) Prescribing, ordering, dispensing, administering,
313 supplying, selling, or giving any ~~systemic~~ drugs for the purpose
314 of treating a systemic disease by a licensed practitioner is
315 prohibited. However, a certified optometrist is permitted to use
316 commonly accepted means or methods to immediately address
317 incidents of anaphylaxis.
318 (4) Surgery of any kind, including the use of lasers, is
319 expressly prohibited. For purposes of this subsection, the term

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

320 "surgery" means a procedure using an instrument, including
321 lasers, scalpels, or needles, in which human tissue is cut,
322 burned, or vaporized by incision, injection, ultrasound, laser,
323 or radiation. The term includes procedures using instruments
324 that require closing by suturing, clamping, or another such
325 device. Certified optometrists may remove superficial foreign
326 bodies. For the purposes of this subsection, the term
327 "superficial foreign bodies" means any foreign matter that is
328 embedded in the conjunctiva or cornea but which has not
329 penetrated the globe.
330 Section 8. Section 463.0141, Florida Statutes, is created
331 to read:
332 463.0141 Reports of adverse incidents in the practice of
333 optometry.—
334 (1) Any adverse incident that occurs on or after January 1,
335 2013, in the practice of optometry must be reported to the
336 department in accordance with this section.
337 (2) The required notification to the department must be
338 submitted in writing by certified mail and postmarked within 15
339 days after the occurrence of the adverse incident.
340 (3) For purposes of notification to the department, the
341 term "adverse incident," as used in this section, means an event
342 that is associated in whole or in part with the prescribing of
343 an oral ocular pharmaceutical agent and that results in one of
344 the following:
345 (a) Any condition that requires the transfer of a patient
346 to a hospital licensed under chapter 395;
347 (b) Any condition that requires the patient to obtain care
348 from a physician licensed under chapter 458 or chapter 459,

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349 other than a referral or a consultation required under this
350 chapter;
351 (c) Permanent physical injury to the patient;
352 (d) Partial or complete permanent loss of sight by the
353 patient; or
354 (e) Death of the patient.
355 (4) The department shall review each incident and determine
356 whether it potentially involved conduct by the licensed
357 practitioner which may be subject to disciplinary action, in
358 which case s. 456.073 applies. Disciplinary action, if any,
359 shall be taken by the board.
360 Section 9. Subsection (1) of section 483.035, Florida
361 Statutes, is amended to read:
362 483.035 Clinical laboratories operated by practitioners for
363 exclusive use; licensure and regulation.—
364 (1) A clinical laboratory operated by one or more
365 practitioners licensed under chapter 458, chapter 459, chapter
366 460, chapter 461, chapter 462, chapter 463, or chapter 466,
367 exclusively in connection with the diagnosis and treatment of
368 their own patients, must be licensed under this part and must
369 comply with the provisions of this part, except that the agency
370 shall adopt rules for staffing, for personnel, including
371 education and training of personnel, for proficiency testing,
372 and for construction standards relating to the licensure and
373 operation of the laboratory based upon and not exceeding the
374 same standards contained in the federal Clinical Laboratory
375 Improvement Amendments of 1988 and the federal regulations
376 adopted thereunder.
377 Section 10. Subsection (7) of section 483.041, Florida

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378 Statutes, is amended to read:
379 483.041 Definitions.—As used in this part, the term:
380 (7) "Licensed practitioner" means a physician licensed
381 under chapter 458, chapter 459, chapter 460, ~~or~~ chapter 461, or
382 chapter 463; a dentist licensed under chapter 466; a person
383 licensed under chapter 462; or an advanced registered nurse
384 practitioner licensed under part I of chapter 464; or a duly
385 licensed practitioner from another state licensed under similar
386 statutes who orders examinations on materials or specimens for
387 nonresidents of the State of Florida, but who reside in the same
388 state as the requesting licensed practitioner.
389 Section 11. Subsection (5) of section 483.181, Florida
390 Statutes, is amended to read:
391 483.181 Acceptance, collection, identification, and
392 examination of specimens.—
393 (5) A clinical laboratory licensed under this part must
394 accept a human specimen submitted for examination by a
395 practitioner licensed under chapter 458, chapter 459, chapter
396 460, chapter 461, chapter 462, chapter 463, s. 464.012, or
397 chapter 466, if the specimen and test are the type performed by
398 the clinical laboratory. A clinical laboratory may only refuse a
399 specimen based upon a history of nonpayment for services by the
400 practitioner. A clinical laboratory shall not charge different
401 prices for tests based upon the chapter under which a
402 practitioner submitting a specimen for testing is licensed.
403 Section 12. Subsection (4) of section 766.102, Florida
404 Statutes, is amended to read:
405 766.102 Medical negligence; standards of recovery; expert
406 witness.—

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407 (4)(a) The Legislature is cognizant of the changing trends
408 and techniques for the delivery of health care in this state and
409 the discretion that is inherent in the diagnosis, care, and
410 treatment of patients by different health care providers. The
411 failure of a health care provider to order, perform, or
412 administer supplemental diagnostic tests is ~~shall~~ not ~~be~~
413 actionable if the health care provider acted in good faith and
414 with due regard for the prevailing professional standard of
415 care.
416 (b) The claimant has the burden of proving by clear and
417 convincing evidence that the alleged actions of the health care
418 provider represent a breach of the prevailing professional
419 standard of care in an action for damages based on death or
420 personal injury which alleges that the death or injury resulted
421 from the failure of a health care provider to order, perform, or
422 administer supplemental diagnostic tests.
423 Section 13. Paragraph (b) of subsection (6) of section
424 766.106, Florida Statutes, is amended to read:
425 766.106 Notice before filing action for medical negligence;
426 presuit screening period; offers for admission of liability and
427 for arbitration; informal discovery; review.—
428 (6) INFORMAL DISCOVERY.—
429 (b) Informal discovery may be used by a party to obtain
430 unsworn statements, the production of documents or things, ~~and~~
431 physical and mental examinations, and ex parte interviews, as
432 follows:
433 1. Unsworn statements.—Any party may require other parties
434 to appear for the taking of an unsworn statement. Such
435 statements may be used only for the purpose of presuit screening

436 and are not discoverable or admissible in any civil action for
437 any purpose by any party. A party desiring to take the unsworn
438 statement of any party must give reasonable notice in writing to
439 all parties. The notice must state the time and place for taking
440 the statement and the name and address of the party to be
441 examined. Unless otherwise impractical, the examination of any
442 party must be done at the same time by all other parties. Any
443 party may be represented by counsel at the taking of an unsworn
444 statement. An unsworn statement may be recorded electronically,
445 stenographically, or on videotape. The taking of unsworn
446 statements is subject to the provisions of the Florida Rules of
447 Civil Procedure and may be terminated for abuses.
448 2. Documents or things.—Any party may request discovery of
449 documents or things. The documents or things must be produced,
450 at the expense of the requesting party, within 20 days after the
451 date of receipt of the request. A party is required to produce
452 discoverable documents or things within that party's possession
453 or control. Medical records shall be produced as provided in s.
454 766.204.
455 3. Physical and mental examinations.—A prospective
456 defendant may require an injured claimant to appear for
457 examination by an appropriate health care provider. The
458 prospective defendant shall give reasonable notice in writing to
459 all parties as to the time and place for examination. Unless
460 otherwise impractical, a claimant is required to submit to only
461 one examination on behalf of all potential defendants. The
462 practicality of a single examination must be determined by the
463 nature of the claimant's condition, as it relates to the
464 liability of each prospective defendant. Such examination report

465 is available to the parties and their attorneys upon payment of
466 the reasonable cost of reproduction and may be used only for the
467 purpose of presuit screening. Otherwise, such examination report
468 is confidential and exempt from the provisions of s. 119.07(1)
469 and s. 24(a), Art. I of the State Constitution.
470 4. Written questions.—Any party may request answers to
471 written questions, the number of which may not exceed 30,
472 including subparts. A response must be made within 20 days after
473 receipt of the questions.
474 5. Unsworn statements of treating health care providers.—A
475 prospective defendant or his or her legal representative may
476 also take unsworn statements of the claimant's treating health
477 care providers. The statements must be limited to those areas
478 that are potentially relevant to the claim of personal injury or
479 wrongful death. Subject to the procedural requirements of
480 subparagraph 1., a prospective defendant may take unsworn
481 statements from a claimant's treating physicians. Reasonable
482 notice and opportunity to be heard must be given to the claimant
483 or the claimant's legal representative before taking unsworn
484 statements. The claimant or claimant's legal representative has
485 the right to attend the taking of such unsworn statements.
486 6. Ex parte interviews of treating health care providers.—A
487 prospective defendant or his or her legal representative may
488 interview the claimant's treating health care providers without
489 the presence of the claimant or the claimant's legal
490 representative. If a prospective defendant or his or her legal
491 representative intends to interview a claimant's health care
492 providers, the prospective defendant must provide the claimant
493 with notice of such interview at least 10 days before the date

494 of the interview.
495 Section 14. Section 766.1091, Florida Statutes, is created
496 to read:
497 766.1091 Voluntary binding arbitration; damages.—
498 (1) A health care provider licensed under chapter 458,
499 chapter 459, chapter 463, or chapter 466; any entity owned in
500 whole or in part by a health care provider licensed under
501 chapter 458, chapter 459, chapter 463, or chapter 466; or any
502 health care clinic licensed under part X of chapter 400, and a
503 patient or prospective patient, may agree in writing to submit
504 to arbitration any claim for medical negligence which may
505 currently exist or may accrue in the future and would otherwise
506 be brought pursuant to this chapter. Any arbitration agreement
507 entered into pursuant to this section shall be governed by
508 chapter 682.
509 (2) Any arbitration agreement entered into pursuant to
510 subsection (1) may contain a provision that limits the available
511 damages in an arbitration award.
512 Section 15. Subsection (21) of section 893.02, Florida
513 Statutes, is amended to read:
514 893.02 Definitions.—The following words and phrases as used
515 in this chapter shall have the following meanings, unless the
516 context otherwise requires:
517 (21) "Practitioner" means a physician licensed pursuant to
518 chapter 458, a dentist licensed pursuant to chapter 466, a
519 veterinarian licensed pursuant to chapter 474, an osteopathic
520 physician licensed pursuant to chapter 459, a naturopath
521 licensed pursuant to chapter 462, a certified optometrist
522 licensed under chapter 463, or a podiatric physician licensed

523 pursuant to chapter 461, provided such practitioner holds a
524 valid federal controlled substance registry number.
525 Section 16. Subsection (1) of section 893.05, Florida
526 Statutes, is amended to read:
527 893.05 Practitioners and persons administering controlled
528 substances in their absence.—
529 (1) A practitioner, in good faith and in the course of his
530 or her professional practice only, may prescribe, administer,
531 dispense, mix, or otherwise prepare a controlled substance, or
532 the practitioner may cause the same to be administered by a
533 licensed nurse or an intern practitioner under his or her
534 direction and supervision only. A veterinarian may so prescribe,
535 administer, dispense, mix, or prepare a controlled substance for
536 use on animals only~~,~~ and may cause it to be administered by an
537 assistant or orderly under the veterinarian's direction and
538 supervision only. A certified optometrist licensed under chapter
539 463 may not administer or prescribe pharmaceutical agents in
540 Schedule I or Schedule II of the Florida Comprehensive Drug
541 Abuse Prevention and Control Act.
542 Section 17. This act shall take effect July 1, 2012.

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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 Judiciary Committee

BILL: CS/CS/SB 292

INTRODUCER: Judiciary Committee, Community Affairs Committee, and Senator Bennett

SUBJECT: Effective Public Notices by Governmental Entities

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	O'Connor	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill requires newspapers that publish legal notices in print to also:

- Publish those notices on the newspapers' websites at no additional charge;
- Place those notices on www.floridapublicnotices.com, which is a website maintained by the Florida Press Association as a repository for legal notices; and
- Provide e-mail notification of new legal notices when they are printed and added to the newspaper's website. The notification service must be provided free of charge to persons upon request.

The bill also revises the rates that newspapers may charge for legal notices. The bill eliminates existing rates that are based on the population of the county served by a newspaper. As a result, the rates for publishing a legal notice are 70 cents per square inch for the first insertion and 40 cents per square inch for the second insertion or the minimum commercial rate, whichever is greater. Additionally, the bill prohibits a newspaper from charging a government entity more than 85 percent of the rate for subsequent advertisements of the same legal notice if the publication costs cannot be imposed on a private party.

Lastly, the bill deletes requirements for several types of notices to be published in a newspaper and provides for certain notices to be provided on a state agency's website or by email in lieu of publication in a newspaper.

This bill substantially amends the following sections of the Florida Statutes: 50.041, 50.061, 125.66, 166.041, 190.005, 200.065, 17.325, 120.60, 215.555, 215.68, 253.52, 255.518, 380.0668, 455.275, 473.3141, 527.23, 573.109, 573.111, and 631.59.

This bill creates section 50.0211, Florida Statutes.

II. Present Situation:

Purpose of Legal Notices and Legal Advertisements

Public notices and legal advertisements provide notice of activities and events that impact citizens' lives because of governmental actions or requirements. They include actions such as government hearings and meetings, zoning, annexation and land use changes, election notices, municipal budgets, tax, and special assessment information. Also, public notices cover requests for bids on government construction and service contracts; permit and licensing applications; land and water use regulations; judicial and executive sales; disposal of foreclosed and abandoned property; and many others.

The Florida Legislature has recognized the need and right of the public to be informed about these activities and events. As a result, statutes require that public notices and legal advertisements be published in newspapers to effectively disseminate this important information throughout the relevant communities.

According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."[1] A report published by The Florida Senate in 2010 stated that publication costs for public notices and legal advertisements placed by local governments ranged considerably with the City of Center Hill reporting an annual cost of $150 and the Miami City Clerk's Office reporting the annual cost was $130,000.[2]

Technical Requirements for Legal Notices and Advertisements

Chapter 50, F.S., contains the requirements for legal and official advertisements. Section 50.011, F.S., provides requirements governing the publication of legal advertisements and notices in a newspaper, including all legal notices and advertisements of sheriffs and tax collectors. Publication must be in a newspaper that is printed and published at least once a week, and must contain at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

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[1] Dalesio, Emery P., *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm (last visited Feb. 14, 2012).
[2] Committee on Community Affairs, Internet Notice, Interim Report 2010-106 (October 2009) (on file with the Community Affairs Staff).

The charge for publishing each official public notice or legal advertisement is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, with some exceptions.[3]

Uniform affidavits are required by statute to serve as proof of publication. Each affidavit is required to be printed on white bond paper containing at least 25 percent rag material and must be 8 1/2 inches in width and of convenient length, at least 5 1/2 inches. A white margin of at least 2 1/2 inches must be left at the right side of each affidavit form and a clipping is required to be substantially pasted on or in this space, which must be a true copy of the public notice or legal advertisement for which proof is executed.[4]

Common Types of Legal Notices

The Florida Statutes contain requirements for the placement of legal notices and advertisements. Such notices and advertisements include:

- Notices of proceedings to validate bonds which must be published in a newspaper in Leon County and in a newspaper in the area that may potentially be affected by the bonds.[5]
- Notice that the Department of Business and Professional Regulation has issued an administrative complaint against a licensee who the department is unable to serve by certified mail. The notice must be published once a week for 4 weeks in the county of the licensee's last known address.[6]
- Notices of the adoption of municipal ordinances and resolutions which must be published one time at least 10 days prior to adoption in a newspaper of general circulation in the municipality.[7]
- Advertisements of millage rates which must be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper.[8]

III. Effect of Proposed Changes:

Publication Requirements for Legal Notices (Section 1)

The bill amends s. 50.021, F.S., to require newspapers that publish legal notices in print to also:

- Publish those notices on the newspapers' websites at no additional charge;
- Place those notices on www.floridapublicnotices.com, which is a website maintained by the Florida Press Association as a repository for legal notices; and
- Provide e-mail notification of new legal notices when they are printed and added to the newspaper's website. The notification service must be provided free of charge upon request.

[3] Section 50.061(2), F.S.
[4] Section 50.041, F.S.
[5] Section 75.06, F.S.
[6] Section 455.275, F.S.
[7] Section 166.041, F.S.
[8] Section 200.065, F.S.

Specifications of Proof of Publication Affidavits (Section 2)

The bill amends s. 50.041, F.S., to delete requirements that a proof of publication affidavit printed on paper be printed on "bond" paper "containing at least 25 percent rag material." The bill also authorizes proof of publication affidavits to be in an electronic form. An electronic affidavit must contain an electronic signature.

Publication Rates for Legal Notices (Section 3)

The bill amends s. 50.061, F.S., to eliminate existing rates a newspaper may charge for legal notices which are based on the population of the county served by a newspaper. As a result, the rates for publishing a legal notice are 70 cents per square inch for the first insertion and 40 cents per square inch for the second insertion or the minimum commercial rate, whichever is greater. Additionally, the bill prohibits a newspaper from charging a government entity more than 85 percent of the rate for subsequent advertisements of the same legal notice if the publication costs cannot be imposed on a private party.

Publication of Legal Notices Containing Maps (Sections 4 - 7)

The bill amends ss. 125.66, 166.041, 190.005, and 200.065, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

Deletion of Requirements for Publication in Leon County (Sections 10, 11, 13, & 14)

The bill deletes requirements for the following legal notices to be published in a newspaper in Leon County, Florida:

- Notices of intent by a state agency to take action against a licensee who does not reside in this state.
- Notices of proceedings to validate state or local government bonds or bonds to be issued by the Florida Hurricane Catastrophe Fund Finance Corporation. However, the bill retains existing requirements to publish these notices in the areas of the state which potentially may be affected by the issuance of the bonds.

Deletion of Requirements to Publish a Notice in a Newspaper (Sections 8, 9, & 12)

The bill deletes requirements for the following notices to be published in a newspaper:

- Notices by the State Board of Administration for the sale of bonds issued on behalf of a state agency.
- Notices by the Board of Trustees of the Internal Improvement Trust Fund to sell oil and gas leases on state land.
- Advertisements by the Chief Financial Officer to promote the governmental efficiency hotline which must contain the slogan "Tell us where we can 'Get Lean.'" However, the bill allows the Chief Financial Officer to advertise the hotline in a newspaper if he or she wishes.

Constructive Notice of Intended Actions by Department of Business and Professional Regulation (Sections 15 & 16)

The bill amends s. 455.275, F.S., to revise the procedures for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint to a person who is licensed by the department. Under existing law, constructive notice of the complaint must be accomplished by publishing notice of the complaint in a newspaper. Under the bill, the department may provide notice of the administrative complaint by posting notice of the complaint on the department's website and by sending notices of the complaint via e-mail to newspapers and news departments of broadcast networks in this state.

The bill amends s. 473.3141, F.S., to delete requirements for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint against a certified public accountant who is licensed by the department. Under existing law, the department must notice of the complaint in a newspaper to provide constructive notice. As a result, the certified public accountant will receive constructive notice of the complaint as provided in s. 455.275, F.S., as described above.

Notice of Marketing Orders by the Department of Agriculture and Consumer Services (Sections 17-19)

The bill deletes requirements for the Department of Agriculture and Professional Regulation to publish in a newspaper the results of a referendum on a marketing order to govern the distribution and handling of propane gas. Under the bill, such referendum results must be published on the department's website and by sending notices of the referendum results via e-mail to newspapers and news departments of broadcast networks in this state.

The bill also deletes requirements for the Department of Agriculture and Professional Regulation to publish in a newspaper the results of a referendum on a marketing order to govern the distribution and handling of agricultural commodities. Under the bill, such referendum results must be published on the department's website and by sending notices of the referendum results via e-mail to newspapers and news departments of broadcast networks in this state.

Notice of Insolvency of an Insurer (Section 20)

Under existing law, the Department of Financial Services may require that the Florida Insurance Guarantee Association, Inc., notify insureds of the insolvency of their insurer by publishing a notice in a newspaper if the association does not have sufficient information to send a notice by mail. The bill authorizes the notice of insolvency to be provided via email or telephone and deletes the authority of the department to require the association to publish notice of the insolvency in a newspaper.

Effective Date (Section 21)

The bill provides an effective date of July 1, 2012, except as otherwise provided 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:

None.

B. Private Sector Impact:

Floridians will have enhanced public notice since information will now be available in print, on the newspaper's website, at www.floridapublicnotices.com, or in an email. Newspapers might have to expend funds to create, maintain and issue correspondence from a registry of persons requesting notifications by e-mail.

According to a report published by the Florida Senate in 2010, the median income reported from newspapers for public notices and legal advertisements was $108,704 with an average cost of $173,219.[9]

C. Government Sector Impact:

The Office of Economic and Demographic Research (EDR) Revenue Estimating Impact Conference has not yet addressed this bill. The Florida League of Cities along with the Florida Association of Counties have stated that based on a survey of their constituents they estimate that local governments spend more than $16 million a year to print legal notices in local newspapers.

This bill reduces the rates that newspapers may charge for legal notices in some cases. The bill removes language specifying rates based on population size and in its place sets out to standardize the rates on which government notices are based. If the government notice is not paid in advance or reimbursed by private parties the rate is initially 70 cents per square inch and successive insertions would be charged at a rate no more than 85 percent of "the original rate," which is 59.50 cents. However, if the government is reimbursed by private parties the rate will be 70 cents per square inch for the initial posting and 40 cents thereafter.

[9] Committee on Community Affairs, *supra* note 2.

This will likely have an unknown fiscal impact on those governmental entities that publish these notices.

VI. Technical Deficiencies:

The Department of Revenue (DOR) performed a staff analysis of SB 292 prior to the bill becoming a committee substitute. Some of their areas of concern are applicable to the committee substitute as it is now written.[10]

The DOR made some recommendations regarding additional sections of Florida Statutes that may need to be added to SB 292 (and now the CS) to conform to the changes proposed in the bill. Their report states that if the intent of the legislation is that a notice on www.floridapublicnotices.com constitutes legal notice, the following statutes will need to be amended: ss. 194.037, 196.194, 197.122, 197.2301, 197.322, 197.402, 197.403, 197.512, 197.522, F.S. These sections describe newspaper advertisement requirements, and the sponsor may want to have them remain consistent if any changes are made to the underlying requirements.

VII. Related Issues:

This bill deletes requirements for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint against a licensee of the department by publishing notice of the complaint in a newspaper. In lieu of notice by publication, the bill authorizes the department to provide notice of the administrative complaint by posting notice of the complaint on the department's website and by sending notices of the complaint via e-mail to newspapers and to news departments of broadcast networks in this state.

The Legislature may wish to revise s. 120.60, F.S., the general licensing statute applicable to state agencies, to allow all state agencies to provide constructive notice of administrative complaints in the same manner that the bill authorizes the Department of Business and Professional Regulation to provide constructive notice of administrative complaints.

VIII. 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 February 16, 2012:
The committee substitute:

- Provides that a newspaper may not impose a charge for publishing a legal notice on its website that the newspaper publishes in print;
- Deletes a requirement to publish a notice of the sale of bonds issued for a state agency;

[10] Department of Revenue, Staff Analysis SB 292 (2011) (on file with the Senate Committee on Community Affairs.)

- Provides for publication of notices relating to marketing orders for propane gas on the Internet rather than requiring such publication in a newspaper; and
- Provides for publication of notices relating agricultural marketing orders on the Internet rather than requiring such publication in a newspaper.

CS by Community Affairs on January 12, 2012:
The CS created a new framework for which legal notices are required to be published. The CS also removes several references to Leon County in statutes as they pertain to legal notices being published there. The CS requires that websites that publish legal notices include maps that appear in the newspaper advertisements.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 50.0211, Florida Statutes, is created to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper, at no additional charge. A link to legal notices shall be provided

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14 on the front page of the newspaper's website that provides
15 access to the legal notices without charge. If there is a
16 specified size and placement required for a printed legal
17 notice, the size and placement of the notice on the newspaper's
18 website should optimize its online visibility in keeping with
19 the print requirements. The newspaper's web pages that contain
20 legal notices shall present the legal notices as the dominant
21 subject matter of those pages. The newspaper's website shall
22 contain a search function to facilitate searching the legal
23 notices. This subsection shall take effect July 1, 2013.
24 (3) If a legal notice is published in a newspaper, the
25 newspaper publishing the notice shall place the notice on the
26 website established and maintained as an initiative of the
27 Florida Press Association as a repository for such notices
28 located at the following address: www.floridapublicnotices.com.
29 (4) Newspapers that publish legal notices shall, upon
30 request, provide e-mail notification of new legal notices when
31 they are printed in the newspaper and added to the newspaper's
32 website. Such e-mail notification shall be provided without
33 charge and notification for such an e-mail registry shall be
34 available on the front page of the legal notices section of the
35 newspaper's website. This subsection shall take effect July 1,
36 2013.
37 (5) An error in the notice placed on the newspaper or
38 statewide website shall be considered a harmless error and
39 proper legal notice requirements shall be considered met if the
40 notice published in the newspaper is correct.
41 Section 2. Subsection (2) of section 50.041, Florida
42 Statutes, is amended to read:

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43 50.041 Proof of publication; uniform affidavits required.—
44 (2) Each such affidavit shall be printed upon white ~~bond~~
45 paper ~~containing at least 25 percent rag material~~ and shall be 8
46 1/2 inches in width and of convenient length, not less than 5
47 1/2 inches. A white margin of not less than 2 1/2 inches shall
48 be left at the right side of each affidavit form and upon or in
49 this space shall be substantially pasted a clipping which shall
50 be a true copy of the public notice or legal advertisement for
51 which proof is executed. Alternatively, the affidavit may be
52 provided in electronic rather than paper form, provided the
53 notarization of the affidavit complies with the requirements of
54 s. 117.021.
55 Section 3. Section 50.061, Florida Statutes, is amended to
56 read:
57 50.061 Amounts chargeable.—
58 (1) The publisher of any newspaper publishing any and all
59 official public notices or legal advertisements shall charge
60 therefor the rates specified in this section without rebate,
61 commission or refund.
62 (2) The charge for publishing each such official public
63 notice or legal advertisement shall be 70 cents per square inch
64 for the first insertion and 40 cents per square inch for each
65 subsequent insertion, except that government notices required to
66 be published more than once whose cost is paid for by the
67 government and not paid in advance by or allowed to be recouped
68 from private parties may not be charged for the second and
69 successive insertions at a rate greater than 85 percent of the
70 original rate.~~:~~
71 ~~(a) In all counties having a population of more than~~

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72 ~~304,000 according to the latest official decennial census, the~~
73 ~~charge for publishing each such official public notice or legal~~
74 ~~advertisement shall be 80 cents per square inch for the first~~
75 ~~insertion and 60 cents per square inch for each subsequent~~
76 ~~insertion.~~
77 ~~(b) In all counties having a population of more than~~
78 ~~450,000 according to the latest official decennial census, the~~
79 ~~charge for publishing each such official public notice or legal~~
80 ~~advertisement shall be 95 cents per square inch for the first~~
81 ~~insertion and 75 cents per square inch for each subsequent~~
82 ~~insertion.~~
83 (3) Where the regular established minimum commercial rate
84 per square inch of the newspaper publishing such official public
85 notices or legal advertisements is in excess of the rate herein
86 stipulated, said minimum commercial rate per square inch may be
87 charged for all such legal advertisements or official public
88 notices for each insertion, except that government notices
89 required to be published more than once whose cost is paid for
90 by the government and not paid in advance by or allowed to be
91 recouped from private parties may not be charged for the second
92 and successive insertions at a rate greater than 85 percent of
93 the original rate.
94 (4) A governmental agency publishing an official public
95 notice or legal advertisement may procure publication by
96 soliciting and accepting written bids from newspapers published
97 in the county, in which case the specified charges in this
98 section do not apply.
99 (5) If the public notice is published in a newspaper, the
100 posting of the notice on the newspaper's website pursuant to s.

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101 50.0211(2) must be done at no additional charge.
102 (6) ~~(4)~~ All official public notices and legal advertisements
103 shall be charged and paid for on the basis of 6-point type on 6-
104 point body, unless otherwise specified by statute.
105 (7) ~~(5)~~ Any person violating ~~a provision of~~ this section,
106 either by allowing or accepting any rebate, commission, or
107 refund, commits a misdemeanor of the second degree, punishable
108 as provided in s. 775.082 or s. 775.083.
109 (8) ~~(6)~~ Failure to charge the rates prescribed by this
110 section shall in no way affect the validity of any official
111 public notice or legal advertisement and shall not subject same
112 to legal attack upon such grounds.
113 Section 4. Paragraph (b) of subsection (4) of section
114 125.66, Florida Statutes, is amended to read:
115 125.66 Ordinances; enactment procedure; emergency
116 ordinances; rezoning or change of land use ordinances or
117 resolutions.—
118 (4) Ordinances or resolutions, initiated by other than the
119 county, that change the actual zoning map designation of a
120 parcel or parcels of land shall be enacted pursuant to
121 subsection (2). Ordinances or resolutions that change the actual
122 list of permitted, conditional, or prohibited uses within a
123 zoning category, or ordinances or resolutions initiated by the
124 county that change the actual zoning map designation of a parcel
125 or parcels of land shall be enacted pursuant to the following
126 procedure:
127 (b) In cases in which the proposed ordinance or resolution
128 changes the actual list of permitted, conditional, or prohibited
129 uses within a zoning category, or changes the actual zoning map

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130 designation of a parcel or parcels of land involving 10
131 contiguous acres or more, the board of county commissioners
132 shall provide for public notice and hearings as follows:
133 1. The board of county commissioners shall hold two
134 advertised public hearings on the proposed ordinance or
135 resolution. At least one hearing shall be held after 5 p.m. on a
136 weekday, unless the board of county commissioners, by a majority
137 plus one vote, elects to conduct that hearing at another time of
138 day. The first public hearing shall be held at least 7 days
139 after the day that the first advertisement is published. The
140 second hearing shall be held at least 10 days after the first
141 hearing and shall be advertised at least 5 days prior to the
142 public hearing.
143 2. The required advertisements shall be no less than 2
144 columns wide by 10 inches long in a standard size or a tabloid
145 size newspaper, and the headline in the advertisement shall be
146 in a type no smaller than 18 point. The advertisement shall not
147 be placed in that portion of the newspaper where legal notices
148 and classified advertisements appear. The advertisement shall be
149 placed in a newspaper of general paid circulation in the county
150 and of general interest and readership in the community pursuant
151 to chapter 50, not one of limited subject matter. It is the
152 legislative intent that, whenever possible, the advertisement
153 shall appear in a newspaper that is published at least 5 days a
154 week unless the only newspaper in the community is published
155 less than 5 days a week. The advertisement shall be in
156 substantially the following form:
157
158 NOTICE OF (TYPE OF) CHANGE

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159
160 The ...(name of local governmental unit)... proposes to
161 adopt the following by ordinance or resolution:...(title of
162 ordinance or resolution)....
163
164 A public hearing on the ordinance or resolution will be
165 held on ...(date and time)... at ...(meeting place)....
166
167 Except for amendments which change the actual list of permitted,
168 conditional, or prohibited uses within a zoning category, the
169 advertisement shall contain a geographic location map which
170 clearly indicates the area within the local government covered
171 by the proposed ordinance or resolution. The map shall include
172 major street names as a means of identification of the general
173 area. <u>In addition to being published in the newspaper, the map</u>
174 <u>must be part of the online notice required pursuant to s.</u>
175 <u>50.0211.</u>
176 3. In lieu of publishing the advertisements set out in this
177 paragraph, the board of county commissioners may mail a notice
178 to each person owning real property within the area covered by
179 the ordinance or resolution. Such notice shall clearly explain
180 the proposed ordinance or resolution and shall notify the person
181 of the time, place, and location of both public hearings on the
182 proposed ordinance or resolution.
183 Section 5. Paragraph (c) of subsection (3) of section
184 166.041, Florida Statutes, is amended to read:
185 166.041 Procedures for adoption of ordinances and
186 resolutions.—
187 (3)

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188 (c) Ordinances initiated by other than the municipality
189 that change the actual zoning map designation of a parcel or
190 parcels of land shall be enacted pursuant to paragraph (a).
191 Ordinances that change the actual list of permitted,
192 conditional, or prohibited uses within a zoning category, or
193 ordinances initiated by the municipality that change the actual
194 zoning map designation of a parcel or parcels of land shall be
195 enacted pursuant to the following procedure:
196 1. In cases in which the proposed ordinance changes the
197 actual zoning map designation for a parcel or parcels of land
198 involving less than 10 contiguous acres, the governing body
199 shall direct the clerk of the governing body to notify by mail
200 each real property owner whose land the municipality will
201 redesignate by enactment of the ordinance and whose address is
202 known by reference to the latest ad valorem tax records. The
203 notice shall state the substance of the proposed ordinance as it
204 affects that property owner and shall set a time and place for
205 one or more public hearings on such ordinance. Such notice shall
206 be given at least 30 days prior to the date set for the public
207 hearing, and a copy of the notice shall be kept available for
208 public inspection during the regular business hours of the
209 office of the clerk of the governing body. The governing body
210 shall hold a public hearing on the proposed ordinance and may,
211 upon the conclusion of the hearing, immediately adopt the
212 ordinance.
213 2. In cases in which the proposed ordinance changes the
214 actual list of permitted, conditional, or prohibited uses within
215 a zoning category, or changes the actual zoning map designation
216 of a parcel or parcels of land involving 10 contiguous acres or

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217 more, the governing body shall provide for public notice and
218 hearings as follows:
219 a. The local governing body shall hold two advertised
220 public hearings on the proposed ordinance. At least one hearing
221 shall be held after 5 p.m. on a weekday, unless the local
222 governing body, by a majority plus one vote, elects to conduct
223 that hearing at another time of day. The first public hearing
224 shall be held at least 7 days after the day that the first
225 advertisement is published. The second hearing shall be held at
226 least 10 days after the first hearing and shall be advertised at
227 least 5 days prior to the public hearing.
228 b. The required advertisements shall be no less than 2
229 columns wide by 10 inches long in a standard size or a tabloid
230 size newspaper, and the headline in the advertisement shall be
231 in a type no smaller than 18 point. The advertisement shall not
232 be placed in that portion of the newspaper where legal notices
233 and classified advertisements appear. The advertisement shall be
234 placed in a newspaper of general paid circulation in the
235 municipality and of general interest and readership in the
236 municipality, not one of limited subject matter, pursuant to
237 chapter 50. It is the legislative intent that, whenever
238 possible, the advertisement appear in a newspaper that is
239 published at least 5 days a week unless the only newspaper in
240 the municipality is published less than 5 days a week. The
241 advertisement shall be in substantially the following form:
242
243 NOTICE OF (TYPE OF) CHANGE
244
245 The ...(name of local governmental unit)... proposes to

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246 adopt the following ordinance:...(title of the ordinance)....
247
248 A public hearing on the ordinance will be held on ...(date
249 and time)... at ...(meeting place)....
250
251 Except for amendments which change the actual list of permitted,
252 conditional, or prohibited uses within a zoning category, the
253 advertisement shall contain a geographic location map which
254 clearly indicates the area covered by the proposed ordinance.
255 The map shall include major street names as a means of
256 identification of the general area. In addition to being
257 published in the newspaper, the map must be part of the online
258 notice required pursuant to s. 50.0211.
259 c. In lieu of publishing the advertisement set out in this
260 paragraph, the municipality may mail a notice to each person
261 owning real property within the area covered by the ordinance.
262 Such notice shall clearly explain the proposed ordinance and
263 shall notify the person of the time, place, and location of any
264 public hearing on the proposed ordinance.
265 Section 6. Paragraph (d) of subsection (1) of section
266 190.005, Florida Statutes, is amended to read:
267 190.005 Establishment of district.—
268 (1) The exclusive and uniform method for the establishment
269 of a community development district with a size of 1,000 acres
270 or more shall be pursuant to a rule, adopted under chapter 120
271 by the Florida Land and Water Adjudicatory Commission, granting
272 a petition for the establishment of a community development
273 district.
274 (d) A local public hearing on the petition shall be

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275 conducted by a hearing officer in conformance with the
276 applicable requirements and procedures of the Administrative
277 Procedure Act. The hearing shall include oral and written
278 comments on the petition pertinent to the factors specified in
279 paragraph (e). The hearing shall be held at an accessible
280 location in the county in which the community development
281 district is to be located. The petitioner shall cause a notice
282 of the hearing to be published in a newspaper at least once a
283 week for the 4 successive weeks immediately prior to the
284 hearing. Such notice shall give the time and place for the
285 hearing, a description of the area to be included in the
286 district, which description shall include a map showing clearly
287 the area to be covered by the district, and any other relevant
288 information which the establishing governing bodies may require.
289 The advertisement shall not be placed in that portion of the
290 newspaper where legal notices and classified advertisements
291 appear. The advertisement shall be published in a newspaper of
292 general paid circulation in the county and of general interest
293 and readership in the community, not one of limited subject
294 matter, pursuant to chapter 50. Whenever possible, the
295 advertisement shall appear in a newspaper that is published at
296 least 5 days a week, unless the only newspaper in the community
297 is published fewer than 5 days a week. <u>In addition to being</u>
298 <u>published in the newspaper, the map referenced above must be</u>
299 <u>part of the online advertisement required pursuant to s.</u>
300 <u>50.0211.</u> All affected units of general-purpose local government
301 and the general public shall be given an opportunity to appear
302 at the hearing and present oral or written comments on the
303 petition.

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304 Section 7. Paragraph (h) of subsection (3) of section
305 200.065, Florida Statutes, is amended to read:
306 200.065 Method of fixing millage.—
307 (3) The advertisement shall be no less than one-quarter
308 page in size of a standard size or a tabloid size newspaper, and
309 the headline in the advertisement shall be in a type no smaller
310 than 18 point. The advertisement shall not be placed in that
311 portion of the newspaper where legal notices and classified
312 advertisements appear. The advertisement shall be published in a
313 newspaper of general paid circulation in the county or in a
314 geographically limited insert of such newspaper. The geographic
315 boundaries in which such insert is circulated shall include the
316 geographic boundaries of the taxing authority. It is the
317 legislative intent that, whenever possible, the advertisement
318 appear in a newspaper that is published at least 5 days a week
319 unless the only newspaper in the county is published less than 5
320 days a week, or that the advertisement appear in a
321 geographically limited insert of such newspaper which insert is
322 published throughout the taxing authority's jurisdiction at
323 least twice each week. It is further the legislative intent that
324 the newspaper selected be one of general interest and readership
325 in the community and not one of limited subject matter, pursuant
326 to chapter 50.
327 (h) In no event shall any taxing authority add to or delete
328 from the language of the advertisements as specified herein
329 unless expressly authorized by law, except that, if an increase
330 in ad valorem tax rates will affect only a portion of the
331 jurisdiction of a taxing authority, advertisements may include a
332 map or geographical description of the area to be affected and

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333 the proposed use of the tax revenues under consideration. In
334 addition, if published in the newspaper, the map must be part of
335 the online advertisement required by s. 50.0211. The
336 advertisements required herein shall not be accompanied,
337 preceded, or followed by other advertising or notices which
338 conflict with or modify the substantive content prescribed
339 herein.
340 Section 8. Subsection (2) of section 17.325, Florida
341 Statutes, is amended to read:
342 17.325 Governmental efficiency hotline; duties of Chief
343 Financial Officer.—
344 (2) The Chief Financial Officer shall operate the hotline
345 24 hours a day. The Chief Financial Officer may ~~shall~~ advertise
346 the availability of the hotline in newspapers of general
347 circulation in this state and shall provide for the posting of
348 notices in conspicuous places in state agency offices, city
349 halls, county courthouses, and places in which there is exposure
350 to significant numbers of the general public, including, but not
351 limited to, local convenience stores, shopping malls, shopping
352 centers, gasoline stations, or restaurants. The Chief Financial
353 Officer shall use the slogan "Tell us where we can 'Get Lean'"
354 for the hotline and in advertisements for the hotline.
355 Section 9. Paragraph (b) of subsection (5) of section
356 215.68, Florida Statutes, is amended to read:
357 215.68 Issuance of bonds; form; maturity date, execution,
358 sale.—
359 (5)
360 (b) All of such bonds shall be sold at public sale at such
361 place or places within the state as the board shall determine to

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362 receive proposals for the purchase of such bonds. Notice of such
363 sale shall be provided at such time ~~published at least once at~~
364 ~~least 10 days prior to the date of sale in one or more~~
365 ~~newspapers or financial journals published within or without the~~
366 ~~state~~ and shall contain such terms as the board shall deem
367 advisable and proper under the circumstances; provided, that if
368 no bids are received at the time and place called for by such
369 notice of sale, or if all bids received are rejected, such bonds
370 may again be offered for public sale by competitive bid or
371 negotiated sale, as provided herein, upon a shorter period of
372 reasonable notice provided for by resolution of the board.
373 However, unless the State Constitution specifically requires the
374 public sale by competitive bid of such bonds, the division may,
375 by resolution adopted at a public meeting, determine that a
376 negotiated sale of such bonds is in the best interest of the
377 issuer, and may negotiate for sale of such bonds to any
378 underwriter designated by the division.
379 1. In the resolution authorizing the negotiated sale, the
380 division shall provide specific findings as to the reasons
381 requiring the negotiated sale.
382 2. A resolution authorizing a negotiated bond sale may be
383 the same resolution as that authorizing the issuance of such
384 bonds.
385 Section 10. Subsection (5) of section 120.60, Florida
386 Statutes, is amended to read:
387 120.60 Licensing.—
388 (5) No revocation, suspension, annulment, or withdrawal of
389 any license is lawful unless, prior to the entry of a final
390 order, the agency has served, by personal service or certified

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391 mail, an administrative complaint which affords reasonable
392 notice to the licensee of facts or conduct which warrant the
393 intended action and unless the licensee has been given an
394 adequate opportunity to request a proceeding pursuant to ss.
395 120.569 and 120.57. When personal service cannot be made and the
396 certified mail notice is returned undelivered, the agency shall
397 cause a short, plain notice to the licensee to be published once
398 each week for 4 consecutive weeks in a newspaper published in
399 the county of the licensee's last known address as it appears on
400 the records of the agency. If no newspaper is published in that
401 county, the notice may be published in a newspaper of general
402 circulation in that county. ~~If the address is in some state~~
403 ~~other than this state or in a foreign territory or country, the~~
404 ~~notice may be published in Leon County.~~
405 Section 11. Paragraph (d) of subsection (6) of section
406 215.555, Florida Statutes, is amended to read:
407 215.555 Florida Hurricane Catastrophe Fund.—
408 (6) REVENUE BONDS.—
409 (d) *Florida Hurricane Catastrophe Fund Finance*
410 *Corporation.*—
411 1. In addition to the findings and declarations in
412 subsection (1), the Legislature also finds and declares that:
413 a. The public benefits corporation created under this
414 paragraph will provide a mechanism necessary for the cost-
415 effective and efficient issuance of bonds. This mechanism will
416 eliminate unnecessary costs in the bond issuance process,
417 thereby increasing the amounts available to pay reimbursement
418 for losses to property sustained as a result of hurricane
419 damage.

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420 b. The purpose of such bonds is to fund reimbursements
421 through the Florida Hurricane Catastrophe Fund to pay for the
422 costs of construction, reconstruction, repair, restoration, and
423 other costs associated with damage to properties of
424 policyholders of covered policies due to the occurrence of a
425 hurricane.
426 c. The efficacy of the financing mechanism will be enhanced
427 by the corporation’s ownership of the assessments, by the
428 insulation of the assessments from possible bankruptcy
429 proceedings, and by covenants of the state with the
430 corporation’s bondholders.
431 2.a. There is created a public benefits corporation, which
432 is an instrumentality of the state, to be known as the Florida
433 Hurricane Catastrophe Fund Finance Corporation.
434 b. The corporation shall operate under a five-member board
435 of directors consisting of the Governor or a designee, the Chief
436 Financial Officer or a designee, the Attorney General or a
437 designee, the director of the Division of Bond Finance of the
438 State Board of Administration, and the senior employee of the
439 State Board of Administration responsible for operations of the
440 Florida Hurricane Catastrophe Fund.
441 c. The corporation has all of the powers of corporations
442 under chapter 607 and under chapter 617, subject only to the
443 provisions of this subsection.
444 d. The corporation may issue bonds and engage in such other
445 financial transactions as are necessary to provide sufficient
446 funds to achieve the purposes of this section.
447 e. The corporation may invest in any of the investments
448 authorized under s. 215.47.

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449 f. There shall be no liability on the part of, and no cause
450 of action shall arise against, any board members or employees of
451 the corporation for any actions taken by them in the performance
452 of their duties under this paragraph.
453 3.a. In actions under chapter 75 to validate any bonds
454 issued by the corporation, the notice required by s. 75.06 shall
455 be published ~~only in Leon County and~~ in two newspapers of
456 general circulation in the state, and the complaint and order of
457 the court shall be served only on the State Attorney of the
458 Second Judicial Circuit.
459 b. The state hereby covenants with holders of bonds of the
460 corporation that the state will not repeal or abrogate the power
461 of the board to direct the Office of Insurance Regulation to
462 levy the assessments and to collect the proceeds of the revenues
463 pledged to the payment of such bonds as long as any such bonds
464 remain outstanding unless adequate provision has been made for
465 the payment of such bonds pursuant to the documents authorizing
466 the issuance of such bonds.
467 4. The bonds of the corporation are not a debt of the state
468 or of any political subdivision, and neither the state nor any
469 political subdivision is liable on such bonds. The corporation
470 does not have the power to pledge the credit, the revenues, or
471 the taxing power of the state or of any political subdivision.
472 The credit, revenues, or taxing power of the state or of any
473 political subdivision shall not be deemed to be pledged to the
474 payment of any bonds of the corporation.
475 5.a. The property, revenues, and other assets of the
476 corporation; the transactions and operations of the corporation
477 and the income from such transactions and operations; and all

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478 bonds issued under this paragraph and interest on such bonds are
479 exempt from taxation by the state and any political subdivision,
480 including the intangibles tax under chapter 199 and the income
481 tax under chapter 220. This exemption does not apply to any tax
482 imposed by chapter 220 on interest, income, or profits on debt
483 obligations owned by corporations other than the Florida
484 Hurricane Catastrophe Fund Finance Corporation.
485 b. All bonds of the corporation shall be and constitute
486 legal investments without limitation for all public bodies of
487 this state; for all banks, trust companies, savings banks,
488 savings associations, savings and loan associations, and
489 investment companies; for all administrators, executors,
490 trustees, and other fiduciaries; for all insurance companies and
491 associations and other persons carrying on an insurance
492 business; and for all other persons who are now or may hereafter
493 be authorized to invest in bonds or other obligations of the
494 state and shall be and constitute eligible securities to be
495 deposited as collateral for the security of any state, county,
496 municipal, or other public funds. This sub-subparagraph shall be
497 considered as additional and supplemental authority and shall
498 not be limited without specific reference to this sub-
499 subparagraph.
500 6. The corporation and its corporate existence shall
501 continue until terminated by law; however, no such law shall
502 take effect as long as the corporation has bonds outstanding
503 unless adequate provision has been made for the payment of such
504 bonds pursuant to the documents authorizing the issuance of such
505 bonds. Upon termination of the existence of the corporation, all
506 of its rights and properties in excess of its obligations shall

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507 pass to and be vested in the state.
508 Section 12. Section 253.52, Florida Statutes, is amended to
509 read:
510 253.52 Placing oil and gas leases on market by board.—
511 Whenever in the opinion of the Board of Trustees of the Internal
512 Improvement Trust Fund there shall be a demand for the purchase
513 of oil and gas leases on any area, tract, or parcel of the land
514 so owned, controlled, or managed, by any state board,
515 department, or agency, then the board shall place such oil and
516 gas lease or leases on the market in such blocks, tracts, or
517 parcels as it may designate. The lease or leases shall only be
518 made after notice by publication thereof has been made not less
519 than once a week for 4 consecutive weeks in a newspaper of
520 general circulation ~~published in Leon County, and in a similar~~
521 ~~newspaper for a similar period of time~~ published in the vicinity
522 of the lands offered to be leased, the last publication ~~in both~~
523 ~~newspapers~~ to be not less than 5 days in advance of the sale
524 date. Such notice shall be to the effect that a lease or leases
525 will be offered for sale at such date and time as may be named
526 in said notice and shall describe the land upon which such
527 lease, or leases, will be offered. This notice may be combined
528 with the notice required pursuant to s. 253.115. Before any
529 lease of any block, tract, or parcel of land, submerged, or
530 unsubmerged, within a radius of 3 miles of the boundaries of any
531 incorporated city, or town, or within such radius of any bathing
532 beach, or beaches, outside thereof, such board, department, or
533 agency, shall through one or more of its members hold a public
534 hearing, after notice thereof by publication once in a newspaper
535 of general circulation published at least 1 week prior to said

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536 hearing in the vicinity of the land, or lands, offered to be
537 leased, of the offer to lease the same, calling upon all
538 interested persons to attend said hearing where they would be
539 given the opportunity to be heard, all of which shall be
540 considered by the board prior to the execution of any lease or
541 leases to said land, and the board may withdraw said land, or
542 any part thereof, from the market, and refuse to execute such
543 lease or leases if after such hearing, or otherwise, it
544 considers such execution contrary to the public welfare. Before
545 advertising any land for lease the form of the lease or leases
546 to be offered for sale, not inconsistent with law, or the
547 provisions of this section, shall be prescribed by the board and
548 a copy, or copies, thereof, shall be available to the general
549 public at the office of the Board of Trustees of the Internal
550 Improvement Trust Fund and the advertisements of such sale shall
551 so state.
552 Section 13. Paragraph (b) of subsection (4) of section
553 255.518, Florida Statutes, is amended to read:
554 255.518 Obligations; purpose, terms, approval,
555 limitations.—
556 (4)
557 (b) In actions to validate such obligations pursuant to
558 chapter 75, the complaint shall be filed in the Circuit Court of
559 Leon County, the notice required by s. 75.06, shall be published
560 ~~only in Leon County and~~ in two newspapers of general circulation
561 in the state, and the complaint and order of the court shall be
562 served only on the state attorney of the Second Judicial
563 Circuit.
564 Section 14. Paragraph (b) of subsection (4) of section

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565 380.0668, Florida Statutes, is amended to read:
566 380.0668 Bonds; purpose, terms, approval, limitations.—
567 (4)
568 (b) In actions to validate such bonds pursuant to chapter
569 75, the complaint shall be filed in the Circuit Court of Leon
570 County, the notice required by s. 75.06 shall be published in
571 newspapers of general circulation in ~~Leon County and~~ the county
572 in which the area or areas of critical state concern involved
573 are located, and the complaint and order of the court shall be
574 served on the state attorney of the Second Judicial Circuit and
575 the circuit in which the area or areas of critical state concern
576 involved are located.
577 Section 15. Paragraph (b) of subsection (3) of section
578 455.275, Florida Statutes, is amended to read:
579 455.275 Address of record.—
580 (3)
581 (b) If service, as provided in paragraph (a), does not
582 provide the department with proof of service, the department
583 shall call the last known telephone number of record and cause a
584 short, plain notice to the licensee to be posted on the front
585 page of the department's website and shall send notice via e-
586 mail to all newspapers of general circulation and all news
587 departments of broadcast network affiliates in the county of the
588 licensee's last known address of record ~~published once each week~~
589 ~~for 4 consecutive weeks in a newspaper published in the county~~
590 ~~of the licensee's last known address of record. If a newspaper~~
591 ~~is not published in the county, the administrative complaint may~~
592 ~~be published in a newspaper of general circulation in the~~
593 ~~county. If the licensee's last known address is located in~~

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594 ~~another state or in a foreign jurisdiction, the administrative~~
595 ~~complaint may be published in Leon County pursuant to s.~~
596 ~~120.60(5)~~.
597 Section 16. Subsection (5) of section 473.3141, Florida
598 Statutes, is amended to read:
599 473.3141 Certified public accountants licensed in other
600 states.—
601 (5) Disciplinary action against an individual or firm that
602 practices pursuant to this section is not valid unless, prior to
603 the entry of a final order, the agency has served, by personal
604 service pursuant to this chapter or chapter 48 or by certified
605 mail, an administrative complaint that provides reasonable
606 notice to the individual or firm of facts or conduct that
607 warrants the intended action and unless the individual or firm
608 has been given an adequate opportunity to request a proceeding
609 pursuant to ss. 120.569 and 120.57. ~~When personal service cannot~~
610 ~~be made and the certified mail notice is returned undelivered,~~
611 ~~the agency shall have a short, plain notice to the individual or~~
612 ~~firm with practice privileges published once a week for 4~~
613 ~~consecutive weeks in a newspaper published in Leon County,~~
614 ~~Florida. The newspaper shall meet the requirements prescribed by~~
615 ~~law for such purposes.~~
616 Section 17. Paragraph (b) of subsection (5) of section
617 527.23, Florida Statutes, is amended to read:
618 527.23 Marketing orders; referendum requirements;
619 assessments.—
620 (5)
621 (b) It is the duty of the producers or dealers of propane
622 gas who vote in each referendum to send their marked ballots to

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623 the department, which shall have the ballots counted by
624 qualified and impartial personnel in its office, and the
625 department shall, within 10 days after the closing date for
626 submitting ballots in any referendum, certify in writing and
627 publish the results of such referendum on the front page of
628 their website and shall send notice via e-mail to all
629 publications of general circulation and all news departments of
630 broadcast network affiliates located within the state ~~in a~~
631 ~~newspaper of general circulation in the state and in such other~~
632 ~~newspapers as the department prescribes~~.
633 Section 18. Subsection (2) of section 573.109, Florida
634 Statutes, is amended to read:
635 573.109 Procedure for referendum.—
636 (2) It shall be the duty of the producers or handlers
637 affected who vote in each referendum to send their marked
638 ballots to the department, which shall have the ballots counted
639 by qualified and impartial personnel in its office, and the
640 department shall, within 10 days after the closing date for
641 submitting ballots in any referendum, certify in writing and
642 publish the results of such referendum on the front page of
643 their website and shall send notice via e-mail to all
644 publications of general circulation and all news departments of
645 broadcast network affiliates located within the state ~~in a~~
646 ~~newspaper of general circulation in the state and in such other~~
647 ~~newspapers as the department may prescribe~~.
648 Section 19. Section 573.111, Florida Statutes, is amended
649 to read:
650 573.111 Notice of effective date of marketing order.—Before
651 the issuance of any marketing order, or any suspension,

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652 amendment, or termination thereof, a notice shall be posted on a
653 public bulletin board to be maintained by the department in the
654 Division of Marketing and Development of the department in the
655 Nathan Mayo Building, Tallahassee, Leon County, and a copy of
656 the notice shall be posted on the department website ~~published~~
657 ~~in a newspaper of general circulation in the state and in such~~
658 ~~other newspaper or newspapers as the department may prescribe.~~
659 ~~The notices published in the newspaper or newspapers shall be~~
660 ~~sent by first-class mail, by the department to those newspapers~~
661 ~~designated by it,~~ the same date that the notice is posted on the
662 bulletin board ~~with instructions to publish the same as a legal~~
663 ~~advertisement the first date after receipt of the notice as such~~
664 ~~newspaper's policy for publishing legal advertisements provides~~.
665 No marketing order, or any suspension, amendment, or termination
666 thereof, shall become effective until the termination of a
667 period of 5 days from the date of posting and publication.
668 Section 20. Subsection (2) of section 631.59, Florida
669 Statutes, is amended to read:
670 631.59 Duties and powers of department and office.—
671 (2) The department may require that the association notify
672 the insureds of the insolvent insurer and any other interested
673 parties of the determination of insolvency and of their rights
674 under this part. Such notification shall be by mail at their
675 last known addresses, when available, but if sufficient
676 information for notification by mail is not available, notice by
677 e-mail or telephone ~~publication in a newspaper of general~~
678 ~~circulation~~ shall be sufficient.
679 Section 21. Except as otherwise expressly provided in this
680 act, this act shall take effect July 1, 2012, and shall apply to

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681 legal notices that must be published on or after that date.
682
683 ========== T I T L E A M E N D M E N T ==========
684 And the title is amended as follows:
685 Delete everything before the enacting clause
686 and insert:
687 A bill to be entitled
688 An act relating to legal notices; creating s. 50.0211,
689 F.S.; requiring that, after a specified date, if a
690 legal notice is published in a newspaper, the
691 newspaper publishing the notice shall also place the
692 notice on a website maintained by the newspaper, at no
693 additional charge; providing requirements for size and
694 placement of such website publication; requiring free
695 access to such online publications; requiring that
696 legal notices published in newspapers also be
697 published on another specified website; requiring
698 that, after a specified date, newspapers that publish
699 legal notice must provide e-mail notification of new
700 legal notices; providing requirements for such notice;
701 providing that an error on a newspaper or statewide
702 website shall be considered a harmless error and legal
703 notice requirements shall be considered met if the
704 notice published in the newspaper is correct; amending
705 s. 50.041, F.S.; revising physical requirements for
706 proof of publication affidavits; authorizing
707 electronic affidavits that meet specified
708 requirements; amending s. 50.061, F.S.; limiting the
709 rate that may be charged for government notices

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710 required to be published more than once in certain
711 circumstances; deleting provisions specifying rates
712 for legal notices based on county population;
713 specifying that if a public notice is published in a
714 newspaper, publication of a notice on a website
715 pursuant to specified provisions must be done at no
716 charge; amending ss. 125.66, 166.041, 190.005, and
717 200.065, F.S.; requiring that website publication of
718 certain legal notices include maps that appear in the
719 newspaper advertisements; amending s. 17.325, F.S.;
720 making it optional for the Chief Financial Officer to
721 advertise the availability of the governmental
722 efficiency hotline; amending s. 215.68, F.S.; deleting
723 specific criteria for publishing certain bond notices;
724 amending ss. 120.60 215.555, 253.52, 255.518, and
725 380.0668, F.S.; deleting requirements that certain
726 legal notices be published in Leon County; amending s.
727 455.275, F.S.; deleting a requirement that certain
728 notices concerning professional licensees who cannot
729 be personally served be published in Leon County;
730 requiring that plain notice to the licensee to be
731 posted on the front page of the Department of Business
732 and Professional Regulation’s website and provided to
733 certain news outlets; amending s. 473.3141, F.S.;
734 deleting a requirement that notices concerning
735 discipline of certain certified public accountants be
736 published in Leon County; amending s. 527.23, F.S.;
737 deleting requirements relating to the newspaper
738 publication of certain notices relating to marketing

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739 orders for propane gas; providing for Internet
740 publication of such orders and for providing
741 information to certain news outlets; amending ss.
742 573.109 and 573.111, F.S.; deleting requirements
743 relating to the newspaper publication of certain
744 notices relating to agricultural marketing orders;
745 providing for Internet publication of such orders and
746 for providing information to certain news outlets;
747 amending s. 631.59, F.S.; deleting requirements for
748 the newspaper publication of certain notices
749 concerning insolvent insurers; providing for notice by
750 e-mail or telephone; providing for applicability;
751 providing effective dates.

By the Committee on Community Affairs; and Senator Bennett

578-01848-12 2012292c1

A bill to be entitled

An act relating to legal notices; creating s. 50.0211, F.S.; requiring that, after a specified date, if a legal notice is published in a newspaper, the newspaper publishing the notice shall also place the notice on a website maintained by the newspaper; providing requirements for size and placement of such website publication; requiring free access to such online publications; requiring that legal notices published in newspapers also be published on another specified website; requiring that, after a specified date, newspapers that publish legal notice provide e-mail notification of new legal notices; providing requirements for such notice; providing that an error on a newspaper or statewide website is considered a harmless error and legal notice requirements are considered met if the notice published in the newspaper is correct; amending s. 50.041, F.S.; revising physical requirements for proof of publication affidavits; authorizing electronic affidavits that meet specified requirements; amending s. 50.061, F.S.; limiting the rate that may be charged for government notices required to be published more than once in certain circumstances; deleting provisions specifying rates for legal notices based on county population; amending ss. 125.66, 166.041, 190.005, and 200.065, F.S.; requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements; amending s.

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578-01848-12 2012292c1

17.325, F.S.; making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline; amending ss. 120.60 215.555, 253.52, 255.518, and 380.0668, F.S.; deleting requirements that certain legal notices be published in Leon County; amending s. 455.275, F.S.; deleting a requirement that certain notices concerning professional licensees who cannot be personally served be published in Leon County; requiring that plain notice to the licensee be posted on the front page of the Department of Business and Professional Regulation's website and be provided to certain news outlets; amending s. 473.3141, F.S.; deleting a requirement that notices concerning the discipline of certain certified public accountants be published in Leon County; amending s. 527.23, F.S.; deleting requirements relating to the newspaper publication of certain notices relating to marketing orders for propane gas; requiring that such orders be published on the Internet and that information be provided to certain news outlets; amending ss. 573.109 and 573.111, F.S.; deleting requirements relating to the newspaper publication of certain notices relating to agricultural marketing orders; requiring that such orders be published on the Internet and that information be provided to certain news outlets; amending s. 631.59, F.S.; deleting requirements for the newspaper publication of certain notices concerning insolvent insurers; providing for notice by

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e-mail or telephone; providing for applicability; providing effective dates.

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

Section 1. Section 50.0211, Florida Statutes, is created to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper. A link to legal notices shall be provided on the front page of the newspaper's website that provides access to the legal notices without charge. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices shall present the legal notices as the dominant subject matter of those pages. The newspaper's website shall contain a search function to facilitate searching the legal notices. This subsection shall take effect July 1, 2013.

(3) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(4) Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification shall be provided without charge and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website. This subsection shall take effect July 1, 2013.

(5) An error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.

Section 2. Subsection (2) of section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(2) Each such affidavit shall be printed upon white ~~bond~~ paper ~~containing at least 25 percent rag material~~ and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

Section 3. Subsection (2) of section 50.061, Florida Statutes, is amended to read:

50.061 Amounts chargeable.—

117 (2) The charge for publishing each such official public
118 notice or legal advertisement shall be 70 cents per square inch
119 for the first insertion and 40 cents per square inch for each
120 subsequent insertion, except that government notices required to
121 be published more than once whose cost is paid for by the
122 government and not paid in advance by or allowed to be recouped
123 from private parties may not be charged for the second and
124 successive insertions at a rate greater than 85 percent of the
125 original rate.~~:~~
126 ~~(a) In all counties having a population of more than~~
127 ~~304,000 according to the latest official decennial census, the~~
128 ~~charge for publishing each such official public notice or legal~~
129 ~~advertisement shall be 80 cents per square inch for the first~~
130 ~~insertion and 60 cents per square inch for each subsequent~~
131 ~~insertion.~~
132 ~~(b) In all counties having a population of more than~~
133 ~~450,000 according to the latest official decennial census, the~~
134 ~~charge for publishing each such official public notice or legal~~
135 ~~advertisement shall be 95 cents per square inch for the first~~
136 ~~insertion and 75 cents per square inch for each subsequent~~
137 ~~insertion.~~
138 Section 4. Paragraph (b) of subsection (4) of section
139 125.66, Florida Statutes, is amended to read:
140 125.66 Ordinances; enactment procedure; emergency
141 ordinances; rezoning or change of land use ordinances or
142 resolutions.—
143 (4) Ordinances or resolutions, initiated by other than the
144 county, that change the actual zoning map designation of a
145 parcel or parcels of land shall be enacted pursuant to

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146 subsection (2). Ordinances or resolutions that change the actual
147 list of permitted, conditional, or prohibited uses within a
148 zoning category, or ordinances or resolutions initiated by the
149 county that change the actual zoning map designation of a parcel
150 or parcels of land shall be enacted pursuant to the following
151 procedure:
152 (b) In cases in which the proposed ordinance or resolution
153 changes the actual list of permitted, conditional, or prohibited
154 uses within a zoning category, or changes the actual zoning map
155 designation of a parcel or parcels of land involving 10
156 contiguous acres or more, the board of county commissioners
157 shall provide for public notice and hearings as follows:
158 1. The board of county commissioners shall hold two
159 advertised public hearings on the proposed ordinance or
160 resolution. At least one hearing shall be held after 5 p.m. on a
161 weekday, unless the board of county commissioners, by a majority
162 plus one vote, elects to conduct that hearing at another time of
163 day. The first public hearing shall be held at least 7 days
164 after the day that the first advertisement is published. The
165 second hearing shall be held at least 10 days after the first
166 hearing and shall be advertised at least 5 days prior to the
167 public hearing.
168 2. The required advertisements shall be no less than 2
169 columns wide by 10 inches long in a standard size or a tabloid
170 size newspaper, and the headline in the advertisement shall be
171 in a type no smaller than 18 point. The advertisement shall not
172 be placed in that portion of the newspaper where legal notices
173 and classified advertisements appear. The advertisement shall be
174 placed in a newspaper of general paid circulation in the county

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175 and of general interest and readership in the community pursuant
176 to chapter 50, not one of limited subject matter. It is the
177 legislative intent that, whenever possible, the advertisement
178 shall appear in a newspaper that is published at least 5 days a
179 week unless the only newspaper in the community is published
180 less than 5 days a week. The advertisement shall be in
181 substantially the following form:
182
183 NOTICE OF (TYPE OF) CHANGE
184
185 The ...(name of local governmental unit)... proposes to
186 adopt the following by ordinance or resolution:...(title of
187 ordinance or resolution)....
188 A public hearing on the ordinance or resolution will be
189 held on ...(date and time)... at ...(meeting place)....
190
191 Except for amendments which change the actual list of permitted,
192 conditional, or prohibited uses within a zoning category, the
193 advertisement shall contain a geographic location map which
194 clearly indicates the area within the local government covered
195 by the proposed ordinance or resolution. The map shall include
196 major street names as a means of identification of the general
197 area. <u>In addition to being published in the newspaper, the map</u>
198 <u>must be part of the online notice required pursuant to s.</u>
199 <u>50.0211.</u>
200 3. In lieu of publishing the advertisements set out in this
201 paragraph, the board of county commissioners may mail a notice
202 to each person owning real property within the area covered by
203 the ordinance or resolution. Such notice shall clearly explain

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204 the proposed ordinance or resolution and shall notify the person
205 of the time, place, and location of both public hearings on the
206 proposed ordinance or resolution.
207 Section 5. Paragraph (c) of subsection (3) of section
208 166.041, Florida Statutes, is amended to read:
209 166.041 Procedures for adoption of ordinances and
210 resolutions.—
211 (3)
212 (c) Ordinances initiated by other than the municipality
213 that change the actual zoning map designation of a parcel or
214 parcels of land shall be enacted pursuant to paragraph (a).
215 Ordinances that change the actual list of permitted,
216 conditional, or prohibited uses within a zoning category, or
217 ordinances initiated by the municipality that change the actual
218 zoning map designation of a parcel or parcels of land shall be
219 enacted pursuant to the following procedure:
220 1. In cases in which the proposed ordinance changes the
221 actual zoning map designation for a parcel or parcels of land
222 involving less than 10 contiguous acres, the governing body
223 shall direct the clerk of the governing body to notify by mail
224 each real property owner whose land the municipality will
225 redesignate by enactment of the ordinance and whose address is
226 known by reference to the latest ad valorem tax records. The
227 notice shall state the substance of the proposed ordinance as it
228 affects that property owner and shall set a time and place for
229 one or more public hearings on such ordinance. Such notice shall
230 be given at least 30 days prior to the date set for the public
231 hearing, and a copy of the notice shall be kept available for
232 public inspection during the regular business hours of the

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233 office of the clerk of the governing body. The governing body
234 shall hold a public hearing on the proposed ordinance and may,
235 upon the conclusion of the hearing, immediately adopt the
236 ordinance.
237 2. In cases in which the proposed ordinance changes the
238 actual list of permitted, conditional, or prohibited uses within
239 a zoning category, or changes the actual zoning map designation
240 of a parcel or parcels of land involving 10 contiguous acres or
241 more, the governing body shall provide for public notice and
242 hearings as follows:
243 a. The local governing body shall hold two advertised
244 public hearings on the proposed ordinance. At least one hearing
245 shall be held after 5 p.m. on a weekday, unless the local
246 governing body, by a majority plus one vote, elects to conduct
247 that hearing at another time of day. The first public hearing
248 shall be held at least 7 days after the day that the first
249 advertisement is published. The second hearing shall be held at
250 least 10 days after the first hearing and shall be advertised at
251 least 5 days prior to the public hearing.
252 b. The required advertisements shall be no less than 2
253 columns wide by 10 inches long in a standard size or a tabloid
254 size newspaper, and the headline in the advertisement shall be
255 in a type no smaller than 18 point. The advertisement shall not
256 be placed in that portion of the newspaper where legal notices
257 and classified advertisements appear. The advertisement shall be
258 placed in a newspaper of general paid circulation in the
259 municipality and of general interest and readership in the
260 municipality, not one of limited subject matter, pursuant to
261 chapter 50. It is the legislative intent that, whenever

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262 possible, the advertisement appear in a newspaper that is
263 published at least 5 days a week unless the only newspaper in
264 the municipality is published less than 5 days a week. The
265 advertisement shall be in substantially the following form:
266
267 NOTICE OF (TYPE OF) CHANGE
268
269 The ...(name of local governmental unit)... proposes to
270 adopt the following ordinance:...(title of the ordinance)....
271 A public hearing on the ordinance will be held on ...(date
272 and time)... at ...(meeting place)....
273
274 Except for amendments which change the actual list of permitted,
275 conditional, or prohibited uses within a zoning category, the
276 advertisement shall contain a geographic location map which
277 clearly indicates the area covered by the proposed ordinance.
278 The map shall include major street names as a means of
279 identification of the general area. In addition to being
280 published in the newspaper, the map must be part of the online
281 notice required pursuant to s. 50.0211.
282 c. In lieu of publishing the advertisement set out in this
283 paragraph, the municipality may mail a notice to each person
284 owning real property within the area covered by the ordinance.
285 Such notice shall clearly explain the proposed ordinance and
286 shall notify the person of the time, place, and location of any
287 public hearing on the proposed ordinance.
288 Section 6. Paragraph (d) of subsection (1) of section
289 190.005, Florida Statutes, is amended to read:
290 190.005 Establishment of district.—

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291 (1) The exclusive and uniform method for the establishment
292 of a community development district with a size of 1,000 acres
293 or more shall be pursuant to a rule, adopted under chapter 120
294 by the Florida Land and Water Adjudicatory Commission, granting
295 a petition for the establishment of a community development
296 district.
297 (d) A local public hearing on the petition shall be
298 conducted by a hearing officer in conformance with the
299 applicable requirements and procedures of the Administrative
300 Procedure Act. The hearing shall include oral and written
301 comments on the petition pertinent to the factors specified in
302 paragraph (e). The hearing shall be held at an accessible
303 location in the county in which the community development
304 district is to be located. The petitioner shall cause a notice
305 of the hearing to be published in a newspaper at least once a
306 week for the 4 successive weeks immediately prior to the
307 hearing. Such notice shall give the time and place for the
308 hearing, a description of the area to be included in the
309 district, which description shall include a map showing clearly
310 the area to be covered by the district, and any other relevant
311 information which the establishing governing bodies may require.
312 The advertisement shall not be placed in that portion of the
313 newspaper where legal notices and classified advertisements
314 appear. The advertisement shall be published in a newspaper of
315 general paid circulation in the county and of general interest
316 and readership in the community, not one of limited subject
317 matter, pursuant to chapter 50. Whenever possible, the
318 advertisement shall appear in a newspaper that is published at
319 least 5 days a week, unless the only newspaper in the community

320 is published fewer than 5 days a week. In addition to being
321 published in the newspaper, the map referenced in this paragraph
322 must be part of the online advertisement required pursuant to s.
323 50.0211. All affected units of general-purpose local government
324 and the general public shall be given an opportunity to appear
325 at the hearing and present oral or written comments on the
326 petition.
327 Section 7. Paragraph (h) of subsection (3) of section
328 200.065, Florida Statutes, is amended to read:
329 200.065 Method of fixing millage.—
330 (3) The advertisement shall be no less than one-quarter
331 page in size of a standard size or a tabloid size newspaper, and
332 the headline in the advertisement shall be in a type no smaller
333 than 18 point. The advertisement shall not be placed in that
334 portion of the newspaper where legal notices and classified
335 advertisements appear. The advertisement shall be published in a
336 newspaper of general paid circulation in the county or in a
337 geographically limited insert of such newspaper. The geographic
338 boundaries in which such insert is circulated shall include the
339 geographic boundaries of the taxing authority. It is the
340 legislative intent that, whenever possible, the advertisement
341 appear in a newspaper that is published at least 5 days a week
342 unless the only newspaper in the county is published less than 5
343 days a week, or that the advertisement appear in a
344 geographically limited insert of such newspaper which insert is
345 published throughout the taxing authority's jurisdiction at
346 least twice each week. It is further the legislative intent that
347 the newspaper selected be one of general interest and readership
348 in the community and not one of limited subject matter, pursuant

349 to chapter 50.
350 (h) In no event shall any taxing authority add to or delete
351 from the language of the advertisements as specified herein
352 unless expressly authorized by law, except that, if an increase
353 in ad valorem tax rates will affect only a portion of the
354 jurisdiction of a taxing authority, advertisements may include a
355 map or geographical description of the area to be affected and
356 the proposed use of the tax revenues under consideration. In
357 addition, if published in the newspaper, the map must be part of
358 the online advertisement required by s. 50.0211. The
359 advertisements required herein shall not be accompanied,
360 preceded, or followed by other advertising or notices which
361 conflict with or modify the substantive content prescribed
362 herein.
363 Section 8. Subsection (2) of section 17.325, Florida
364 Statutes, is amended to read:
365 17.325 Governmental efficiency hotline; duties of Chief
366 Financial Officer.—
367 (2) The Chief Financial Officer shall operate the hotline
368 24 hours a day. The Chief Financial Officer may ~~shall~~ advertise
369 the availability of the hotline in newspapers of general
370 circulation in this state and shall provide for the posting of
371 notices in conspicuous places in state agency offices, city
372 halls, county courthouses, and places in which there is exposure
373 to significant numbers of the general public, including, but not
374 limited to, local convenience stores, shopping malls, shopping
375 centers, gasoline stations, or restaurants. The Chief Financial
376 Officer shall use the slogan "Tell us where we can 'Get Lean'"
377 for the hotline and in advertisements for the hotline.

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378 Section 9. Subsection (5) of section 120.60, Florida
379 Statutes, is amended to read:
380 120.60 Licensing.—
381 (5) No revocation, suspension, annulment, or withdrawal of
382 any license is lawful unless, prior to the entry of a final
383 order, the agency has served, by personal service or certified
384 mail, an administrative complaint which affords reasonable
385 notice to the licensee of facts or conduct which warrant the
386 intended action and unless the licensee has been given an
387 adequate opportunity to request a proceeding pursuant to ss.
388 120.569 and 120.57. When personal service cannot be made and the
389 certified mail notice is returned undelivered, the agency shall
390 cause a short, plain notice to the licensee to be published once
391 each week for 4 consecutive weeks in a newspaper published in
392 the county of the licensee's last known address as it appears on
393 the records of the agency. If no newspaper is published in that
394 county, the notice may be published in a newspaper of general
395 circulation in that county. ~~If the address is in some state~~
396 ~~other than this state or in a foreign territory or country, the~~
397 ~~notice may be published in Leon County.~~
398 Section 10. Paragraph (d) of subsection (6) of section
399 215.555, Florida Statutes, is amended to read:
400 215.555 Florida Hurricane Catastrophe Fund.—
401 (6) REVENUE BONDS.—
402 (d) *Florida Hurricane Catastrophe Fund Finance*
403 *Corporation.*—
404 1. In addition to the findings and declarations in
405 subsection (1), the Legislature also finds and declares that:
406 a. The public benefits corporation created under this

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407 paragraph will provide a mechanism necessary for the cost-
408 effective and efficient issuance of bonds. This mechanism will
409 eliminate unnecessary costs in the bond issuance process,
410 thereby increasing the amounts available to pay reimbursement
411 for losses to property sustained as a result of hurricane
412 damage.
413 b. The purpose of such bonds is to fund reimbursements
414 through the Florida Hurricane Catastrophe Fund to pay for the
415 costs of construction, reconstruction, repair, restoration, and
416 other costs associated with damage to properties of
417 policyholders of covered policies due to the occurrence of a
418 hurricane.
419 c. The efficacy of the financing mechanism will be enhanced
420 by the corporation's ownership of the assessments, by the
421 insulation of the assessments from possible bankruptcy
422 proceedings, and by covenants of the state with the
423 corporation's bondholders.
424 2.a. There is created a public benefits corporation, which
425 is an instrumentality of the state, to be known as the Florida
426 Hurricane Catastrophe Fund Finance Corporation.
427 b. The corporation shall operate under a five-member board
428 of directors consisting of the Governor or a designee, the Chief
429 Financial Officer or a designee, the Attorney General or a
430 designee, the director of the Division of Bond Finance of the
431 State Board of Administration, and the senior employee of the
432 State Board of Administration responsible for operations of the
433 Florida Hurricane Catastrophe Fund.
434 c. The corporation has all of the powers of corporations
435 under chapter 607 and under chapter 617, subject only to the

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436 provisions of this subsection.
437 d. The corporation may issue bonds and engage in such other
438 financial transactions as are necessary to provide sufficient
439 funds to achieve the purposes of this section.
440 e. The corporation may invest in any of the investments
441 authorized under s. 215.47.
442 f. There shall be no liability on the part of, and no cause
443 of action shall arise against, any board members or employees of
444 the corporation for any actions taken by them in the performance
445 of their duties under this paragraph.
446 3.a. In actions under chapter 75 to validate any bonds
447 issued by the corporation, the notice required by s. 75.06 shall
448 be published ~~only in Leon County and~~ in two newspapers of
449 general circulation in the state, and the complaint and order of
450 the court shall be served only on the State Attorney of the
451 Second Judicial Circuit.
452 b. The state hereby covenants with holders of bonds of the
453 corporation that the state will not repeal or abrogate the power
454 of the board to direct the Office of Insurance Regulation to
455 levy the assessments and to collect the proceeds of the revenues
456 pledged to the payment of such bonds as long as any such bonds
457 remain outstanding unless adequate provision has been made for
458 the payment of such bonds pursuant to the documents authorizing
459 the issuance of such bonds.
460 4. The bonds of the corporation are not a debt of the state
461 or of any political subdivision, and neither the state nor any
462 political subdivision is liable on such bonds. The corporation
463 does not have the power to pledge the credit, the revenues, or
464 the taxing power of the state or of any political subdivision.

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465 The credit, revenues, or taxing power of the state or of any
466 political subdivision shall not be deemed to be pledged to the
467 payment of any bonds of the corporation.
468 5.a. The property, revenues, and other assets of the
469 corporation; the transactions and operations of the corporation
470 and the income from such transactions and operations; and all
471 bonds issued under this paragraph and interest on such bonds are
472 exempt from taxation by the state and any political subdivision,
473 including the intangibles tax under chapter 199 and the income
474 tax under chapter 220. This exemption does not apply to any tax
475 imposed by chapter 220 on interest, income, or profits on debt
476 obligations owned by corporations other than the Florida
477 Hurricane Catastrophe Fund Finance Corporation.
478 b. All bonds of the corporation shall be and constitute
479 legal investments without limitation for all public bodies of
480 this state; for all banks, trust companies, savings banks,
481 savings associations, savings and loan associations, and
482 investment companies; for all administrators, executors,
483 trustees, and other fiduciaries; for all insurance companies and
484 associations and other persons carrying on an insurance
485 business; and for all other persons who are now or may hereafter
486 be authorized to invest in bonds or other obligations of the
487 state and shall be and constitute eligible securities to be
488 deposited as collateral for the security of any state, county,
489 municipal, or other public funds. This sub-subparagraph shall be
490 considered as additional and supplemental authority and shall
491 not be limited without specific reference to this sub-
492 subparagraph.
493 6. The corporation and its corporate existence shall

494 continue until terminated by law; however, no such law shall
495 take effect as long as the corporation has bonds outstanding
496 unless adequate provision has been made for the payment of such
497 bonds pursuant to the documents authorizing the issuance of such
498 bonds. Upon termination of the existence of the corporation, all
499 of its rights and properties in excess of its obligations shall
500 pass to and be vested in the state.
501 Section 11. Section 253.52, Florida Statutes, is amended to
502 read:
503 253.52 Placing oil and gas leases on market by board.—
504 Whenever in the opinion of the Board of Trustees of the Internal
505 Improvement Trust Fund there shall be a demand for the purchase
506 of oil and gas leases on any area, tract, or parcel of the land
507 so owned, controlled, or managed, by any state board,
508 department, or agency, then the board shall place such oil and
509 gas lease or leases on the market in such blocks, tracts, or
510 parcels as it may designate. The lease or leases shall only be
511 made after notice by publication thereof has been made not less
512 than once a week for 4 consecutive weeks in a newspaper of
513 general circulation ~~published in Leon County, and in a similar~~
514 ~~newspaper for a similar period of time~~ published in the vicinity
515 of the lands offered to be leased, the last publication ~~in both~~
516 ~~newspapers~~ to be not less than 5 days in advance of the sale
517 date. Such notice shall be to the effect that a lease or leases
518 will be offered for sale at such date and time as may be named
519 in said notice and shall describe the land upon which such
520 lease, or leases, will be offered. This notice may be combined
521 with the notice required pursuant to s. 253.115. Before any
522 lease of any block, tract, or parcel of land, submerged, or

523 unsubmerged, within a radius of 3 miles of the boundaries of any
524 incorporated city, or town, or within such radius of any bathing
525 beach, or beaches, outside thereof, such board, department, or
526 agency, shall through one or more of its members hold a public
527 hearing, after notice thereof by publication once in a newspaper
528 of general circulation published at least 1 week prior to said
529 hearing in the vicinity of the land, or lands, offered to be
530 leased, of the offer to lease the same, calling upon all
531 interested persons to attend said hearing where they would be
532 given the opportunity to be heard, all of which shall be
533 considered by the board prior to the execution of any lease or
534 leases to said land, and the board may withdraw said land, or
535 any part thereof, from the market, and refuse to execute such
536 lease or leases if after such hearing, or otherwise, it
537 considers such execution contrary to the public welfare. Before
538 advertising any land for lease the form of the lease or leases
539 to be offered for sale, not inconsistent with law, or the
540 provisions of this section, shall be prescribed by the board and
541 a copy, or copies, thereof, shall be available to the general
542 public at the office of the Board of Trustees of the Internal
543 Improvement Trust Fund and the advertisements of such sale shall
544 so state.
545 Section 12. Paragraph (b) of subsection (4) of section
546 255.518, Florida Statutes, is amended to read:
547 255.518 Obligations; purpose, terms, approval,
548 limitations.—
549 (4)
550 (b) In actions to validate such obligations pursuant to
551 chapter 75, the complaint shall be filed in the Circuit Court of

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552 Leon County, the notice required by s. 75.06, shall be published
553 ~~only in Leon County and~~ in two newspapers of general circulation
554 in the state, and the complaint and order of the court shall be
555 served only on the state attorney of the Second Judicial
556 Circuit.
557 Section 13. Paragraph (b) of subsection (4) of section
558 380.0668, Florida Statutes, is amended to read:
559 380.0668 Bonds; purpose, terms, approval, limitations.—
560 (4)
561 (b) In actions to validate such bonds pursuant to chapter
562 75, the complaint shall be filed in the Circuit Court of Leon
563 County, the notice required by s. 75.06 shall be published in
564 newspapers of general circulation in ~~Leon County and~~ the county
565 in which the area or areas of critical state concern involved
566 are located, and the complaint and order of the court shall be
567 served on the state attorney of the Second Judicial Circuit and
568 the circuit in which the area or areas of critical state concern
569 involved are located.
570 Section 14. Paragraph (b) of subsection (3) of section
571 455.275, Florida Statutes, is amended to read:
572 455.275 Address of record.—
573 (3)
574 (b) If service, as provided in paragraph (a), does not
575 provide the department with proof of service, the department
576 shall call the last known telephone number of record and cause a
577 short, plain notice to the licensee to be posted on the front
578 page of the department's website and shall send notice via e-
579 mail to all newspapers of general circulation and all news
580 departments of broadcast network affiliates in the county of the

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licensee's last known address of record ~~published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record~~. ~~If a newspaper is not published in the county, the administrative complaint may be published in a newspaper of general circulation in the county. If the licensee's last known address is located in another state or in a foreign jurisdiction, the administrative complaint may be published in Leon County pursuant to s. 120.60(5).~~

Section 15. Subsection (5) of section 473.3141, Florida Statutes, is amended to read:

473.3141 Certified public accountants licensed in other states.—

(5) Disciplinary action against an individual or firm that practices pursuant to this section is not valid unless, prior to the entry of a final order, the agency has served, by personal service pursuant to this chapter or chapter 48 or by certified mail, an administrative complaint that provides reasonable notice to the individual or firm of facts or conduct that warrants the intended action and unless the individual or firm has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. ~~When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall have a short, plain notice to the individual or firm with practice privileges published once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida. The newspaper shall meet the requirements prescribed by law for such purposes.~~

Section 16. Paragraph (b) of subsection (5) of section

527.23, Florida Statutes, is amended to read:

527.23 Marketing orders; referendum requirements; assessments.—

(5)

(b) It is the duty of the producers or dealers of propane gas who vote in each referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum on the front page of its website and shall send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state ~~in a newspaper of general circulation in the state and in such other newspapers as the department prescribes~~.

Section 17. Subsection (2) of section 573.109, Florida Statutes, is amended to read:

573.109 Procedure for referendum.—

(2) It shall be the duty of the producers or handlers affected who vote in each referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum on the front page of its website and shall send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state ~~in a newspaper of~~

639 ~~general circulation in the state and in such other newspapers as~~
640 ~~the department may prescribe~~.
641 Section 18. Section 573.111, Florida Statutes, is amended
642 to read:
643 573.111 Notice of effective date of marketing order.—Before
644 the issuance of any marketing order, or any suspension,
645 amendment, or termination thereof, a notice shall be posted on a
646 public bulletin board to be maintained by the department in the
647 Division of Marketing and Development of the department in the
648 Nathan Mayo Building, Tallahassee, Leon County, and a copy of
649 the notice shall be posted on the department's website ~~published~~
650 ~~in a newspaper of general circulation in the state and in such~~
651 ~~other newspaper or newspapers as the department may prescribe.~~
652 ~~The notices published in the newspaper or newspapers shall be~~
653 ~~sent by first-class mail, by the department to those newspapers~~
654 ~~designated by it,~~ the same date that the notice is posted on the
655 bulletin board ~~with instructions to publish the same as a legal~~
656 ~~advertisement the first date after receipt of the notice as such~~
657 ~~newspaper's policy for publishing legal advertisements provides~~.
658 No marketing order, or any suspension, amendment, or termination
659 thereof, shall become effective until the termination of a
660 period of 5 days from the date of posting and publication.
661 Section 19. Subsection (2) of section 631.59, Florida
662 Statutes, is amended to read:
663 631.59 Duties and powers of department and office.—
664 (2) The department may require that the association notify
665 the insureds of the insolvent insurer and any other interested
666 parties of the determination of insolvency and of their rights
667 under this part. Such notification shall be by mail at their

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668 last known addresses, when available, but if sufficient
669 information for notification by mail is not available, notice by
670 e-mail or telephone ~~publication in a newspaper of general~~
671 ~~circulation~~ shall be sufficient.
672 Section 20. Except as otherwise expressly provided in this
673 act, this act shall take effect July 1, 2012, and shall apply to
674 legal notices that must be published on or after that date.

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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 Judiciary Committee

BILL: CS/SB 782

INTRODUCER: Judiciary Committee and Senator Bennett

SUBJECT: Florida Evidence Code

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	**Fav/CS**
2.			MS	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Florida Evidence Code generally prohibits a judge or jury from considering hearsay, which is an out-of-court statement offered by someone other than the declarant while testifying at trial or a hearing used to prove the truth of the matter asserted. This bill creates a hearsay exception to allow a court to consider statements that would otherwise be inadmissible into evidence if a party wrongfully makes a witness unavailable. Specifically, this bill creates a hearsay exception for a statement offered by an unavailable witness against a party that has engaged or acquiesced in wrongdoing intended to make the witness unavailable.

This bill substantially amends section 90.804, Florida Statutes.

II. Present Situation:

The Florida Evidence Code

Article II, section 3 of the Florida Constitution provides that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches

unless expressly provided herein."[1] The Florida Supreme Court has explained that the separation-of-powers doctrine recognizes two fundamental prohibitions imposed on each branch of government.[2] The Court explained that "'[t]he first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power.'"[3] Under the state's constitutional framework, the Legislature has authority to enact substantive laws, while the Florida Supreme Court has authority to govern practice and procedure in all state courts.[4]

The Florida Evidence Code is statutory, as enacted and amended by the Legislature and codified in ch. 90, F.S. There is a balance between the jurisdiction of Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature continues to revise ch. 90, F.S., and the Supreme Court tends to adopt these changes as rules. The Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. The Court has on very infrequent occasions rejected legislative amendments to the Evidence Code as rules of court.[5]

Hearsay

"Hearsay"[6] is a statement,[7] other than one made by the declarant[8] while testifying at trial or a hearing,[9] offered in evidence to prove the truth of the matter asserted.[10] Current law provides that hearsay statements are not admissible at trial unless a statutory exception applies.[11] The reasoning behind excluding hearsay statements is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including: the statement is not made under oath; jurors cannot observe the demeanor of the declarant and judge the witness' credibility; and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.[12]

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[1] *See also Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004).
[2] *Whiley v. Scott*, 2011 WL 3568804 at 3 (Fla. 2011) (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).
[3] *Id*.
[4] *See, e.g., Benyard v. Wainwright*, 322 So. 2d 473, 475 (Fla. 1975).
[5] *See, e.g., In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); *compare In re Florida Evidence Code*, 372 So. 2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), *clarified by In re Florida Evidence Code* 376 So. 2d 1161 (Fla. 1979).
[6] Section 90.801, F.S.
[7] A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." *See* Fed. R. Evid. 801 Advisory Committee Note.
[8] The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.
[9] Often referred to simply as an "out-of-court statement."
[10] Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.
[11] Section 90.802, F.S.
[12] *See* Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).

Exceptions to the Hearsay Rule

Exceptions to the hearsay rule fall into two categories: those under s. 90.803, F.S., where the availability of the declarant is irrelevant, and those under s. 90.804, F.S., where the declarant must be unavailable to testify in court. Section 90.804, F.S., provides that a declarant is "unavailable" as a witness if the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement (for example, a declarant is unavailable if the trial court sustains an assertion of the Fifth Amendment privilege against self-incrimination);[13]
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite a court order to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.[14]

The section also provides that a witness is not unavailable if the party who seeks to admit the statement caused the unavailability by wrongful conduct.[15]

The party seeking to introduce a hearsay statement under the exception in s. 90.804, F.S. exception bears the burden of establishing that the declarant is unavailable as a witness. The trial judge makes the determination of such unavailability at a pretrial hearing.[16]

Forfeiture by Wrongdoing

Forfeiture by wrongdoing is a common law hearsay exception in many jurisdictions, which innately requires that the declarant be unavailable.[17] Under the forfeiture by wrongdoing doctrine, a person who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation the witness.[18] The doctrine of forfeiture by wrongdoing is in part an equitable doctrine in which courts curtail attempts by a defendant who seeks to undermine the judicial process by procuring or coercing silence from witnesses and victims.[19]

Under Federal Rule of Evidence 804(b)(6), the doctrine of forfeiture by wrongdoing is codified as a hearsay exception to make admissible "[a] statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." Additionally, several states have adopted a comparable hearsay exception that allows out-of-court statements to be admitted where the witness is unavailable to

[13] *Perry v. State*, 675 So. 2d 976, 980 (Fla. 4th DCA 1996).
[14] Section 90.804, F.S.
[15] *Id*.
[16] *See Jones v. State*, 678 So. 2d 309, 314 (Fla. 1996).
[17] *See Chavez v. State*, 25 So. 3d 49, 51 (Fla. 1st DCA 2009).
[18] 21A AM. JUR. 2D *Criminal Law* s. 1094 (2011).
[19] 21A AM. JUR. 2D *Criminal Law* s. 1094 (2011).

testify at trial and proof is established that the unavailability of the witness was due to misconduct on the part of the defendant.[20]

In *Chavez v. State*, the Florida First District Court of Appeal held that the trial court was in error as a matter of law to admit hearsay evidence of a criminal defendant's threats to harm his wife based on the legal doctrine of forfeiture by wrongdoing.[21] The First District Court of Appeal rejected the state's argument that the doctrine of forfeiture by wrongdoing is applicable in Florida as a common law hearsay exception under s. 90.102, F.S., "which provides that the Florida Evidence Code replaces or supersedes only conflicting statutory or common law."[22] The court reasoned that s. 90.802, F.S., "prohibits courts from admitting hearsay 'except as provided by statute.'"[23] The court additionally found that under the facts in *Chavez*, "the murder was not committed with the specific intent to prevent the victim from providing testimony."[24] Based on the express statutory exclusion of the hearsay testimony under s. 90.802, F.S., the court declined to create a broad rule allowing the admission of the testimony in *Chavez*.[25] The court noted that "[a]lthought the forfeiture by wrongdoing doctrine is grounded in well-established principles of equity and sound public policy, we are without authority to rely on it because of the statutory exclusion of hearsay evidence in the Florida Evidence Code."[26]

III. Effect of Proposed Changes:

The Florida Evidence Code generally prohibits a judge or jury from considering hearsay, which is an out-of-court statement offered by someone other than the declarant while testifying at trial or a hearing used to prove the truth of the matter asserted. This bill creates a hearsay exception to allow a court to consider statements that would otherwise be inadmissible when a party wrongfully makes a witness unavailable.

Specifically, the bill provides for a hearsay exception for a statement by an unavailable witness offered against a party that has engaged or acquiesced in wrongdoing intended to make the witness unavailable. This exception to the hearsay rule is effectively identical to the Federal Rule of Evidence 804(b)(6).

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[20] *See* 23 C.J.S. *Criminal Law* s. 1174.
[21] *Chavez*, 25 So. 3d at 51.
[22] *Id*. at 52.
[23] *Id*. at 51.
[24] *Id*. at 52.
[25] *Id*. at 49.
[26] *Id*. at 49-50.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Confrontation Clause

The Confrontation Clause of the Sixth Amendment provides, in part, that "in all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him."[27] In *Crawford v. Washington*,[28] the U.S. Supreme Court held that the Confrontation Clause applies to testimonial statements.[29] The Court has emphasized that there is no bright-line test to determine whether a statement is testimonial; the determination involves a "highly context-dependent inquiry."[30]

An out-of-court statement by a witness which is testimonial is inadmissible at trial under the Confrontation Clause unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.[31] An out-of-court statement that violates the Confrontation Clause is inadmissible at trial even if it falls within a state's statutory hearsay exception.[32] In contrast, if a statement is non-testimonial, it does not implicate the Confrontation Clause, and therefore admission of such statements is determined by state hearsay exceptions.[33]

However, in *Crawford*, the Court recognized the constitutional validity of the "forfeiture by wrongdoing" exception to excluding testimonial statements. Such wrongdoing "extinguishes [defendant's] confrontation claims on essentially equitable grounds."[34]

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[27] U.S. CONST. amend. VI.
[28] *Crawford v. Washington*, 541 U.S. 36 (2004).
[29] The definition of a "testimonial statement" includes statements made during police interrogations. *Crawford*, 541 U.S. at 68.
[30] *Michigan v. Bryant*, 131 S. Ct. 1143, 1148 (2011) (The Court explained that in general, statements made to law enforcement where the circumstances indicate that the "primary purpose" of the statement is to aid the police in addressing an ongoing emergency are not testimonial. On the other hand, statements made to a law enforcement officer where the circumstances indicate that the primary purpose of the statement is to establish the facts of a past event that may be relevant in prosecuting a defendant at trial are testimonial.).
[31] *Crawford*, 541 U.S. at 53-54.
[32] *Id*. at 51 (2004) (finding that the Confrontation Clause applies to out-of-court statements introduced at trial, regardless of admissibility of statements under law of evidence); *see also State v. Lopez*, 974 So. 2d 340, 345 (Fla. 2008); *22 Fla. Prac., Criminal Procedure* s. 12:6 (2011 ed.).
[33] *Id*. at 68 ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law.").
[34] *Crawford*, 541 U.S. at 62 (citing *Reynolds v. United States*, 98 U.S. 145, 158 (1879) ("The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.")).

In a subsequent case, *Davis v. Washington*, the Court expanded on the distinction between testimonial and non-testimonial statements for purposes of the Confrontation Clause. The Court held that a domestic violence victim's statements in response to a 911 operator's questions were not testimonial in nature, and thus not subject to the Confrontation Clause. However, statements later given to police were testimonial and not admissible because admission in the absence of the accuser would have violated the Confrontation Clause.[35] The Court categorized statements made for the objective primary purpose of enabling assistance in an ongoing emergency as non-testimonial.[36] Statements are testimonial, on the other hand, when there is no such ongoing emergency and the primary purpose "is to establish or prove past events potentially relevant to later criminal prosecution."[37]

Rulemaking Authority

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.[38] The case law interpreting Article V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Article V, s. 2.[39] On the other hand, legislation concerning matters of practice and procedure are within the Court's "exclusive authority to regulate."[40] However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."[41] Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

The Florida Supreme Court held in one case involving the hearsay exception in s. 394.9155(5), F.S., regarding mental health reports in proceedings to commit sexually violent predators, does not violate Article V, s. 2(a) of the Florida Constitution.[42] In contrast, the First District Court of Appeal held that s. 90.803(22), F.S., the "former testimony" hearsay exception, violated Article V, s. 2 because it infringed on the Court's authority to adopt procedural rules.[43] The court noted that one of the reasons the exception was different than other hearsay exceptions adopted by the Court was that it

[35] *Davis v. Washington*, 547 U.S. 813 (2006).
[36] *Id.* at 822.
[37] *Id.*
[38] Art. V, s. 2(a), Fla. Const.
[39] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991).
[40] *Id.*
[41] *In re Commitment of Cartwright*, 870 So. 2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 54 (Fla. 2000)).
[42] *Cartwright*, 870 So. 2d at 161 (citing *Booker v. State*, 397 So. 2d 910, 918 (Fla. 1981) (rejecting the challenge under article V, section 2(a), to the provision in section 921.141, Florida Statutes (1977), permitting the admission of hearsay evidence).
[43] *Grabau v. Dep't of Health, Bd. of Psychology*, 816 So. 2d 701, 709 (Fla. 1st DCA 2002) (holding s. 90.803(22), F.S., to be unconstitutional on various grounds, including "as an infringement on the authority conferred on the Florida Supreme Court by art. V, s. 2(a) of the Florida Constitution").

was not modeled after the Federal Rules of Evidence.[44] The bill adopts a portion of the Federal Rules of Evidence hearsay exception.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator:

> By making more evidence admissible, there will be an increase in judicial workload .... The increase in judicial workload is unquantifiable because there is no way to estimate the number of additional hearings that will be required.[45]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 16, 2012
The committee substitute:

- Deletes language specifying that the spontaneous statement exception to the hearsay rule includes a call to an emergency operations center for the immediate dispatch of personnel for emergency purposes;
- Deletes language specifying that the excited utterance exception to the hearsay rule includes a statement made by a victim to an emergency responder while under the stress of the event in a criminal case;
- Deletes a section providing for a hearsay exception for statements by a victim of domestic violence in a criminal proceeding;

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[44] *Id*. at 708 (citing *In re Amendments to the Florida Evidence Code*, 782 So. 2d 339, 340-42 (Fla. 2000)).
[45] Office of the State Courts Administrator, *2012 Judicial Impact Statement, SB 782* (Nov. 8, 2011(on file with the Senate Committee on Judiciary).

- Changes "forfeiture by wrongdoing" to "statement offered against a party that wrongfully caused the declarant's unavailability";
- Deletes language providing for a presumption of forfeiture by wrongdoing if the accused assaulted or threatened an unavailable witness or his or her family;
- Deletes a section providing for a residual exception to the hearsay rule giving the court discretion to admit evidence that is not included in a hearsay exception but has the same guarantees of trustworthiness; and
- Changes the effective date from July 1, 2012 to "upon becoming a law."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (f) is added to subsection (2) of
6 section 90.804, Florida Statutes, to read:
7 90.804 Hearsay exceptions; declarant unavailable.—
8 (2) HEARSAY EXCEPTIONS.—The following are not excluded
9 under s. 90.802, provided that the declarant is unavailable as a
10 witness:
11 (f) *Statement offered against a party that wrongfully*
12 *caused the declarant's unavailability.*—A statement offered
13 against a party that wrongfully caused, or acquiesced in

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14 wrongfully causing, the declarant's unavailability as a witness,
15 and did so intending that result.
16 Section 2. This act shall take effect upon becoming a law.
17
18 ========== T I T L E A M E N D M E N T ==========
19 And the title is amended as follows:
20
21 Delete everything before the enacting clause
22 and insert:
23 A bill to be entitled
24 An act relating to the Florida Evidence Code; amending
25 s. 90.804, F.S.; providing that a statement offered
26 against a party that wrongfully caused the declarant's
27 unavailability is not excluded as hearsay; providing
28 an effective date.

By Senator Bennett

21-00433-12 2012782__

A bill to be entitled

An act relating to the Florida Evidence Code; amending s. 90.803, F.S.; providing that certain specified spontaneous statements relating to a call to an emergency operations center, such as police, fire, or emergency rescue personnel, is admissible as evidence if the call is for the immediate dispatch of personnel for emergency purposes; providing that an excited utterance made by a victim to an emergency responder, including police, fire, or emergency personnel, is admissible if the victim or witness is under the stress or excitement of the event while the statement is being made; providing an exception to the inadmissibility of a hearsay statement of the victim of domestic violence in a proceeding relating to criminal domestic violence; requiring that the court consider certain matters and make specific findings of fact to support the court's decision to admit the victim's statement into evidence; requiring that, in a criminal case, the defendant be notified of the victim's statement at least 10 days before the criminal trial or proceeding; providing for the content of the notice; amending s. 90.804, F.S.; providing that, in a criminal case, upon proof by a preponderance of the evidence that the accused, at any time, assaulted an unavailable witness, or threatened to inflict physical harm upon an unavailable witness or any member of the witness's immediate family, the court may presume forfeiture of any objection under

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21-00433-12 2012782__

the hearsay rule or the confrontation clause of the State Constitution; creating s. 90.807, F.S.; providing that a statement not specifically covered by any other hearsay exception, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that the interests of justice will be best served by admitting the statement into evidence; requiring a certain procedure be followed before that statement may be admitted; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 90.803, Florida Statutes, are amended, and subsection (25) is added to that section, to read:

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1) SPONTANEOUS STATEMENT.—A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness. A call to an emergency operations center, such as police, fire, or emergency rescue personnel, is admissible if the purpose of the call is for the immediate dispatch of personnel for emergency purposes and is not merely to report a crime or event or a call

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59 for assistance regarding an event occurring a substantial period
60 of time in the past.
61 (2) EXCITED UTTERANCE.—A statement or excited utterance
62 relating to a startling event or condition made while the
63 declarant was under the stress of excitement caused by the event
64 or condition. In a criminal case, a statement made by the victim
65 to an emergency responder, including police, fire, or emergency
66 personnel, is admissible if, while the statement is made, the
67 victim or witness is under the stress or excitement of the
68 event.
69 (25) HEARSAY EXCEPTION; STATEMENT OF A VICTIM OF DOMESTIC
70 VIOLENCE IN A CRIMINAL PROCEEDING.—
71 (a) Unless the source of information or the method or
72 circumstances by which the statement is reported indicates a
73 lack of trustworthiness, an out-of-court statement made by a
74 victim of domestic violence, as defined in s. 741.28, describing
75 any act of domestic violence not otherwise admissible, is
76 admissible in evidence in any criminal proceeding if:
77 1. The court finds in a hearing conducted outside the
78 presence of the jury that the time, content, and circumstances
79 of the statement provide sufficient safeguards of reliability.
80 In making its determination, the court may consider the mental
81 and physical age and maturity of the victim of domestic
82 violence, the nature and duration of the act of domestic
83 violence, the relationship of the victim to the offender, the
84 reliability of the assertion, the reliability of the victim of
85 domestic violence, and any other factor deemed appropriate; and
86 2. The victim of domestic violence:
87 a. Testifies; or

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88 b. Is unavailable as a witness and there is corroborative
89 evidence of the offense. Unavailability includes a finding by
90 the court that the victim's participation in the criminal trial
91 or proceeding would result in a substantial likelihood of severe
92 emotional, mental, or physical harm, in addition to findings
93 pursuant to s. 90.804(1).
94 (b) In a criminal action, the defendant shall be notified
95 at least 10 days before the trial that a statement that
96 qualifies as a hearsay exception pursuant to this subsection
97 will be offered as evidence at trial. The notice must include a
98 written statement of the content of the victim's statement, the
99 time at which the statement was made, the circumstances
100 surrounding the statement which indicate its reliability, and
101 such other particulars as necessary to provide full disclosure
102 of the statement.
103 (c) The court shall make specific findings of fact, on the
104 record, as to the basis for its ruling under this subsection.
105 Section 2. Paragraph (f) is added to subsection (2) of
106 section 90.804, Florida Statutes, to read:
107 90.804 Hearsay exceptions; declarant unavailable.—
108 (2) HEARSAY EXCEPTIONS.—The following are not excluded
109 under s. 90.802, provided that the declarant is unavailable as a
110 witness:
111 (f) *Forfeiture by wrongdoing.*—A statement offered against a
112 party that has engaged or acquiesced in wrongdoing that was
113 intended to, and did, procure the unavailability of the
114 declarant as a witness. In a criminal case, upon proof by a
115 preponderance of the evidence that the accused, at any time,
116 assaulted an unavailable witness, or threatened to inflict

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117 physical harm upon an unavailable witness or any member of the
118 witness's immediate family, the court may presume forfeiture of
119 any objection under the hearsay rule or the confrontation clause
120 of the State Constitution. This presumption may be rebutted by
121 proof by a preponderance of the evidence that the accused did
122 not engage in, and did not acquiesce in, the wrongdoing intended
123 to cause the witness not to testify.
124 Section 3. Section 90.807, Florida Statutes, is created to
125 read:
126 90.807 Residual exception.—A statement that is not
127 specifically covered by s. 90.803 or s. 90.804 but that has
128 equivalent circumstantial guarantees of trustworthiness is not
129 excluded by the hearsay rule if the court determines that the
130 statement is offered as evidence of a material fact, the
131 statement is more probative on the point for which it is offered
132 than any other evidence that the proponent can procure through
133 reasonable efforts, and the general purposes of these rules and
134 the interests of justice will best be served by admission of the
135 statement into evidence. However, a statement may not be
136 admitted under this exception unless the party seeking admission
137 makes known such intention, including the particulars of the
138 statement and the declarant's name and address, to the adverse
139 party sufficiently in advance of the trial or hearing to provide
140 the adverse party with a fair opportunity to deny or explain the
141 statement.
142 Section 4. This act shall take effect July 1, 2012.

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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 Judiciary Committee

BILL: CS/CS/SB 732

INTRODUCER: Judiciary Committee and Criminal Justice Committee and Senators Bogdanoff and Joyner

SUBJECT: Sentences of Inmates

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Irwin	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill makes a number of changes to ch. 893, F.S., relating to controlled substances. Specifically, the bill:

- Requires that prosecutors prove "intent to sell, purchase, manufacture or deliver" for various trafficking offenses if the trafficking charge is based on knowing possession of a relevant controlled substance in a trafficking quantity.
- Increases minimum weight thresholds and weight ranges for the imposition of a minimum mandatory sentence for various trafficking offenses involving morphine, opium, oxycodone, hydrocodone and hydromorphone.
- Specifies that if a mixture is a prescription drug and the weight of the controlled substance in the mixture can be identified using the national drug code, the weight of the controlled substance is the weight identified in the National Drug Code (NDC).
- Provides that a judge hearing a motion from the state attorney to reduce or suspend a sentence for substantial assistance rendered, may reduce or suspend, defer, or withhold, the

sentence or adjudication of guilt (current law authorizes the judge to reduce or suspend the sentence).
- Deletes legislative findings regarding cases relevant to construction of controlled substance scheduling language in relation to drug trafficking weight thresholds.

This bill substantially amends ss. 893.135 and 921.0022, F.S., and reenacts ss. 775.087(2)(a) and 782.04(1)(a), (3), and (4), F.S.

II. Present Situation:

The Drug Trafficking Statute (s. 893.135, F.S.) and Sentencing

Section 893.135, F.S., provides sanctions for drug trafficking, which is generally the knowing sale, purchase, manufacture, delivery, or bringing into this state, or the knowing actual or constructive possession of, certain controlled substances (such as cocaine, cannabis, methamphetamine, hydrocodone, and oxycodone) which meet a specified minimum weight threshold or fall within a specified weight range. Section 893.13, F.S., does not require proof of possession with the intent to sell, etc.

In addition to covering specified controlled substances, s. 893.135, F.S., covers any salt, derivative, isomer, or salt of an isomer of the controlled substance, and any mixture containing the substance or its salt, derivative, etc.

There is a minimum weight threshold for trafficking in each relevant controlled substance or mixture. There are also escalating weight ranges. A mandatory minimum term and fine apply to each trafficking offense. As weight ranges escalate, so do mandatory minimum terms and fines. For example, knowing possession of less than 4 grams of oxycodone is not a trafficking offense (4 grams is the minimum weight threshold for oxycodone trafficking).[1] There is a 3-year mandatory minimum term and $50,000 fine for knowing possession of 4 grams or more, but less than 14 grams of oxycodone.[2] Mandatory minimum terms and fines increase to a 15-year mandatory minimum term and $100,000 fine for 14 grams or more,[3] but less than 28 grams of oxycodone, and a 25-year mandatory minimum term and $500,000 fine for 28 grams or more, but less than 30 kilograms of oxycodone.[4]

If the controlled substance appears in a mixture, the total weight of the mixture is treated as the weight of the controlled substance.[5] For example, “street cocaine” is frequently adulterated (“cut”) with other agents, which increases the quantity of cocaine available for sale and the seller’s profits. In the case of opioid mixtures, these often involve pharmaceutical medications that have been unlawfully obtained. These mixtures, typically in tablet or pill form, contain the controlled substance (e.g., hydrocodone) and other constituents of the tablet/pill that are not controlled substances. The total weight of the tablets/pills is treated as the weight of the controlled substance.

[1] Section 893.135(1)(c)1., F.S.
[2] Section 893.135(1)(c)1.a., F.S.
[3] Section 893.135(1)(c)1.b., F.S.
[4] Section 893.135(1)(c)1.c., F.S.
[5] Section 893.135(6), F.S.

The Criminal Punishment Code[6] (Code) is Florida's general framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Non-capital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[7] Points are assigned and accrue based upon the level assigned (sentence points escalate as the level escalates).[8] Level rankings and points are assigned to the primary offense, additional offenses, and prior offenses.[9] Points may also accrue based upon other factors specified in the law.[10] These points are entered into a mathematical calculation to determine the lowest permissible sentence.[11] Absent a permissible mitigating factor, the lowest permissible sentence is the "floor" for sentencing (a mandatory minimum term effectively becomes the floor if it exceeds the scored lowest permissible sentence). The "ceiling" is generally the statutory maximum penalty for the degree of the felony as provided in s. 775.082, F.S. The court may impose any sentence within this range (floor to ceiling).

Typically, trafficking offenses are first-degree felonies but levels assigned to these trafficking offenses vary depending on the offense. For example, trafficking in 4 grams or more, but less than 14 grams of oxycodone is a Level 7 offense,[12] but trafficking in 14 grams or more, but less than 28 grams of oxycodone is a Level 8 offense.[13] Additionally, the Code authorizes the sentencing court to multiply subtotal sentence points by 1.5 for a Level 7 or Level 8 trafficking primary offense.[14]

Even if a person knowingly possesses, sells, etc., a relevant controlled substance in a trafficking quantity, a mandatory minimum term may be avoided in some instances through the charging decision or plea agreement. In some instances, the person is charged with or offered a plea to attempted trafficking or another controlled substance offense in which there is no mandatory minimum term (the prosecutor could charge a non-trafficking quantity in the information).

However, once a person is convicted of a drug trafficking offense, it appears the sentencing court has little discretion to elect not to impose the mandatory minimum term. To staff's knowledge, this discretion may only be exercised in instances in which the defendant is a youthful offender[15] or when the court grants a motion from the State to reduce or suspend a sentence based on substantial assistance rendered.[16]

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[6] Section 775.011(1), F.S.
[7] Section 921.0022(2), F.S.
[8] Section 921.0024(1)(a), F.S.
[9] *Id.*
[10] Section 921.0024(1)(b), F.S.
[11] Section 921.0024(2), F.S.
[12] Section 921.0022(3)(g), F.S.
[13] Section 921.0022(3)(h), F.S.
[14] Section 921.0024(1)(b)2.b., F.S.
[15] *See* Section 958.04, F.S.; *State v. Dishman*, 5 So. 3d 773 (Fla. 4th DCA 2009); *Inman v. State*, 842 So. 2d 862 (Fla. 2d DCA 2003).
[16] *See* s. 893.135(4), F.S. (stating mitigation cannot occur without the State's motion); *State v. Agerton*, 523 So. 2d 1241 (Fla. 5th DCA 1988), *rev. den.*, 531 So. 2d 1352 (Fla.1988).

Knowledge of the Illicit Nature of a Controlled Substance

Although the bill does not amend or repeal s. 893.101, F.S. (discussed below), there are currently state and federal court proceedings regarding this statute in relation to provisions of the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), the resolution of which may substantially impact prosecutions of some offenses under the Act. Therefore, this statute and these proceedings are discussed for informational purposes.

In 2002, the Legislature enacted s. 893.101, F.S.[17] The statute provides that the "[l]ack of knowledge of the illicit nature of a controlled substance is an affirmative defense"[18] to the crime of possession of a controlled substance. If a defendant raises this affirmative defense, the trial court must instruct the jury that "possession of a controlled substance, whether actual or constructive, shall give rise to a permissive presumption that the possessor knew of the illicit nature of the substance."[19]

Section 893.101, F.S., was intended to legislatively supersede *Chicone v. State*,[20] in which the Florida Supreme Court held that knowledge of the illicit nature of a substance is an element of the crime of possession even though not explicitly stated in the law. Stated another way, *Chicone* (and other later cases) "stand for the proposition that 'guilty knowledge' is an element of the offense of possession and must be proven beyond a reasonable doubt."[21]

On July 21, 2011, Judge Mary Scriven, who presides over the U.S. District Court, Middle District of Florida, Orlando Division, found s. 893.13, F.S., "to be unconstitutional on substantive due process grounds."[22] This case was *Shelton v. Secretary, Department of Corrections*.[23]

> In *Shelton*, the court concluded that Florida Statute § 893.13 is facially unconstitutional. The court reasoned that the Florida Legislature's 2002 amendment to Florida's Drug Abuse Prevention and Control law, codified at Fla. Stat. § 893.101, eliminated any *mens rea* requirement for the drug offenses enumerated in Fla. Stat. § 893.13, thus rendering these offenses strict liability offenses. The court then held that the statute could not pass constitutional muster as a strict liability statute because it subjects its offenders to "harsh penalties," "gravely besmirches an individual's reputation," and "punishes otherwise

[17] Chapter 2002-258, L.O.F.
[18] Section 893.101(2), F.S. "An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." *State v. Cohen*, 568 So. 2d 49, 51 (Fla.1990). Florida courts have also recognized a defense (not in statute) where possession is based on temporary control of a controlled substance for legal disposition by throwing the substance away, destroying the substance, or giving the substance to police. *See Robinson v. State*, 57 So. 3d 278, 281 (Fla. 4th DCA 2011); *Keller v. State*, 946 So. 2d 1233, 1235 (Fla. 4th DCA 2007), *rev. den*., 958 So. 2d 919 (Fla.2007); *Ramsubhag v. State*, 937 So. 2d 1192, 1194-1195 (Fla. 4th DCA 2006); *Stanton v. State*, 746 So. 2d 1229, 1230 (Fla. 3d DCA 1999).
[19] Section 893.101(3), F.S.
[20] 684 So. 2d 736 (Fla.1996).
[21] *Garcia v. State*, 901 So. 2d 788, 793 (Fla.2005).
[22] *Maestas v. State*, 76 So. 3d 991 (Fla. 4th DCA 2011), 2011 WL 5964337 (Fla. 4th DCA November 30, 2011), at *1 (citation omitted), describing the *Shelton* holding.
[23] 802 F. Supp. 2d 1289, No. 6:07-cv-839-ORL-35, 2011 WL 3236040 (M.D. Fla. July 27, 2011).

> innocuous conduct without proof of knowledge or other criminal intent," which violates the Due Process Clause of the United States Constitution.[24]

Attorney General Pam Bondi appealed the order in *Shelton* to the United States Court of Appeals, Eleventh Circuit.[25] To date there has not been a decision on that appeal.

Subsequent to Judge Scriven's order, at least one other Florida federal district court judge in the U.S. District Court, Middle District of Florida, Tampa Division, disagreed with *Shelton* that s. 893.13, F.S., is facially unconstitutional.[26] It appears that only two Florida circuit court judges have agreed with *Shelton*.[27] Further, Florida's First, Third, Fourth, and Fifth district courts of appeal have rejected *Shelton*.[28] All of these courts have held that s. 893.13, F.S., as amended by s. 893.101, F.S., is constitutional. The Second District Court of Appeal did not consider the merits of *Shelton* but rather certified the constitutionality issue to the Florida Supreme Court as an issue of great public importance.[29] The Florida Supreme Court accepted jurisdiction to hear this question and briefs have been filed and oral argument has taken place.[30] To date there has not been a decision.

The holdings of those district courts of appeal that have considered the merits are based on a number of findings. Perhaps the finding of greatest importance in regard to the question of whether *Shelton* was correctly decided is the finding that s. 893.101, F.S., does not create strict liability crimes. For example, the Fourth District in *Maestes* held that "section 893.101 did not remove scienter from section 893.13 offenses and did not create an unconstitutional strict liability crime."[31] The court found a *mens rea* requirement for drug possession:

> Although knowledge of presence is not expressly required by the text of section 893.13, such knowledge has always been required in drug possession cases. Section 893.13 is no exception. Indeed, the standard jury instruction for possession of a controlled substance requires the jury find that "([d]efendant) had knowledge of the presence of the substance." Fla. Std. Jury Instr. (Crim.) 25:2.[32]

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[24] *United States v. Bunton*, No. 8:10-cr-327-T-30EAJ (M.D. Fla. October 26, 2011), 2011 WL 5080307 (M.D. Fla. October 26, 2011), at *1, citing *Shelton*, supra, at *9.
[25] *Secretary, Florida Department of Corrections v. Shelton*, No. 11-13515-G, United States Court of Appeals, Eleventh Circuit.
[26] *Bunton*, *supra* note 24. Further, *Shelton* appears to conflict with another order out of the U.S. District Court, Middle District of Florida, Jacksonville Division, in which the court rejected the petitioner's assertion that sale or delivery of cocaine was a strict liability offense. *See Knox v. Secretary of the Florida Department of Corrections*, No. 8:10-cv-306-J-20TEM (M.D. Fla. August 11, 2011).
[27] *State v. Washington*, Nos. F11-11019, et al. (Fla. 11th Cir. Ct. August 17, 2011); *State v. Adkins*, Nos. 2011 CF 002001, et al. (Fla. 12th Cir. Ct. September 14, 2011).
[28] *See Flagg v. State*, 74 So.3d 138 (Fla. 1st DCA 2011); *Little v. State*, --- So. 3d --- (Fla. 3d DCA 2011), 2011 WL 5554812 (Fla. 3d DCA November 16, 2011); *Maestas*, *supra* note 22; *Holcy v. State*, --- So. 3d --- (Fla. 5th DCA 2011), 2011 WL 5299328 (Fla. 5th DCA November 1, 2011).
[29] *State v. Adkins*, 71 So. 3d 184 (Fla. 2d DCA 2011), *rev. granted*, 71 So. 3d 117 (Fla. Oct 12, 2011).
[30] *State v. Adkins*, No. SC11-1878, Supreme Court of Florida.
[31] *Maestas*, at *4.
[32] *Maestas*, at *2 (other citations omitted).

The offenses in s. 893.13, F.S., are "general intent crimes and, although not expressly stated in the statute, require that the defendant *voluntarily* commit the proscribed act. Contrary to the holding in *Shelton*, the statute does not punish strictly an unknowing possession or delivery.[33]

Hydrocodone Trafficking and Weighing Mixtures

Prior to legislative changes in 2000 (and subsequent changes in 2001), s. 893.03, Florida's controlled substance scheduling statute, provided that, unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing not more than 300 milligrams of hydrocodone (or its salts) per 100 milliliters or not more than 15 milligrams per dosage unit (e.g., tablet or pill), with recognized therapeutic amounts of one or more active ingredients which are not controlled substances, was a Schedule III controlled substance. However, hydrocodone in amounts in excess of 300 milligrams per 100 milliliters or 15 milligrams per dosage unit was a Schedule II controlled substance.

In *Hayes v. State*, 750 So. 2d 1 (Fla. 1999), a hydrocodone trafficking case, the Florida Supreme Court reviewed this scheduling language and s. 893.135, F.S. The Court found that s. 893.135, F.S., applied only to Schedule I or Schedule II controlled substances (or mixtures containing such substances). Reading together s. 893.135, F.S., and s. 893.03, F.S., the court concluded that Hayes, who unlawfully possessed Lorcet tablets (which contain hydrocodone) could not be charged with hydrocodone trafficking because the tablets possessed by Hayes each contained not more than 15 milligrams of hydrocodone and were, therefore, Schedule III controlled substances outside the purview of s. 893.135, F.S.[34] The court also found it of further significance that the Schedule III scheduling language did not provide that aggregate weight of the dosage units should be considered in order to determine whether the hydrocodone was a Schedule III controlled substance.[35]

In 2000, in reaction to the *Hayes* decision, the Legislature amended Schedule III to delete reference to hydrocodone.[36] The effect of this change was that hydrocodone was a Schedule II controlled substance subject to s. 893.135, F.S., if the weight threshold for trafficking was met. However, in 2001, the Legislature partially reversed itself.[37] It reinstated the prior Schedule III scheduling language for hydrocodone (while retaining the existing Schedule II scheduling language). However, new language was added that specified that, for purposes of charging a trafficking violation involving hydrocodone, hydrocodone that meets Schedule III scheduling is a Schedule III controlled substance but the weight of the hydrocodone per milliliter or per dosage unit is not relevant to the charging of a trafficking violation.[38, 39] The weight of the hydrocodone is to be determined pursuant to s. 893.135(6), F.S. (a provision created by the 2001 legislation),

[33] *Maestas*, at *2 (citation omitted). "A 'general intent' statute is one that prohibits either a specific voluntary act or something that is substantially certain to result from the act (e.g., damage to a building is the natural result of the act of setting a building afire. A person's subjective intent to cause the particular result is irrelevant to general intent crimes because the law ascribes to him a presumption that he intended such result." *Linehan v. State*, 442 So.2d 244, 247 (Fla. 2d DCA 1983).
[34] *Hayes v. State*, 750 So. 2d 1, 5 (Fla. 1999).
[35] *Id.* at 4.
[36] Chapter 2000-320, L.O.F.
[37] Chapter 2001-55, L.O.F.
[38] Section 893.03(3)(c)3., F.S.
[39] Section 893.135(1)(c), F.S.

which provides that the weight of a controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. Further, aggregate weighing is authorized. The Legislature also added a findings provision indicating disagreement with the *Hayes* decision and agreement with two district court of appeal decisions which authorized aggregate weighing [*States v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998), which the *Hayes* decision quashed, and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996), which the *Hayes* decision abrogated].[40]

Effect of Hydrocodone Trafficking on Possession Cases

In a 2009 interim project report, staff of the Senate Committee on Criminal Justice noted a concern that had been raised that a person could be subject to a trafficking mandatory minimum term and other trafficking penalties for knowing possession of a relatively small number of prescription tablets or pills containing hydrocodone, oxycodone, and hydromorphone:

> Hydrocodone, oxycodone, and hydromorphone, which are listed in s. 893.135, F.S., are powerful opioid analgesics. Section 893.135, F.S., punishes trafficking in these controlled substances. The minimum weight threshold for trafficking in these substances is 4 grams. The minimum weight threshold as well as applicable weight ranges and mandatories have raised a concern that unlawful possession of relatively small numbers of tablets/pills containing these substances may result in trafficking penalties, including mandatories. For example, 6.25 tablets of Vicodin® that contain 10 milligrams per tablet weigh 4 grams. A person who unlawfully possesses 7 such tablets could be subject to a 3-year mandatory. The 28 gram threshold (potentially triggering a 25-year mandatory) for hydrocodone trafficking can be reached by possession of 44 of these tablets (43.75 of these tablets equals 28 grams). As a point of comparison, a person trafficking in 149 kilograms of cocaine or 10,000 pounds or more of cannabis is subject to a 15-year mandatory. As another point of comparison, a person who commits lewd molestation on a child less than 12 years of age and who is sentenced under the statutory split-sentence option receives a minimum 25-year prison sentence.[41]

Staff also noted a concern that had been raised about the application of trafficking mandatory minimum terms to chronic pain management cases involving patients who unlawfully procure pain medication because of limitations on access to those medications:

> Important to understanding the concern about the potential application of mandatories to chronic pain management patients is an understanding of some of the issues involving the use of opioid analgesics for chronic pain management. Expanded use of opioid analgesics in the treatment of chronic or acute pain has "magnified opportunities for diversion and abuse." However, "[e]fforts to address

[40] The *Hayes* decision has no relevancy to hydrocodone trafficking cases charged under the scheduling and/or trafficking statutes as amended in 2000 and 2001 since the law no longer exists in the form reviewed by the Florida Supreme Court in *Hayes*. Further, the *Hayes* decision did not address aggregate weighing of other mixtures, like oxycodone tablets. *State v. Travis*, 808 So. 2d 194, 196 (Fla.2002).

[41] Committee on Criminal Justice, The Florida Senate, *A Policy Analysis of Mandatory Minimum Sentencing for Drug Traffickers*, 8 (Interim Report 2010-109) (October 2009) (footnotes omitted).

> prescription opioid abuse may have the undesirable consequence of diminishing legitimate access to opioids; conversely, actions to improve access to opioids for legitimate pain may fuel the prescription opioid abuse problem." Medical information indicates that chronic pain management patients are rarely addicted to the opioid analgesics prescribed them for pain but over time may develop a tolerance to and physical dependence upon opioid analgesics that may be misperceived as addiction rather than the "normal consequences of sustained opioid use." Some practitioners may be reluctant to treat chronic management cases for fear that regulatory and law enforcement agencies may not understand or appreciate this distinction.[42]

III. Effect of Proposed Changes:

Section 1 amends s. 893.135, F.S., to make the following changes:

- Requires that prosecutors prove "intent to sell, purchase, manufacture, or deliver" for various trafficking offenses when the trafficking charge is based on knowing possession of a relevant controlled substance in a trafficking quantity. This is a significant departure from current law in which the trafficking charge can be based on knowing possession of a relevant controlled substance in a trafficking quantity.
- Increases minimum weight thresholds and weight ranges for various trafficking offenses involving morphine, opium, oxycodone, hydrocodone and hydromorphone.

Offense	Current minimum weight threshold or weight range	Revised weight threshold or weight range (SB 732)
Trafficking in illegal drugs (s. 893.13(1)(c)1., F.S.)	Minimum weight threshold: 4 grams.	Minimum weight threshold: 28 grams.
Trafficking in illegal drugs (s. 893.13(1)(c)1.a., F.S.)	Weight range: 4 grams or more, but less than 14 grams.	Weight range: 28 grams or more, but less than 50 grams.
Trafficking in illegal drugs (s. 893.13(1)(c)1.b., F.S.)	Weight range: 14 grams or more, but less than 28 grams.	Weight range: 50 grams or more, but less than 200 grams.
Trafficking in illegal drugs (s. 893.13(1)(c)1.c., F.S.)	Weight range: 28 grams or more, but less than 30 kilograms.	Weight range: 200 grams or more, but less than 30 kilograms.

- Specifies that if a mixture is a prescription drug as defined in s. 499.003, F.S., and the weight of the controlled substance in the mixture can be identified using the national drug code, the weight of the controlled substance is the weight identified in the national drug code (NDC). This weighing method applies only to those mixtures that meet the criteria. (See "Technical Deficiencies" section of this analysis.) The weight of other mixtures containing a relevant controlled substance would be the total weight of the mixtures possessed, sold, etc. (current law).

[42] *Id*. at 9 (footnotes omitted).

- Provides that a judge hearing a motion from the state attorney to reduce or suspend a sentence for substantial assistance rendered may reduce or suspend, defer, or withhold, the sentence or adjudication of guilt (current law authorizes the judge to reduce or suspend the sentence).
- Deletes legislative finding relevant to construction of controlled substance scheduling language in relation to drug trafficking weight thresholds. Specifically, current legislative findings are that *Hayes v. State*, 750 So. 2d 1 (Fla. 1999) does not correctly construe legislative intent, and that *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) do correctly construe legislative intent. (See "Technical Deficiencies" section of this analysis.)

Section 2 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical changes to a number of descriptions of ranked trafficking offenses to reflect changes made to weight ranges in Section 1 of the bill. However, amendment Barcode 285176 changed some of the weight ranges in Section 1, but did not make conforming changes to Section 2. (See "Technical Deficiencies" section of this analysis.)

Sections 3 and 4 reenact, respectively, some provisions of s. 775.087, F.S. (the "10-20-Life" statute) and s. 782.04, F.S. (murder) for the purpose of incorporating amendments made by the act to s. 893.135, F.S., in reference to s. 893.135, F.S. These reenactments do not make any changes to these statutes.

Section 5 provides that the act takes effect July 1, 2012.

Other Potential Implications:

The Florida Department of Law Enforcement (FDLE) has indicated a potential issue with regard to the new language in the bill on weighing mixtures that are prescription drugs:

> There are also questions as to the veracity of the information contained within the NDC [National Drug Code]. On the Food and Drug Administration's [FDA] website it clearly states that "Inclusion of information in the NDC Directory does not indicate that FDA has verified the information provided. The content of each NDC Directory entry is the responsibility of the labeler submitting the SPL [Structured Product Labeling] file. Assignment of an NDC number does not in any way denote FDA approval of the product."[43]

If the new language in the bill on weighing mixtures that are prescription drugs were to become law it would mean that a substantial number of tablets/pills containing hydrocodone or oxycodone would be required to charge trafficking. As stated by FDLE:

> The increased weight thresholds for trafficking prescription drugs and the requirements to separate and weigh only the drug in determining weight will increase the total number of pills or tablets that can be possessed or sold before

[43] Florida Department of Law Enforcement, *Senate Bill 732 A Bill Relating to Sentences of Inmates* (January 4, 2012) (on file with the Committee on Judiciary). Further references to this source are cited as "FDLE Analysis."

> minimum mandatory trafficking sentences could be applied. For example: The first level of trafficking in opiates is 4 grams. If a Lortab preparation consists of 5 milligrams of hydrocodone, it would take 800 or more tablets to reach the trafficking threshold. Similarly, it would take 133 or more tablets containing 30 milligrams [of] Oxycodone to constitute a trafficking weight. This is a substantial change in the number of tablets and potency one could possess without being subjected to trafficking penalties.[44]

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an indeterminate prison bed impact.

The Florida Department of Law Enforcement (FDLE) has indicated that the new language on weighing mixtures that are prescription drugs has a potential fiscal impact on the FDLE if quantitation (testing to determine weight of the controlled substance in tablets/pills) is required. The Florida Department of Law Enforcement does not perform quantitation but rather tests the tablets/pills to determine if they contain a controlled substance and identify what that substance is. The Florida Department of Law Enforcement states:

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[44] *Id.*

> The proposed wording to refer to the NDC [National Drug Code] for the weight of prescription drugs in a mixture will not impact Florida's crime laboratories. However, potential legal challenges may result in the state attorneys' requesting the crime laboratories to quantitate the exact amounts of the controlled substance. Unless there is enabling statutory language for prosecution by utilizing a reference sample, the only way to determine quantity of a controlled substance is through analytical quantitation. This will require the crime labs to first analyze the substance to determine if a controlled substance is present in the suspected pill, tablet or capsule. Upon determining the controlled substance presence in the pill, tablet or capsule, the chemist will need to perform a quantitation process to determine the exact amount of the substance present. This quantitation process will require a stringent quality monitoring program to maintain the laboratory's accreditation standards through the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).[45]

The Florida Department of Law Enforcement further states:

> [T]he mandates to separate only the active ingredient within a controlled substance and determine the weight of only that portion of the substance could require forensic laboratories to perform quantitation analysis on drug exhibits. Between November 1, 2010 and October 31, 2010, FDLE received 12,681 exhibits containing tablets or pills for drug chemistry analysis. An estimated 50% of those exhibits contained tablets or pills potentially related to trafficking offenses (6,341).
>
> Based on adjusted workload standards, 810 drug samples can be quantitated by per chemist per year, and initial analysis currently performed with existing staff will still be required for all case submissions. Therefore existing staff will need to be retained. Based on these estimates, the quantitation process will require 8 additional Crime Laboratory Analysts.[46]

The Florida Department of Law Enforcement has indicated the following specific costs[47] if quantitation is required:

	FY 2012-13	**FY 2013-14**	**FY 2014-15**	
8 Positions - 8 Crime Lab Analysts	$502,893	$502,893	$502,893	Salary & Benefits
Standard Expense for 8 Positions	$81,624	$52,440	$52,440	Expense
Standard HR Services for 8	$2,848	$2,848	$2,848	Human

[45] FDLE Analysis.
[46] *Id.*
[47] *Id.*

Positions				Resources
Equipment for new Crime Lab Analysts (Gas Chromatographs, balances, and computer software)	$337,200			Expense
Training for existing Crime Lab Analysts in quantitation process	$20,000			Expense
Consumables (additional chemicals and supplies needed to run triplicate samples on every lab submission)	$40,000	$40,000	$40,000	Expense
TOTAL	**$984,565**	**$598,181**	**$598,181**	

In addition to the specified costs provided, FDLE notes:

> [The Florida Department of Law Enforcement] may be required to transition from gas chromatography to liquid chromatography to comply with accreditation standards if a quantitation process is required. This will result in an estimated additional $780,000 in new equipment to outfit the 6 laboratories performing drug chemistry analysis. This would be in addition to the initial fiscal year impact of $984,565. Once implemented recurring consumable costs would be added to the recurring cost of $598,181 each subsequent fiscal year.[48]

Finally, FDLE notes local government impact if quantitation is required: "The five county operated crime labs would also experience a fiscal impact if legal challenges result in the need to quantitate the controlled substances. Previous estimates provided were approximately $1.875 million for additional personnel, training, equipment and consumables."[49]

There may be legal costs to state government if the bill becomes law and the veracity of the information contained within the national drug code is challenged and/or it is argued that, absent quantitation, evidence is insufficient to prove the weight of the controlled substance in tablets/pills possessed, sold, etc.

The Office of the State Courts Administrator provided the following estimate of the impact of the bill on the state court system:

> The net effect will probably be an increase in court workload. By raising the quantity of drugs in order to qualify as trafficking, there will be fewer trafficking cases. But the trafficking cases are often resolved with plea agreements because of the mandatory minimum sentences. What had been

[48] *Id.*
[49] *Id.*

> charged as trafficking will now be charged as possession and possession with intent. When a person is caught with a large amount of drugs (although not a trafficking amount under the proposed bill), the state may push for a jail or prison sentence because the prosecutor will conclude the person is a drug dealer. That is uncertain, however. Prosecutors may end up treating the former trafficking cases like a low level felony case. It is also uncertain how judges will treat these new possession and possession with intent cases. Without the risk of a mandatory minimum sentence, the accused has more incentive to go to trial. Without the certainty of a mandatory minimum sentence, the state has less incentive to go to trial. In sum, the bill will probably lead to fewer pleas and more trials, which will increase judicial workload. The best estimate will be a modest increase in judicial workload, although that is highly speculative.[50]

VI. Technical Deficiencies:

There are two technical issues regarding the new language in the bill on weighing mixtures of prescription drugs and weight thresholds:

First, the new language is in potential conflict with current law language pertaining to weight thresholds. The Florida Department of Law Enforcement (FDLE) identifies this problem as follows:

> [T]here appears to be conflicting language within the bill. On page 5, lines 125-126 is existing language that specifies "4 or more grams of any mixture containing any such substance" is considered trafficking in morphine, opium, oxycodone, hydrocodone, or hydromorphone. The newly added language on page 20, lines 566-570, states that if the mixture is a prescription drug and the weight of the controlled substance can be identified using the NDC [National Drug Code], then the weight of the controlled substance is the weight identified in the NDC. The controlled substances outlined on page 5 are all prescription drugs.[51]

Second, section 1 of the bill amends s. 93.135(1)(c), F.S., to revise the amount of drugs a person must possess before the person is subject to a mandatory minimum sentence for a drug possession offense. Section 2 of the bill amends s. 921.0022, F.S., which is the criminal punishment code. The criminal punishment code specifies the offense level of these drug possession offenses in s. 921.0022(3), F.S., based on the amount of drugs in a person's possession.

The provisions of the criminal punishment code specifying drug amounts for the various offense levels should correspond to the drug amounts specified in s. 893.135(1)(c), F.S., as amended by the bill. However, the drug amounts in the criminal punishment code do not correspond to the drug amounts specified in s. 921.0022(3), F.S., as amended by the bill. As such, the Legislature

[50] Office of the State Courts Administrator, *2012 Judicial Impact Statement SB 732* (November 18, 2011) (on file with the Committee on Judiciary).
[51] FDLE Analysis.

may wish to amend the bill to conform the drug amounts specified in the criminal punishment code to the amounts specified in s. 893.135(1)(c), F.S., as amended by the bill.

Additionally, the bill deletes legislative findings that *Hayes v. State*, 750 So.2d 1 (Fla. 1999) does not correctly construe legislative intent, and that *State v. Hayes*, 720 So.2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So.2d 831 (Fla. 5th DCA 1996) do correctly construe legislative intent.

Hayes (Florida Supreme Court) was superseded when the Legislature changed s. 893.03, F.S., in 2000, and changed ss. 890.03 and 893.135, F.S., in 2001. Changes to Schedule III scheduling language in 2001 allowed for dosage units that contain 15 milligrams or less of hydrocodone, and which are classified as Schedule III controlled substances, to be considered under s. 893.135, F.S. The effect of *Hayes* was that tablets/pills containing 15 milligrams or less of hydrocodone were outside the purview of s. 893.135, F.S. In the bill, such tablets/pills are within the purview of s. 893.135, F.S. The bill just changes the method of weighing those tablets/pills (considering only the weight of the controlled substance in the tablet/pills).

Hayes (4th DCA) and *Baxley* appear to provide some support for the aggregate weighing method currently used for weighing mixtures (total weight rather than weight of the controlled substances only), a method which is retained in the bill for mixtures (including tablets/pills) that are not prescription drugs.

VII. Related Issues:

The bill references the National Drug Code (NDC), this list may be frozen in time when the bill becomes effective due to the combined effects of incorporation by reference and the non-delegation doctrine.

> "Florida courts strictly adhere to the rule that the Legislature may not delegate its authority to make laws, when material other than Florida law is incorporated in a statute by reference, only the version of that material in existence at the time the Legislature made the incorporation will be given effect. An attempt to incorporate future versions of federal law . . . would delegate to Congress . . . the power to make Florida law, which resides solely with the Legislature."[52]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

[52] The Florida Senate, *Manual for Drafting Legislation*, 124 (6th ed. 2009) (citing Section 1, Article III of the State Constitution. *See also* Freimuth v. State, 272 So.2d 473 (Fla. 1972) and Florida Industrial Commission v. State *ex rel*. Orange State Oil Co., 21 So.2d 599 (Fla. 1945)).

CS/CS by Judiciary on February 16, 2012:
The Committee Substitute (CS) restores the weight thresholds for the imposition of a minimum mandatory sentence, s. 893.135(1), F.S., to existing law, except for paragraph (c) and makes other technical changes.

The CS replaces a requirement that a person have the intent to distribute a controlled substance with a requirement that a person have the intent to "sell, purchase, or deliver" a controlled substance.

The CS also deletes legislative findings regarding cases relevant to construction of controlled substance scheduling language in relation to drug trafficking weight thresholds.

CS by Criminal Justice on January 31, 2012:
Removes a provision that was in the original bill that repealed s. 893.101, F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House
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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 21 - 577
and insert:
Section 1. Section 893.135, Florida Statutes, is amended to read:
893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—
(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:
(a) A ~~Any~~ person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who ~~is~~ knowingly is in actual or constructive possession with intent to

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14 sell, purchase, manufacture, deliver, or bring into this state
15 ~~of~~, in excess of 25 pounds of cannabis, or 300 or more cannabis
16 plants, commits a felony of the first degree, which felony shall
17 be known as "trafficking in cannabis," punishable as provided in
18 s. 775.082, s. 775.083, or s. 775.084. If the quantity of
19 cannabis involved:
20 1. Is in excess of 25 pounds, but less than 2,000 pounds,
21 or is 300 or more cannabis plants, but not more than 2,000
22 cannabis plants, such person shall be sentenced to a mandatory
23 minimum term of imprisonment of 3 years, and the defendant shall
24 be ordered to pay a fine of $25,000.
25 2. Is 2,000 pounds or more, but less than 10,000 pounds, or
26 is 2,000 or more cannabis plants, but not more than 10,000
27 cannabis plants, such person shall be sentenced to a mandatory
28 minimum term of imprisonment of 7 years, and the defendant shall
29 be ordered to pay a fine of $50,000.
30 3. Is 10,000 pounds or more, or is 10,000 or more cannabis
31 plants, such person shall be sentenced to a mandatory minimum
32 term of imprisonment of 15 calendar years, and the defendant
33 shall be ordered to pay a fine of $200,000.
34
35 For the purpose of this paragraph, a plant, including, but not
36 limited to, a seedling or cutting, is a "cannabis plant" if it
37 has some readily observable evidence of root formation, such as
38 root hairs. To determine if a piece or part of a cannabis plant
39 severed from the cannabis plant is itself a cannabis plant, the
40 severed piece or part must have some readily observable evidence
41 of root formation, such as root hairs. Callous tissue is not
42 readily observable evidence of root formation. The viability and

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43 sex of a plant and the fact that the plant may or may not be a
44 dead harvested plant are not relevant in determining if the
45 plant is a "cannabis plant" or in the charging of an offense
46 under this paragraph. Upon conviction, the court shall impose
47 the longest term of imprisonment provided for in this paragraph.
48 (b)1. Any person who knowingly sells, purchases,
49 manufactures, delivers, or brings into this state, or who ~~is~~
50 knowingly is in actual or constructive possession with intent to
51 sell, purchase, manufacture, deliver, or bring into this state
52 ~~of~~, 28 grams or more of cocaine, as described in s.
53 893.03(2)(a)4., or of any mixture containing cocaine, but less
54 than 150 kilograms of cocaine or any such mixture, commits a
55 felony of the first degree, which felony shall be known as
56 "trafficking in cocaine," punishable as provided in s. 775.082,
57 s. 775.083, or s. 775.084. If the quantity involved:
58 a. Is 28 grams or more, but less than 200 grams, such
59 person shall be sentenced to a mandatory minimum term of
60 imprisonment of 3 years, and the defendant shall be ordered to
61 pay a fine of $50,000.
62 b. Is 200 grams or more, but less than 400 grams, such
63 person shall be sentenced to a mandatory minimum term of
64 imprisonment of 7 years, and the defendant shall be ordered to
65 pay a fine of $100,000.
66 c. Is 400 grams or more, but less than 150 kilograms, such
67 person shall be sentenced to a mandatory minimum term of
68 imprisonment of 15 calendar years, and the defendant shall be
69 ordered to pay a fine of $250,000.
70 2. Any person who knowingly sells, purchases, manufactures,
71 delivers, or brings into this state, or who ~~is~~ knowingly is in

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72 actual or constructive possession with intent to sell, purchase,
73 manufacture, deliver, or bring into this state ~~of~~, 150 kilograms
74 or more of cocaine, as described in s. 893.03(2)(a)4., commits
75 the first degree felony of trafficking in cocaine. A person who
76 has been convicted of the first-degree ~~first degree~~ felony of
77 trafficking in cocaine under this subparagraph shall be punished
78 by life imprisonment and is ineligible for any form of
79 discretionary early release except pardon or executive clemency
80 or conditional medical release under s. 947.149. However, if the
81 court determines that, in addition to committing any act
82 specified in this paragraph:
83 a. The person intentionally killed an individual or
84 counseled, commanded, induced, procured, or caused the
85 intentional killing of an individual and such killing was the
86 result; or
87 b. The person’s conduct in committing that act led to a
88 natural, though not inevitable, lethal result,
89
90 such person commits the capital felony of trafficking in
91 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
92 person sentenced for a capital felony under this paragraph shall
93 also be ordered ~~sentenced~~ to pay the maximum fine provided under
94 subparagraph 1.
95 3. Any person who knowingly brings into this state 300
96 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
97 and who knows that the probable result of such importation would
98 be the death of any person, commits capital importation of
99 cocaine, a capital felony punishable as provided in ss. 775.082
100 and 921.142. Any person sentenced for a capital felony under

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101 this paragraph shall also be ordered ~~sentenced~~ to pay the
102 maximum fine provided under subparagraph 1.
103 (c)1. Any person who knowingly sells, purchases,
104 manufactures, delivers, or brings into this state, or who ~~is~~
105 knowingly is in actual or constructive possession with intent to
106 sell, purchase, manufacture, deliver, or bring into this state
107 ~~of~~, 28 ~~4~~ grams or more of any morphine, opium, oxycodone,
108 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
109 salt of an isomer thereof, including heroin, as described in s.
110 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more
111 of any mixture containing any such substance, but less than 30
112 kilograms of such substance or mixture, commits a felony of the
113 first degree, which felony shall be known as "trafficking in
114 illegal drugs," punishable as provided in s. 775.082, s.
115 775.083, or s. 775.084. If the quantity involved:
116 a. Is 28 ~~4~~ grams or more, but less than 50 ~~14~~ grams, such
117 person shall be sentenced to a mandatory minimum term of
118 imprisonment of 3 years, and the defendant shall be ordered to
119 pay a fine of $50,000.
120 b. Is 50 ~~14~~ grams or more, but less than 200 ~~28~~ grams, such
121 person shall be sentenced to a mandatory minimum term of
122 imprisonment of 7 ~~15~~ years, and the defendant shall be ordered
123 to pay a fine of $100,000.
124 c. Is 200 ~~28~~ grams or more, but less than 30 kilograms,
125 such person shall be sentenced to a mandatory minimum term of
126 imprisonment of 15 ~~25~~ calendar years, and the defendant shall be
127 ordered to pay a fine of $500,000.
128 2. Any person who knowingly sells, purchases, manufactures,
129 delivers, or brings into this state, or who ~~is~~ knowingly is in

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130 actual or constructive possession with intent to sell, purchase,
131 manufacture, deliver, or bring into this state ~~of~~, 30 kilograms
132 or more of any morphine, opium, oxycodone, hydrocodone,
133 hydromorphone, or any salt, derivative, isomer, or salt of an
134 isomer thereof, including heroin, as described in s.
135 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
136 more of any mixture containing any such substance, commits the
137 first-degree ~~first degree~~ felony of trafficking in illegal
138 drugs. A person who has been convicted of the first-degree ~~first~~
139 ~~degree~~ felony of trafficking in illegal drugs under this
140 subparagraph shall be punished by life imprisonment and is
141 ineligible for any form of discretionary early release except
142 pardon or executive clemency or conditional medical release
143 under s. 947.149. However, if the court determines that, in
144 addition to committing any act specified in this paragraph:
145 a. The person intentionally killed an individual or
146 counseled, commanded, induced, procured, or caused the
147 intentional killing of an individual and such killing was the
148 result; or
149 b. The person’s conduct in committing that act led to a
150 natural, though not inevitable, lethal result,
151
152 such person commits the capital felony of trafficking in illegal
153 drugs, punishable as provided in ss. 775.082 and 921.142. Any
154 person sentenced for a capital felony under this paragraph shall
155 also be ordered ~~sentenced~~ to pay the maximum fine provided under
156 subparagraph 1.
157 3. Any person who knowingly brings into this state 60
158 kilograms or more of any morphine, opium, oxycodone,

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159 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
160 salt of an isomer thereof, including heroin, as described in s.
161 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
162 more of any mixture containing any such substance, and who knows
163 that the probable result of such importation would be the death
164 of any person, commits capital importation of illegal drugs, a
165 capital felony punishable as provided in ss. 775.082 and
166 921.142. Any person sentenced for a capital felony under this
167 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
168 fine provided under subparagraph 1.
169 (d)1. Any person who knowingly sells, purchases,
170 manufactures, delivers, or brings into this state, or who ~~is~~
171 knowingly is in actual or constructive possession with intent to
172 sell, purchase, manufacture, deliver, or bring into this state
173 ~~of~~, 28 grams or more of phencyclidine or of any mixture
174 containing phencyclidine, as described in s. 893.03(2)(b),
175 commits a felony of the first degree, which felony shall be
176 known as "trafficking in phencyclidine," punishable as provided
177 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
178 involved:
179 a. Is 28 grams or more, but less than 200 grams, such
180 person shall be sentenced to a mandatory minimum term of
181 imprisonment of 3 years, and the defendant shall be ordered to
182 pay a fine of $50,000.
183 b. Is 200 grams or more, but less than 400 grams, such
184 person shall be sentenced to a mandatory minimum term of
185 imprisonment of 7 years, and the defendant shall be ordered to
186 pay a fine of $100,000.
187 c. Is 400 grams or more, such person shall be sentenced to

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188 a mandatory minimum term of imprisonment of 15 calendar years,
189 and the defendant shall be ordered to pay a fine of $250,000.
190 2. Any person who knowingly brings into this state 800
191 grams or more of phencyclidine or of any mixture containing
192 phencyclidine, as described in s. 893.03(2)(b), and who knows
193 that the probable result of such importation would be the death
194 of any person commits capital importation of phencyclidine, a
195 capital felony punishable as provided in ss. 775.082 and
196 921.142. Any person sentenced for a capital felony under this
197 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
198 fine provided under subparagraph 1.
199 (e)1. Any person who knowingly sells, purchases,
200 manufactures, delivers, or brings into this state, or who ~~is~~
201 knowingly is in actual or constructive possession with intent to
202 sell, purchase, manufacture, deliver, or bring into this state
203 ~~of~~, 200 grams or more of methaqualone or of any mixture
204 containing methaqualone, as described in s. 893.03(1)(d),
205 commits a felony of the first degree, which felony shall be
206 known as "trafficking in methaqualone," punishable as provided
207 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
208 involved:
209 a. Is 200 grams or more, but less than 5 kilograms, such
210 person shall be sentenced to a mandatory minimum term of
211 imprisonment of 3 years, and the defendant shall be ordered to
212 pay a fine of $50,000.
213 b. Is 5 kilograms or more, but less than 25 kilograms, such
214 person shall be sentenced to a mandatory minimum term of
215 imprisonment of 7 years, and the defendant shall be ordered to
216 pay a fine of $100,000.

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217 c. Is 25 kilograms or more, such person shall be sentenced
218 to a mandatory minimum term of imprisonment of 15 calendar
219 years, and the defendant shall be ordered to pay a fine of
220 $250,000.
221 2. Any person who knowingly brings into this state 50
222 kilograms or more of methaqualone or of any mixture containing
223 methaqualone, as described in s. 893.03(1)(d), and who knows
224 that the probable result of such importation would be the death
225 of any person commits capital importation of methaqualone, a
226 capital felony punishable as provided in ss. 775.082 and
227 921.142. Any person sentenced for a capital felony under this
228 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
229 fine provided under subparagraph 1.
230 (f)1. Any person who knowingly sells, purchases,
231 manufactures, delivers, or brings into this state, or who ~~is~~
232 knowingly is in actual or constructive possession with intent to
233 sell, purchase, manufacture, deliver, or bring into this state
234 ~~of~~, 14 grams or more of amphetamine, as described in s.
235 893.03(2)(c)2., or methamphetamine, as described in s.
236 893.03(2)(c)4., or of any mixture containing amphetamine or
237 methamphetamine, or phenylacetone, phenylacetic acid,
238 pseudoephedrine, or ephedrine in conjunction with other
239 chemicals and equipment utilized in the manufacture of
240 amphetamine or methamphetamine, commits a felony of the first
241 degree, which felony shall be known as "trafficking in
242 amphetamine," punishable as provided in s. 775.082, s. 775.083,
243 or s. 775.084. If the quantity involved:
244 a. Is 14 grams or more, but less than 28 grams, such person
245 shall be sentenced to a mandatory minimum term of imprisonment

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246 of 3 years, and the defendant shall be ordered to pay a fine of
247 $50,000.
248 b. Is 28 grams or more, but less than 200 grams, such
249 person shall be sentenced to a mandatory minimum term of
250 imprisonment of 7 years, and the defendant shall be ordered to
251 pay a fine of $100,000.
252 c. Is 200 grams or more, such person shall be sentenced to
253 a mandatory minimum term of imprisonment of 15 calendar years,
254 and the defendant shall be ordered to pay a fine of $250,000.
255 2. Any person who knowingly manufactures or brings into
256 this state 400 grams or more of amphetamine, as described in s.
257 893.03(2)(c)2., or methamphetamine, as described in s.
258 893.03(2)(c)4., or of any mixture containing amphetamine or
259 methamphetamine, or phenylacetone, phenylacetic acid,
260 pseudoephedrine, or ephedrine in conjunction with other
261 chemicals and equipment used in the manufacture of amphetamine
262 or methamphetamine, and who knows that the probable result of
263 such manufacture or importation would be the death of any person
264 commits capital manufacture or importation of amphetamine, a
265 capital felony punishable as provided in ss. 775.082 and
266 921.142. Any person sentenced for a capital felony under this
267 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
268 fine provided under subparagraph 1.
269 (g)1. Any person who knowingly sells, purchases,
270 manufactures, delivers, or brings into this state, or who ~~is~~
271 knowingly is in actual or constructive possession with intent to
272 sell, purchase, manufacture, deliver, or bring into this state
273 ~~of~~, 4 grams or more of flunitrazepam or any mixture containing
274 flunitrazepam as described in s. 893.03(1)(a) commits a felony

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275 of the first degree, which felony shall be known as "trafficking
276 in flunitrazepam," punishable as provided in s. 775.082, s.
277 775.083, or s. 775.084. If the quantity involved:
278 a. Is 4 grams or more but less than 14 grams, such person
279 shall be sentenced to a mandatory minimum term of imprisonment
280 of 3 years, and the defendant shall be ordered to pay a fine of
281 $50,000.
282 b. Is 14 grams or more but less than 28 grams, such person
283 shall be sentenced to a mandatory minimum term of imprisonment
284 of 7 years, and the defendant shall be ordered to pay a fine of
285 $100,000.
286 c. Is 28 grams or more but less than 30 kilograms, such
287 person shall be sentenced to a mandatory minimum term of
288 imprisonment of 25 calendar years, and the defendant shall be
289 ordered to pay a fine of $500,000.
290 2. Any person who knowingly sells, purchases, manufactures,
291 delivers, or brings into this state or who ~~is~~ knowingly is in
292 actual or constructive possession with intent to sell, purchase,
293 manufacture, deliver, or bring into this state ~~of~~ 30 kilograms
294 or more of flunitrazepam or any mixture containing flunitrazepam
295 as described in s. 893.03(1)(a) commits the first-degree ~~first~~
296 ~~degree~~ felony of trafficking in flunitrazepam. A person who has
297 been convicted of the first-degree ~~first degree~~ felony of
298 trafficking in flunitrazepam under this subparagraph shall be
299 punished by life imprisonment and is ineligible for any form of
300 discretionary early release except pardon or executive clemency
301 or conditional medical release under s. 947.149. However, if the
302 court determines that, in addition to committing any act
303 specified in this paragraph:

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304 a. The person intentionally killed an individual or
305 counseled, commanded, induced, procured, or caused the
306 intentional killing of an individual and such killing was the
307 result; or
308 b. The person's conduct in committing that act led to a
309 natural, though not inevitable, lethal result,
310
311 such person commits the capital felony of trafficking in
312 flunitrazepam, punishable as provided in ss. 775.082 and
313 921.142. Any person sentenced for a capital felony under this
314 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
315 fine provided under subparagraph 1.
316 (h)1. Any person who knowingly sells, purchases,
317 manufactures, delivers, or brings into this state, or who ~~is~~
318 knowingly is in actual or constructive possession with intent to
319 sell, purchase, manufacture, deliver, or bring into this state
320 ~~of~~, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as
321 described in s. 893.03(1)(d), or any mixture containing gamma-
322 hydroxybutyric acid (GHB), commits a felony of the first degree,
323 which felony shall be known as "trafficking in gamma-
324 hydroxybutyric acid (GHB)," punishable as provided in s.
325 775.082, s. 775.083, or s. 775.084. If the quantity involved:
326 a. Is 1 kilogram or more but less than 5 kilograms, such
327 person shall be sentenced to a mandatory minimum term of
328 imprisonment of 3 years, and the defendant shall be ordered to
329 pay a fine of $50,000.
330 b. Is 5 kilograms or more but less than 10 kilograms, such
331 person shall be sentenced to a mandatory minimum term of
332 imprisonment of 7 years, and the defendant shall be ordered to

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333 pay a fine of $100,000.
334 c. Is 10 kilograms or more, such person shall be sentenced
335 to a mandatory minimum term of imprisonment of 15 calendar
336 years, and the defendant shall be ordered to pay a fine of
337 $250,000.
338 2. Any person who knowingly manufactures or brings into
339 this state 150 kilograms or more of gamma-hydroxybutyric acid
340 (GHB), as described in s. 893.03(1)(d), or any mixture
341 containing gamma-hydroxybutyric acid (GHB), and who knows that
342 the probable result of such manufacture or importation would be
343 the death of any person commits capital manufacture or
344 importation of gamma-hydroxybutyric acid (GHB), a capital felony
345 punishable as provided in ss. 775.082 and 921.142. Any person
346 sentenced for a capital felony under this paragraph shall also
347 be ordered ~~sentenced~~ to pay the maximum fine provided under
348 subparagraph 1.
349 (i)1. Any person who knowingly sells, purchases,
350 manufactures, delivers, or brings into this state, or who ~~is~~
351 knowingly is in actual or constructive possession with intent to
352 sell, purchase, manufacture, deliver, or bring into this state
353 ~~of~~, 1 kilogram or more of gamma-butyrolactone (GBL), as
354 described in s. 893.03(1)(d), or any mixture containing gamma-
355 butyrolactone (GBL), commits a felony of the first degree, which
356 felony shall be known as "trafficking in gamma-butyrolactone
357 (GBL)," punishable as provided in s. 775.082, s. 775.083, or s.
358 775.084. If the quantity involved:
359 a. Is 1 kilogram or more but less than 5 kilograms, such
360 person shall be sentenced to a mandatory minimum term of
361 imprisonment of 3 years, and the defendant shall be ordered to

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362 pay a fine of $50,000.
363 b. Is 5 kilograms or more but less than 10 kilograms, such
364 person shall be sentenced to a mandatory minimum term of
365 imprisonment of 7 years, and the defendant shall be ordered to
366 pay a fine of $100,000.
367 c. Is 10 kilograms or more, such person shall be sentenced
368 to a mandatory minimum term of imprisonment of 15 calendar
369 years, and the defendant shall be ordered to pay a fine of
370 $250,000.
371 2. Any person who knowingly manufactures or brings into the
372 state 150 kilograms or more of gamma-butyrolactone (GBL), as
373 described in s. 893.03(1)(d), or any mixture containing gamma-
374 butyrolactone (GBL), and who knows that the probable result of
375 such manufacture or importation would be the death of any person
376 commits capital manufacture or importation of gamma-
377 butyrolactone (GBL), a capital felony punishable as provided in
378 ss. 775.082 and 921.142. Any person sentenced for a capital
379 felony under this paragraph shall also be ordered ~~sentenced~~ to
380 pay the maximum fine provided under subparagraph 1.
381 (j)1. Any person who knowingly sells, purchases,
382 manufactures, delivers, or brings into this state, or who ~~is~~
383 knowingly is in actual or constructive possession with intent to
384 sell, purchase, manufacture, deliver, or bring into this state
385 ~~of~~, 1 kilogram or more of 1,4-Butanediol as described in s.
386 893.03(1)(d), or of any mixture containing 1,4-Butanediol,
387 commits a felony of the first degree, which felony shall be
388 known as “trafficking in 1,4-Butanediol,” punishable as provided
389 in s. 775.082, s. 775.083, or s. 775.084. If the quantity
390 involved:

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391 a. Is 1 kilogram or more, but less than 5 kilograms, such
392 person shall be sentenced to a mandatory minimum term of
393 imprisonment of 3 years, and the defendant shall be ordered to
394 pay a fine of $50,000.
395 b. Is 5 kilograms or more, but less than 10 kilograms, such
396 person shall be sentenced to a mandatory minimum term of
397 imprisonment of 7 years, and the defendant shall be ordered to
398 pay a fine of $100,000.
399 c. Is 10 kilograms or more, such person shall be sentenced
400 to a mandatory minimum term of imprisonment of 15 calendar
401 years, and the defendant shall be ordered to pay a fine of
402 $500,000.
403 2. Any person who knowingly manufactures or brings into
404 this state 150 kilograms or more of 1,4-Butanediol as described
405 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
406 and who knows that the probable result of such manufacture or
407 importation would be the death of any person commits capital
408 manufacture or importation of 1,4-Butanediol, a capital felony
409 punishable as provided in ss. 775.082 and 921.142. Any person
410 sentenced for a capital felony under this paragraph shall also
411 be ordered ~~sentenced~~ to pay the maximum fine provided under
412 subparagraph 1.
413 (k)1. Any person who knowingly sells, purchases,
414 manufactures, delivers, or brings into this state, or who ~~is~~
415 knowingly is in actual or constructive possession with intent to
416 sell, purchase, manufacture, deliver, or bring into this state
417 ~~of~~, 10 grams or more of any of the following substances
418 described in s. 893.03(1)(a) or (c):
419 a. 3,4-Methylenedioxymethamphetamine (MDMA);

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420 b. 4-Bromo-2,5-dimethoxyamphetamine;
421 c. 4-Bromo-2,5-dimethoxyphenethylamine;
422 d. 2,5-Dimethoxyamphetamine;
423 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
424 f. N-ethylamphetamine;
425 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
426 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
427 i. 4-methoxyamphetamine;
428 j. 4-methoxymethamphetamine;
429 k. 4-Methyl-2,5-dimethoxyamphetamine;
430 l. 3,4-Methylenedioxy-N-ethylamphetamine;
431 m. 3,4-Methylenedioxyamphetamine;
432 n. N,N-dimethylamphetamine; or
433 o. 3,4,5-Trimethoxyamphetamine,
434
435 individually or in any combination of or any mixture containing
436 any substance listed in sub-subparagraphs a.-o., commits a
437 felony of the first degree, which felony shall be known as
438 “trafficking in Phenethylamines,” punishable as provided in s.
439 775.082, s. 775.083, or s. 775.084.
440 2. If the quantity involved:
441 a. Is 10 grams or more but less than 200 grams, such person
442 shall be sentenced to a mandatory minimum term of imprisonment
443 of 3 years, and the defendant shall be ordered to pay a fine of
444 $50,000.
445 b. Is 200 grams or more, but less than 400 grams, such
446 person shall be sentenced to a mandatory minimum term of
447 imprisonment of 7 years, and the defendant shall be ordered to
448 pay a fine of $100,000.

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449 c. Is 400 grams or more, such person shall be sentenced to
450 a mandatory minimum term of imprisonment of 15 calendar years,
451 and the defendant shall be ordered to pay a fine of $250,000.
452 3. Any person who knowingly manufactures or brings into
453 this state 30 kilograms or more of any of the following
454 substances described in s. 893.03(1)(a) or (c):
455 a. 3,4-Methylenedioxymethamphetamine (MDMA);
456 b. 4-Bromo-2,5-dimethoxyamphetamine;
457 c. 4-Bromo-2,5-dimethoxyphenethylamine;
458 d. 2,5-Dimethoxyamphetamine;
459 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
460 f. N-ethylamphetamine;
461 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
462 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
463 i. 4-methoxyamphetamine;
464 j. 4-methoxymethamphetamine;
465 k. 4-Methyl-2,5-dimethoxyamphetamine;
466 l. 3,4-Methylenedioxy-N-ethylamphetamine;
467 m. 3,4-Methylenedioxyamphetamine;
468 n. N,N-dimethylamphetamine; or
469 o. 3,4,5-Trimethoxyamphetamine,
470
471 individually or in any combination of or any mixture containing
472 any substance listed in sub-subparagraphs a.-o., and who knows
473 that the probable result of such manufacture or importation
474 would be the death of any person commits capital manufacture or
475 importation of Phenethylamines, a capital felony punishable as
476 provided in ss. 775.082 and 921.142. Any person sentenced for a
477 capital felony under this paragraph shall also be ordered

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478 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
479 (l)1. Any person who knowingly sells, purchases,
480 manufactures, delivers, or brings into this state, or who ~~is~~
481 knowingly is in actual or constructive possession with intent to
482 sell, purchase, manufacture, deliver, or bring into this state
483 ~~of~~, 1 gram or more of lysergic acid diethylamide (LSD) as
484 described in s. 893.03(1)(c), or of any mixture containing
485 lysergic acid diethylamide (LSD), commits a felony of the first
486 degree, which felony shall be known as "trafficking in lysergic
487 acid diethylamide (LSD)," punishable as provided in s. 775.082,
488 s. 775.083, or s. 775.084. If the quantity involved:
489 a. Is 1 gram or more, but less than 5 grams, such person
490 shall be sentenced to a mandatory minimum term of imprisonment
491 of 3 years, and the defendant shall be ordered to pay a fine of
492 $50,000.
493 b. Is 5 grams or more, but less than 7 grams, such person
494 shall be sentenced to a mandatory minimum term of imprisonment
495 of 7 years, and the defendant shall be ordered to pay a fine of
496 $100,000.
497 c. Is 7 grams or more, such person shall be sentenced to a
498 mandatory minimum term of imprisonment of 15 calendar years, and
499 the defendant shall be ordered to pay a fine of $500,000.
500 2. Any person who knowingly manufactures or brings into
501 this state 7 grams or more of lysergic acid diethylamide (LSD)
502 as described in s. 893.03(1)(c), or any mixture containing
503 lysergic acid diethylamide (LSD), and who knows that the
504 probable result of such manufacture or importation would be the
505 death of any person commits capital manufacture or importation
506 of lysergic acid diethylamide (LSD), a capital felony punishable

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507 as provided in ss. 775.082 and 921.142. Any person sentenced for
508 a capital felony under this paragraph shall also be ordered
509 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
510 (2) A person acts knowingly under subsection (1) if that
511 person intends to sell, purchase, manufacture, deliver, or bring
512 into this state, or to actually or constructively possess, any
513 of the controlled substances listed in subsection (1),
514 regardless of which controlled substance listed in subsection
515 (1) is in fact sold, purchased, manufactured, delivered, or
516 brought into this state, or actually or constructively
517 possessed.
518 (3) Notwithstanding the provisions of s. 948.01, with
519 respect to any person who is found to have violated this
520 section, adjudication of guilt or imposition of sentence may
521 ~~shall~~ not be suspended, deferred, or withheld, and ~~nor shall~~
522 such person is not ~~be~~ eligible for parole before ~~prior to~~
523 serving the mandatory minimum term of imprisonment prescribed by
524 this section. A person sentenced to a mandatory minimum term of
525 imprisonment under this section is not eligible for any form of
526 discretionary early release, except pardon or executive clemency
527 or conditional medical release under s. 947.149, before ~~prior to~~
528 serving the mandatory minimum term of imprisonment.
529 (4) The state attorney may move the sentencing court to
530 reduce or suspend the sentence of any person who is convicted of
531 a violation of this section and who provides substantial
532 assistance in the identification, arrest, or conviction of any
533 of that person’s accomplices, accessories, coconspirators, or
534 principals or of any other person engaged in trafficking in
535 controlled substances. The arresting agency shall be given an

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536 opportunity to be heard in aggravation or mitigation in
537 reference to any such motion. Upon good cause shown, the motion
538 may be filed and heard in camera. The judge hearing the motion
539 may reduce or suspend, defer, or withhold the sentence or
540 adjudication of guilt if the judge finds that the defendant
541 rendered such substantial assistance.
542 (5) Any person who agrees, conspires, combines, or
543 confederates with another person to commit any act prohibited by
544 subsection (1) commits a felony of the first degree and is
545 punishable as if he or she had actually committed such
546 prohibited act. ~~Nothing in~~ This subsection does not ~~shall be~~
547 ~~construed to~~ prohibit separate convictions and sentences for a
548 violation of this subsection and any violation of subsection
549 (1).
550 (6)(a) A mixture, as defined in s. 893.02, containing any
551 controlled substance described in this section includes, but is
552 not limited to, a solution or a dosage unit, including, but not
553 limited to, a pill or tablet, containing a controlled substance.
554 (b) Except as provided in paragraph (c), ~~For the purpose of~~
555 ~~clarifying legislative intent regarding the weighing of a~~
556 ~~mixture containing a controlled substance described in this~~
557 ~~section,~~ the weight of the controlled substance is the total
558 weight of the mixture, including the controlled substance and
559 any other substance in the mixture. If there is more than one
560 mixture containing the same controlled substance, the weight of
561 the controlled substance is calculated by aggregating the total
562 weight of each mixture.
563 (c) If the mixture is a prescription drug as defined in s.
564 499.003 and the weight of the controlled substance in the

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565 mixture can be identified using the National Drug Code
566 Directory, as published by the United States Department of
567 Health and Human Services, the weight of the controlled
568 substance is the weight of the controlled substance identified
569 in the National Drug Code Directory, exclusive of other tablet
570 components. If there is more than one mixture that is a
571 prescription drug and all of the mixtures contain the same
572 controlled substance, and the weight of the controlled substance
573 in each mixture can be identified using the National Drug Code
574 Directory, the weight of the controlled substance is calculated
575 by aggregating the weight of the controlled substance in each
576 mixture.
577 ~~(7) For the purpose of further clarifying legislative~~
578 ~~intent, the Legislature finds that the opinion in *Hayes v.*~~
579 ~~*State*, 750 So. 2d 1 (Fla. 1999) does not correctly construe~~
580 ~~legislative intent. The Legislature finds that the opinions in~~
581 ~~*State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v.*~~
582 ~~*Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe~~
583 ~~legislative intent.~~

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Substitute for Amendment (370628)

Delete lines 21 - 577
and insert:
Section 1. Section 893.135, Florida Statutes, is amended to read:
893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—
(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:
(a) A ~~Any~~ person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who ~~is~~ knowingly is in actual or constructive possession with intent to

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14 sell, purchase, manufacture, or deliver ~~of~~, in excess of 25
15 pounds of cannabis, or 300 or more cannabis plants, commits a
16 felony of the first degree, which felony shall be known as
17 "trafficking in cannabis," punishable as provided in s. 775.082,
18 s. 775.083, or s. 775.084. If the quantity of cannabis involved:
19 1. Is in excess of 25 pounds, but less than 2,000 pounds,
20 or is 300 or more cannabis plants, but not more than 2,000
21 cannabis plants, such person shall be sentenced to a mandatory
22 minimum term of imprisonment of 3 years, and the defendant shall
23 be ordered to pay a fine of $25,000.
24 2. Is 2,000 pounds or more, but less than 10,000 pounds, or
25 is 2,000 or more cannabis plants, but not more than 10,000
26 cannabis plants, such person shall be sentenced to a mandatory
27 minimum term of imprisonment of 7 years, and the defendant shall
28 be ordered to pay a fine of $50,000.
29 3. Is 10,000 pounds or more, or is 10,000 or more cannabis
30 plants, such person shall be sentenced to a mandatory minimum
31 term of imprisonment of 15 calendar years, and the defendant
32 shall be ordered to pay a fine of $200,000.
33
34 For the purpose of this paragraph, a plant, including, but not
35 limited to, a seedling or cutting, is a "cannabis plant" if it
36 has some readily observable evidence of root formation, such as
37 root hairs. To determine if a piece or part of a cannabis plant
38 severed from the cannabis plant is itself a cannabis plant, the
39 severed piece or part must have some readily observable evidence
40 of root formation, such as root hairs. Callous tissue is not
41 readily observable evidence of root formation. The viability and
42 sex of a plant and the fact that the plant may or may not be a

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43 dead harvested plant are not relevant in determining if the
44 plant is a "cannabis plant" or in the charging of an offense
45 under this paragraph. Upon conviction, the court shall impose
46 the longest term of imprisonment provided for in this paragraph.
47 (b)1. Any person who knowingly sells, purchases,
48 manufactures, delivers, or brings into this state, or who ~~is~~
49 knowingly is in actual or constructive possession with intent to
50 sell, purchase, manufacture, or deliver ~~of~~, 28 grams or more of
51 cocaine, as described in s. 893.03(2)(a)4., or of any mixture
52 containing cocaine, but less than 150 kilograms of cocaine or
53 any such mixture, commits a felony of the first degree, which
54 felony shall be known as "trafficking in cocaine," punishable as
55 provided in s. 775.082, s. 775.083, or s. 775.084. If the
56 quantity involved:
57 a. Is 28 grams or more, but less than 200 grams, such
58 person shall be sentenced to a mandatory minimum term of
59 imprisonment of 3 years, and the defendant shall be ordered to
60 pay a fine of $50,000.
61 b. Is 200 grams or more, but less than 400 grams, such
62 person shall be sentenced to a mandatory minimum term of
63 imprisonment of 7 years, and the defendant shall be ordered to
64 pay a fine of $100,000.
65 c. Is 400 grams or more, but less than 150 kilograms, such
66 person shall be sentenced to a mandatory minimum term of
67 imprisonment of 15 calendar years, and the defendant shall be
68 ordered to pay a fine of $250,000.
69 2. Any person who knowingly sells, purchases, manufactures,
70 delivers, or brings into this state, or who ~~is~~ knowingly is in
71 actual or constructive possession with intent to sell, purchase,

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72 manufacture, or deliver ~~of~~, 150 kilograms or more of cocaine, as
73 described in s. 893.03(2)(a)4., commits the first degree felony
74 of trafficking in cocaine. A person who has been convicted of
75 the first-degree ~~first degree~~ felony of trafficking in cocaine
76 under this subparagraph shall be punished by life imprisonment
77 and is ineligible for any form of discretionary early release
78 except pardon or executive clemency or conditional medical
79 release under s. 947.149. However, if the court determines that,
80 in addition to committing any act specified in this paragraph:
81 a. The person intentionally killed an individual or
82 counseled, commanded, induced, procured, or caused the
83 intentional killing of an individual and such killing was the
84 result; or
85 b. The person's conduct in committing that act led to a
86 natural, though not inevitable, lethal result,
87
88 such person commits the capital felony of trafficking in
89 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
90 person sentenced for a capital felony under this paragraph shall
91 also be ordered ~~sentenced~~ to pay the maximum fine provided under
92 subparagraph 1.
93 3. Any person who knowingly brings into this state 300
94 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
95 and who knows that the probable result of such importation would
96 be the death of any person, commits capital importation of
97 cocaine, a capital felony punishable as provided in ss. 775.082
98 and 921.142. Any person sentenced for a capital felony under
99 this paragraph shall also be ordered ~~sentenced~~ to pay the
100 maximum fine provided under subparagraph 1.

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101 (c)1. Any person who knowingly sells, purchases,
102 manufactures, delivers, or brings into this state, or who ~~is~~
103 knowingly is in actual or constructive possession with intent to
104 sell, purchase, manufacture, or deliver ~~of~~, 28 ~~4~~ grams or more
105 of any morphine, opium, oxycodone, hydrocodone, hydromorphone,
106 or any salt, derivative, isomer, or salt of an isomer thereof,
107 including heroin, as described in s. 893.03(1)(b), (2)(a),
108 (3)(c)3., or (3)(c)4., or 28 ~~4~~ grams or more of any mixture
109 containing any such substance, but less than 30 kilograms of
110 such substance or mixture, commits a felony of the first degree,
111 which felony shall be known as "trafficking in illegal drugs,"
112 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
113 If the quantity involved:
114 a. Is 28 ~~4~~ grams or more, but less than 50 ~~14~~ grams, such
115 person shall be sentenced to a mandatory minimum term of
116 imprisonment of 3 years, and the defendant shall be ordered to
117 pay a fine of $50,000.
118 b. Is 50 ~~14~~ grams or more, but less than 200 ~~28~~ grams, such
119 person shall be sentenced to a mandatory minimum term of
120 imprisonment of 7 ~~15~~ years, and the defendant shall be ordered
121 to pay a fine of $100,000.
122 c. Is 200 ~~28~~ grams or more, but less than 30 kilograms,
123 such person shall be sentenced to a mandatory minimum term of
124 imprisonment of 15 ~~25~~ calendar years, and the defendant shall be
125 ordered to pay a fine of $500,000.
126 2. Any person who knowingly sells, purchases, manufactures,
127 delivers, or brings into this state, or who ~~is~~ knowingly is in
128 actual or constructive possession with intent to sell, purchase,
129 manufacture, or deliver ~~of~~, 30 kilograms or more of any

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130 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
131 salt, derivative, isomer, or salt of an isomer thereof,
132 including heroin, as described in s. 893.03(1)(b), (2)(a),
133 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture
134 containing any such substance, commits the first-degree ~~first~~
135 ~~degree~~ felony of trafficking in illegal drugs. A person who has
136 been convicted of the first-degree ~~first degree~~ felony of
137 trafficking in illegal drugs under this subparagraph shall be
138 punished by life imprisonment and is ineligible for any form of
139 discretionary early release except pardon or executive clemency
140 or conditional medical release under s. 947.149. However, if the
141 court determines that, in addition to committing any act
142 specified in this paragraph:
143 a. The person intentionally killed an individual or
144 counseled, commanded, induced, procured, or caused the
145 intentional killing of an individual and such killing was the
146 result; or
147 b. The person's conduct in committing that act led to a
148 natural, though not inevitable, lethal result,
149
150 such person commits the capital felony of trafficking in illegal
151 drugs, punishable as provided in ss. 775.082 and 921.142. Any
152 person sentenced for a capital felony under this paragraph shall
153 also be ordered ~~sentenced~~ to pay the maximum fine provided under
154 subparagraph 1.
155 3. Any person who knowingly brings into this state 60
156 kilograms or more of any morphine, opium, oxycodone,
157 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
158 salt of an isomer thereof, including heroin, as described in s.

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159 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
160 more of any mixture containing any such substance, and who knows
161 that the probable result of such importation would be the death
162 of any person, commits capital importation of illegal drugs, a
163 capital felony punishable as provided in ss. 775.082 and
164 921.142. Any person sentenced for a capital felony under this
165 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
166 fine provided under subparagraph 1.
167 (d)1. Any person who knowingly sells, purchases,
168 manufactures, delivers, or brings into this state, or who ~~is~~
169 knowingly is in actual or constructive possession with intent to
170 sell, purchase, manufacture, or deliver ~~of~~, 28 grams or more of
171 phencyclidine or of any mixture containing phencyclidine, as
172 described in s. 893.03(2)(b), commits a felony of the first
173 degree, which felony shall be known as "trafficking in
174 phencyclidine," punishable as provided in s. 775.082, s.
175 775.083, or s. 775.084. If the quantity involved:
176 a. Is 28 grams or more, but less than 200 grams, such
177 person shall be sentenced to a mandatory minimum term of
178 imprisonment of 3 years, and the defendant shall be ordered to
179 pay a fine of $50,000.
180 b. Is 200 grams or more, but less than 400 grams, such
181 person shall be sentenced to a mandatory minimum term of
182 imprisonment of 7 years, and the defendant shall be ordered to
183 pay a fine of $100,000.
184 c. Is 400 grams or more, such person shall be sentenced to
185 a mandatory minimum term of imprisonment of 15 calendar years,
186 and the defendant shall be ordered to pay a fine of $250,000.
187 2. Any person who knowingly brings into this state 800

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188 grams or more of phencyclidine or of any mixture containing
189 phencyclidine, as described in s. 893.03(2)(b), and who knows
190 that the probable result of such importation would be the death
191 of any person commits capital importation of phencyclidine, a
192 capital felony punishable as provided in ss. 775.082 and
193 921.142. Any person sentenced for a capital felony under this
194 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
195 fine provided under subparagraph 1.
196 (e)1. Any person who knowingly sells, purchases,
197 manufactures, delivers, or brings into this state, or who ~~is~~
198 knowingly is in actual or constructive possession with intent to
199 sell, purchase, manufacture, or deliver ~~of~~, 200 grams or more of
200 methaqualone or of any mixture containing methaqualone, as
201 described in s. 893.03(1)(d), commits a felony of the first
202 degree, which felony shall be known as "trafficking in
203 methaqualone," punishable as provided in s. 775.082, s. 775.083,
204 or s. 775.084. If the quantity involved:
205 a. Is 200 grams or more, but less than 5 kilograms, such
206 person shall be sentenced to a mandatory minimum term of
207 imprisonment of 3 years, and the defendant shall be ordered to
208 pay a fine of $50,000.
209 b. Is 5 kilograms or more, but less than 25 kilograms, such
210 person shall be sentenced to a mandatory minimum term of
211 imprisonment of 7 years, and the defendant shall be ordered to
212 pay a fine of $100,000.
213 c. Is 25 kilograms or more, such person shall be sentenced
214 to a mandatory minimum term of imprisonment of 15 calendar
215 years, and the defendant shall be ordered to pay a fine of
216 $250,000.

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217 2. Any person who knowingly brings into this state 50
218 kilograms or more of methaqualone or of any mixture containing
219 methaqualone, as described in s. 893.03(1)(d), and who knows
220 that the probable result of such importation would be the death
221 of any person commits capital importation of methaqualone, a
222 capital felony punishable as provided in ss. 775.082 and
223 921.142. Any person sentenced for a capital felony under this
224 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
225 fine provided under subparagraph 1.
226 (f)1. Any person who knowingly sells, purchases,
227 manufactures, delivers, or brings into this state, or who ~~is~~
228 knowingly is in actual or constructive possession with intent to
229 sell, purchase, manufacture, or deliver ~~of~~, 14 grams or more of
230 amphetamine, as described in s. 893.03(2)(c)2., or
231 methamphetamine, as described in s. 893.03(2)(c)4., or of any
232 mixture containing amphetamine or methamphetamine, or
233 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine
234 in conjunction with other chemicals and equipment utilized in
235 the manufacture of amphetamine or methamphetamine, commits a
236 felony of the first degree, which felony shall be known as
237 "trafficking in amphetamine," punishable as provided in s.
238 775.082, s. 775.083, or s. 775.084. If the quantity involved:
239 a. Is 14 grams or more, but less than 28 grams, such person
240 shall be sentenced to a mandatory minimum term of imprisonment
241 of 3 years, and the defendant shall be ordered to pay a fine of
242 $50,000.
243 b. Is 28 grams or more, but less than 200 grams, such
244 person shall be sentenced to a mandatory minimum term of
245 imprisonment of 7 years, and the defendant shall be ordered to

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246 pay a fine of $100,000.
247 c. Is 200 grams or more, such person shall be sentenced to
248 a mandatory minimum term of imprisonment of 15 calendar years,
249 and the defendant shall be ordered to pay a fine of $250,000.
250 2. Any person who knowingly manufactures or brings into
251 this state 400 grams or more of amphetamine, as described in s.
252 893.03(2)(c)2., or methamphetamine, as described in s.
253 893.03(2)(c)4., or of any mixture containing amphetamine or
254 methamphetamine, or phenylacetone, phenylacetic acid,
255 pseudoephedrine, or ephedrine in conjunction with other
256 chemicals and equipment used in the manufacture of amphetamine
257 or methamphetamine, and who knows that the probable result of
258 such manufacture or importation would be the death of any person
259 commits capital manufacture or importation of amphetamine, a
260 capital felony punishable as provided in ss. 775.082 and
261 921.142. Any person sentenced for a capital felony under this
262 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
263 fine provided under subparagraph 1.
264 (g)1. Any person who knowingly sells, purchases,
265 manufactures, delivers, or brings into this state, or who ~~is~~
266 knowingly is in actual or constructive possession with intent to
267 sell, purchase, manufacture, or deliver ~~of~~, 4 grams or more of
268 flunitrazepam or any mixture containing flunitrazepam as
269 described in s. 893.03(1)(a) commits a felony of the first
270 degree, which felony shall be known as "trafficking in
271 flunitrazepam," punishable as provided in s. 775.082, s.
272 775.083, or s. 775.084. If the quantity involved:
273 a. Is 4 grams or more but less than 14 grams, such person
274 shall be sentenced to a mandatory minimum term of imprisonment

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275 of 3 years, and the defendant shall be ordered to pay a fine of
276 $50,000.
277 b. Is 14 grams or more but less than 28 grams, such person
278 shall be sentenced to a mandatory minimum term of imprisonment
279 of 7 years, and the defendant shall be ordered to pay a fine of
280 $100,000.
281 c. Is 28 grams or more but less than 30 kilograms, such
282 person shall be sentenced to a mandatory minimum term of
283 imprisonment of 25 calendar years, and the defendant shall be
284 ordered to pay a fine of $500,000.
285 2. Any person who knowingly sells, purchases, manufactures,
286 delivers, or brings into this state or who ~~is~~ knowingly is in
287 actual or constructive possession with intent to sell, purchase,
288 manufacture, or deliver ~~of~~ 30 kilograms or more of flunitrazepam
289 or any mixture containing flunitrazepam as described in s.
290 893.03(1)(a) commits the first-degree ~~first degree~~ felony of
291 trafficking in flunitrazepam. A person who has been convicted of
292 the first-degree ~~first degree~~ felony of trafficking in
293 flunitrazepam under this subparagraph shall be punished by life
294 imprisonment and is ineligible for any form of discretionary
295 early release except pardon or executive clemency or conditional
296 medical release under s. 947.149. However, if the court
297 determines that, in addition to committing any act specified in
298 this paragraph:
299 a. The person intentionally killed an individual or
300 counseled, commanded, induced, procured, or caused the
301 intentional killing of an individual and such killing was the
302 result; or
303 b. The person’s conduct in committing that act led to a

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304 natural, though not inevitable, lethal result,
305
306 such person commits the capital felony of trafficking in
307 flunitrazepam, punishable as provided in ss. 775.082 and
308 921.142. Any person sentenced for a capital felony under this
309 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
310 fine provided under subparagraph 1.
311 (h)1. Any person who knowingly sells, purchases,
312 manufactures, delivers, or brings into this state, or who ~~is~~
313 knowingly is in actual or constructive possession with intent to
314 sell, purchase, manufacture, or deliver ~~of~~, 1 kilogram or more
315 of gamma-hydroxybutyric acid (GHB), as described in s.
316 893.03(1)(d), or any mixture containing gamma-hydroxybutyric
317 acid (GHB), commits a felony of the first degree, which felony
318 shall be known as "trafficking in gamma-hydroxybutyric acid
319 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.
320 775.084. If the quantity involved:
321 a. Is 1 kilogram or more but less than 5 kilograms, such
322 person shall be sentenced to a mandatory minimum term of
323 imprisonment of 3 years, and the defendant shall be ordered to
324 pay a fine of $50,000.
325 b. Is 5 kilograms or more but less than 10 kilograms, such
326 person shall be sentenced to a mandatory minimum term of
327 imprisonment of 7 years, and the defendant shall be ordered to
328 pay a fine of $100,000.
329 c. Is 10 kilograms or more, such person shall be sentenced
330 to a mandatory minimum term of imprisonment of 15 calendar
331 years, and the defendant shall be ordered to pay a fine of
332 $250,000.

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333 2. Any person who knowingly manufactures or brings into
334 this state 150 kilograms or more of gamma-hydroxybutyric acid
335 (GHB), as described in s. 893.03(1)(d), or any mixture
336 containing gamma-hydroxybutyric acid (GHB), and who knows that
337 the probable result of such manufacture or importation would be
338 the death of any person commits capital manufacture or
339 importation of gamma-hydroxybutyric acid (GHB), a capital felony
340 punishable as provided in ss. 775.082 and 921.142. Any person
341 sentenced for a capital felony under this paragraph shall also
342 be ordered ~~sentenced~~ to pay the maximum fine provided under
343 subparagraph 1.
344 (i)1. Any person who knowingly sells, purchases,
345 manufactures, delivers, or brings into this state, or who ~~is~~
346 knowingly is in actual or constructive possession with intent to
347 sell, purchase, manufacture, or deliver ~~of~~, 1 kilogram or more
348 of gamma-butyrolactone (GBL), as described in s. 893.03(1)(d),
349 or any mixture containing gamma-butyrolactone (GBL), commits a
350 felony of the first degree, which felony shall be known as
351 "trafficking in gamma-butyrolactone (GBL)," punishable as
352 provided in s. 775.082, s. 775.083, or s. 775.084. If the
353 quantity involved:
354 a. Is 1 kilogram or more but less than 5 kilograms, such
355 person shall be sentenced to a mandatory minimum term of
356 imprisonment of 3 years, and the defendant shall be ordered to
357 pay a fine of $50,000.
358 b. Is 5 kilograms or more but less than 10 kilograms, such
359 person shall be sentenced to a mandatory minimum term of
360 imprisonment of 7 years, and the defendant shall be ordered to
361 pay a fine of $100,000.

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362 c. Is 10 kilograms or more, such person shall be sentenced
363 to a mandatory minimum term of imprisonment of 15 calendar
364 years, and the defendant shall be ordered to pay a fine of
365 $250,000.
366 2. Any person who knowingly manufactures or brings into the
367 state 150 kilograms or more of gamma-butyrolactone (GBL), as
368 described in s. 893.03(1)(d), or any mixture containing gamma-
369 butyrolactone (GBL), and who knows that the probable result of
370 such manufacture or importation would be the death of any person
371 commits capital manufacture or importation of gamma-
372 butyrolactone (GBL), a capital felony punishable as provided in
373 ss. 775.082 and 921.142. Any person sentenced for a capital
374 felony under this paragraph shall also be ordered ~~sentenced~~ to
375 pay the maximum fine provided under subparagraph 1.
376 (j)1. Any person who knowingly sells, purchases,
377 manufactures, delivers, or brings into this state, or who ~~is~~
378 knowingly is in actual or constructive possession with intent to
379 sell, purchase, manufacture, or deliver ~~of~~, 1 kilogram or more
380 of 1,4-Butanediol as described in s. 893.03(1)(d), or of any
381 mixture containing 1,4-Butanediol, commits a felony of the first
382 degree, which felony shall be known as "trafficking in 1,4-
383 Butanediol," punishable as provided in s. 775.082, s. 775.083,
384 or s. 775.084. If the quantity involved:
385 a. Is 1 kilogram or more, but less than 5 kilograms, such
386 person shall be sentenced to a mandatory minimum term of
387 imprisonment of 3 years, and the defendant shall be ordered to
388 pay a fine of $50,000.
389 b. Is 5 kilograms or more, but less than 10 kilograms, such
390 person shall be sentenced to a mandatory minimum term of

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391 imprisonment of 7 years, and the defendant shall be ordered to
392 pay a fine of $100,000.
393 c. Is 10 kilograms or more, such person shall be sentenced
394 to a mandatory minimum term of imprisonment of 15 calendar
395 years, and the defendant shall be ordered to pay a fine of
396 $500,000.
397 2. Any person who knowingly manufactures or brings into
398 this state 150 kilograms or more of 1,4-Butanediol as described
399 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
400 and who knows that the probable result of such manufacture or
401 importation would be the death of any person commits capital
402 manufacture or importation of 1,4-Butanediol, a capital felony
403 punishable as provided in ss. 775.082 and 921.142. Any person
404 sentenced for a capital felony under this paragraph shall also
405 be ordered ~~sentenced~~ to pay the maximum fine provided under
406 subparagraph 1.
407 (k)1. Any person who knowingly sells, purchases,
408 manufactures, delivers, or brings into this state, or who ~~is~~
409 knowingly is in actual or constructive possession with intent to
410 sell, purchase, manufacture, or deliver ~~of~~, 10 grams or more of
411 any of the following substances described in s. 893.03(1)(a) or
412 (c):
413 a. 3,4-Methylenedioxymethamphetamine (MDMA);
414 b. 4-Bromo-2,5-dimethoxyamphetamine;
415 c. 4-Bromo-2,5-dimethoxyphenethylamine;
416 d. 2,5-Dimethoxyamphetamine;
417 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
418 f. N-ethylamphetamine;
419 g. N-Hydroxy-3,4-methylenedioxyamphetamine;

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420 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
421 i. 4-methoxyamphetamine;
422 j. 4-methoxymethamphetamine;
423 k. 4-Methyl-2,5-dimethoxyamphetamine;
424 l. 3,4-Methylenedioxy-N-ethylamphetamine;
425 m. 3,4-Methylenedioxyamphetamine;
426 n. N,N-dimethylamphetamine; or
427 o. 3,4,5-Trimethoxyamphetamine,
428
429 individually or in any combination of or any mixture containing
430 any substance listed in sub-subparagraphs a.-o., commits a
431 felony of the first degree, which felony shall be known as
432 "trafficking in Phenethylamines," punishable as provided in s.
433 775.082, s. 775.083, or s. 775.084.
434 2. If the quantity involved:
435 a. Is 10 grams or more but less than 200 grams, such person
436 shall be sentenced to a mandatory minimum term of imprisonment
437 of 3 years, and the defendant shall be ordered to pay a fine of
438 $50,000.
439 b. Is 200 grams or more, but less than 400 grams, such
440 person shall be sentenced to a mandatory minimum term of
441 imprisonment of 7 years, and the defendant shall be ordered to
442 pay a fine of $100,000.
443 c. Is 400 grams or more, such person shall be sentenced to
444 a mandatory minimum term of imprisonment of 15 calendar years,
445 and the defendant shall be ordered to pay a fine of $250,000.
446 3. Any person who knowingly manufactures or brings into
447 this state 30 kilograms or more of any of the following
448 substances described in s. 893.03(1)(a) or (c):

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449 a. 3,4-Methylenedioxymethamphetamine (MDMA);
450 b. 4-Bromo-2,5-dimethoxyamphetamine;
451 c. 4-Bromo-2,5-dimethoxyphenethylamine;
452 d. 2,5-Dimethoxyamphetamine;
453 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
454 f. N-ethylamphetamine;
455 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
456 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
457 i. 4-methoxyamphetamine;
458 j. 4-methoxymethamphetamine;
459 k. 4-Methyl-2,5-dimethoxyamphetamine;
460 l. 3,4-Methylenedioxy-N-ethylamphetamine;
461 m. 3,4-Methylenedioxyamphetamine;
462 n. N,N-dimethylamphetamine; or
463 o. 3,4,5-Trimethoxyamphetamine,
464
465 individually or in any combination of or any mixture containing
466 any substance listed in sub-subparagraphs a.-o., and who knows
467 that the probable result of such manufacture or importation
468 would be the death of any person commits capital manufacture or
469 importation of Phenethylamines, a capital felony punishable as
470 provided in ss. 775.082 and 921.142. Any person sentenced for a
471 capital felony under this paragraph shall also be ordered
472 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
473 (l)1. Any person who knowingly sells, purchases,
474 manufactures, delivers, or brings into this state, or who ~~is~~
475 knowingly is in actual or constructive possession with intent to
476 sell, purchase, manufacture, or deliver ~~of~~, 1 gram or more of
477 lysergic acid diethylamide (LSD) as described in s.

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478 893.03(1)(c), or of any mixture containing lysergic acid
479 diethylamide (LSD), commits a felony of the first degree, which
480 felony shall be known as "trafficking in lysergic acid
481 diethylamide (LSD)," punishable as provided in s. 775.082, s.
482 775.083, or s. 775.084. If the quantity involved:
483 a. Is 1 gram or more, but less than 5 grams, such person
484 shall be sentenced to a mandatory minimum term of imprisonment
485 of 3 years, and the defendant shall be ordered to pay a fine of
486 $50,000.
487 b. Is 5 grams or more, but less than 7 grams, such person
488 shall be sentenced to a mandatory minimum term of imprisonment
489 of 7 years, and the defendant shall be ordered to pay a fine of
490 $100,000.
491 c. Is 7 grams or more, such person shall be sentenced to a
492 mandatory minimum term of imprisonment of 15 calendar years, and
493 the defendant shall be ordered to pay a fine of $500,000.
494 2. Any person who knowingly manufactures or brings into
495 this state 7 grams or more of lysergic acid diethylamide (LSD)
496 as described in s. 893.03(1)(c), or any mixture containing
497 lysergic acid diethylamide (LSD), and who knows that the
498 probable result of such manufacture or importation would be the
499 death of any person commits capital manufacture or importation
500 of lysergic acid diethylamide (LSD), a capital felony punishable
501 as provided in ss. 775.082 and 921.142. Any person sentenced for
502 a capital felony under this paragraph shall also be ordered
503 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
504 (2) A person acts knowingly under subsection (1) if that
505 person intends to sell, purchase, manufacture, deliver, or bring
506 into this state, or to actually or constructively possess, any

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507 of the controlled substances listed in subsection (1),
508 regardless of which controlled substance listed in subsection
509 (1) is in fact sold, purchased, manufactured, delivered, or
510 brought into this state, or actually or constructively
511 possessed.
512 (3) Notwithstanding the provisions of s. 948.01, with
513 respect to any person who is found to have violated this
514 section, adjudication of guilt or imposition of sentence may
515 ~~shall~~ not be suspended, deferred, or withheld, and ~~nor shall~~
516 such person is not ~~be~~ eligible for parole before ~~prior to~~
517 serving the mandatory minimum term of imprisonment prescribed by
518 this section. A person sentenced to a mandatory minimum term of
519 imprisonment under this section is not eligible for any form of
520 discretionary early release, except pardon or executive clemency
521 or conditional medical release under s. 947.149, before ~~prior to~~
522 serving the mandatory minimum term of imprisonment.
523 (4) The state attorney may move the sentencing court to
524 reduce or suspend the sentence of any person who is convicted of
525 a violation of this section and who provides substantial
526 assistance in the identification, arrest, or conviction of any
527 of that person’s accomplices, accessories, coconspirators, or
528 principals or of any other person engaged in trafficking in
529 controlled substances. The arresting agency shall be given an
530 opportunity to be heard in aggravation or mitigation in
531 reference to any such motion. Upon good cause shown, the motion
532 may be filed and heard in camera. The judge hearing the motion
533 may reduce or suspend, defer, or withhold the sentence or
534 adjudication of guilt if the judge finds that the defendant
535 rendered such substantial assistance.

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536 (5) Any person who agrees, conspires, combines, or
537 confederates with another person to commit any act prohibited by
538 subsection (1) commits a felony of the first degree and is
539 punishable as if he or she had actually committed such
540 prohibited act. ~~Nothing in~~ This subsection does not ~~shall be~~
541 ~~construed to~~ prohibit separate convictions and sentences for a
542 violation of this subsection and any violation of subsection
543 (1).
544 (6)(a) A mixture, as defined in s. 893.02, containing any
545 controlled substance described in this section includes, but is
546 not limited to, a solution or a dosage unit, including, but not
547 limited to, a pill or tablet, containing a controlled substance.
548 (b) Except as provided in paragraph (c) ~~For the purpose of~~
549 ~~clarifying legislative intent regarding the weighing of a~~
550 ~~mixture containing a controlled substance described in this~~
551 ~~section~~, the weight of the controlled substance is the total
552 weight of the mixture, including the controlled substance and
553 any other substance in the mixture. If there is more than one
554 mixture containing the same controlled substance, the weight of
555 the controlled substance is calculated by aggregating the total
556 weight of each mixture.
557 (c) If the mixture is a prescription drug as defined in s.
558 499.003 and the weight of the controlled substance in the
559 mixture can be identified using the National Drug Code
560 Directory, as published by the United States Department of
561 Health and Human Services, the weight of the controlled
562 substance is the weight of the controlled substance identified
563 in the National Drug Code Directory, exclusive of other tablet
564 components. If there is more than one mixture that is a

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565 prescription drug and all of the mixtures contain the same
566 controlled substance, and the weight of the controlled substance
567 in each mixture can be identified using the National Drug Code
568 Directory, the weight of the controlled substance is calculated
569 by aggregating the weight of the controlled substance in each
570 mixture.
571 ~~(7) For the purpose of further clarifying legislative~~
572 ~~intent, the Legislature finds that the opinion in *Hayes v.*~~
573 ~~*State*, 750 So. 2d 1 (Fla. 1999) does not correctly construe~~
574 ~~legislative intent. The Legislature finds that the opinions in~~
575 ~~*State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v.*~~
576 ~~*Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe~~
577 ~~legislative intent.~~

By the Committee on Criminal Justice; and Senators Bogdanoff and Joyner

A bill to be entitled

An act relating to sentences of inmates; amending s. 893.135, F.S.; revising the quantity of a controlled substance which a person must knowingly sell, purchase, manufacture, deliver, or bring into this state with the intent to distribute in order to be subject to the automatic imposition of a mandatory minimum term of imprisonment; providing the method for determining the weight of a controlled substance in a mixture that is a prescription drug; revising legislative intent; amending s. 921.0022, F.S.; revising provisions to conform to changes made by the act; reenacting ss. 775.087(2)(a) and 782.04(1)(a), (3), and (4), F.S., relating to the possession or use of a weapon and murder, respectively, to incorporate the amendments made to s. 893.135, F.S., in references thereto; providing an effective date.

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

Section 1. Section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) A ~~Any~~ person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who ~~is~~ knowingly is in actual or constructive possession with intent to

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distribute ~~of~~, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years, and the defendant shall be ordered to pay a fine of $200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a

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59 dead harvested plant are not relevant in determining if the
60 plant is a "cannabis plant" or in the charging of an offense
61 under this paragraph. Upon conviction, the court shall impose
62 the longest term of imprisonment provided for in this paragraph.
63 (b)1. Any person who knowingly sells, purchases,
64 manufactures, delivers, or brings into this state, or who ~~is~~
65 knowingly is in actual or constructive possession with intent to
66 distribute ~~of~~, 50 ~~28~~ grams or more of cocaine, as described in
67 s. 893.03(2)(a)4., or of any mixture containing cocaine, but
68 less than 150 kilograms of cocaine or any such mixture, commits
69 a felony of the first degree, which felony shall be known as
70 "trafficking in cocaine," punishable as provided in s. 775.082,
71 s. 775.083, or s. 775.084. If the quantity involved:
72 a. Is 50 ~~28~~ grams or more, but less than 400 ~~200~~ grams,
73 such person shall be sentenced to a mandatory minimum term of
74 imprisonment of 3 years, and the defendant shall be ordered to
75 pay a fine of $50,000.
76 b. Is 400 ~~200~~ grams or more, but less than 4 kilograms ~~400~~
77 ~~grams~~, such person shall be sentenced to a mandatory minimum
78 term of imprisonment of 7 years, and the defendant shall be
79 ordered to pay a fine of $100,000.
80 c. Is 4 kilograms ~~400 grams~~ or more, but less than 150
81 kilograms, such person shall be sentenced to a mandatory minimum
82 term of imprisonment of 15 calendar years, and the defendant
83 shall be ordered to pay a fine of $250,000.
84 2. Any person who knowingly sells, purchases, manufactures,
85 delivers, or brings into this state, or who ~~is~~ knowingly is in
86 actual or constructive possession with intent to distribute ~~of~~,
87 150 kilograms or more of cocaine, as described in s.

88 893.03(2)(a)4., commits the first degree felony of trafficking
89 in cocaine. A person who has been convicted of the first-degree
90 ~~first degree~~ felony of trafficking in cocaine under this
91 subparagraph shall be punished by life imprisonment and is
92 ineligible for any form of discretionary early release except
93 pardon or executive clemency or conditional medical release
94 under s. 947.149. However, if the court determines that, in
95 addition to committing any act specified in this paragraph:
96 a. The person intentionally killed an individual or
97 counseled, commanded, induced, procured, or caused the
98 intentional killing of an individual and such killing was the
99 result; or
100 b. The person's conduct in committing that act led to a
101 natural, though not inevitable, lethal result,
102
103 such person commits the capital felony of trafficking in
104 cocaine, punishable as provided in ss. 775.082 and 921.142. Any
105 person sentenced for a capital felony under this paragraph shall
106 also be ordered ~~sentenced~~ to pay the maximum fine provided under
107 subparagraph 1.
108 3. Any person who knowingly brings into this state 300
109 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
110 and who knows that the probable result of such importation would
111 be the death of any person, commits capital importation of
112 cocaine, a capital felony punishable as provided in ss. 775.082
113 and 921.142. Any person sentenced for a capital felony under
114 this paragraph shall also be ordered ~~sentenced~~ to pay the
115 maximum fine provided under subparagraph 1.
116 (c)1. Any person who knowingly sells, purchases,

117 manufactures, delivers, or brings into this state, or who ~~is~~
118 knowingly is in actual or constructive possession with intent to
119 distribute ~~of~~, 4 grams or more of any morphine, opium,
120 oxycodone, hydrocodone, hydromorphone, or any salt, derivative,
121 isomer, or salt of an isomer thereof, including heroin, as
122 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
123 4 grams or more of any mixture containing any such substance,
124 but less than 30 kilograms of such substance or mixture, commits
125 a felony of the first degree, which felony shall be known as
126 "trafficking in illegal drugs," punishable as provided in s.
127 775.082, s. 775.083, or s. 775.084. If the quantity involved:
128 a. Is 4 grams or more, but less than 14 grams, such person
129 shall be sentenced to a mandatory minimum term of imprisonment
130 of 3 years, and the defendant shall be ordered to pay a fine of
131 $50,000.
132 b. Is 14 grams or more, but less than 28 grams, such person
133 shall be sentenced to a mandatory minimum term of imprisonment
134 of 15 years, and the defendant shall be ordered to pay a fine of
135 $100,000.
136 c. Is 28 grams or more, but less than 30 kilograms, such
137 person shall be sentenced to a mandatory minimum term of
138 imprisonment of 25 calendar years, and the defendant shall be
139 ordered to pay a fine of $500,000.
140 2. Any person who knowingly sells, purchases, manufactures,
141 delivers, or brings into this state, or who ~~is~~ knowingly is in
142 actual or constructive possession with intent to distribute ~~of~~,
143 30 kilograms or more of any morphine, opium, oxycodone,
144 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
145 salt of an isomer thereof, including heroin, as described in s.

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146 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
147 more of any mixture containing any such substance, commits the
148 first-degree ~~first degree~~ felony of trafficking in illegal
149 drugs. A person who has been convicted of the first-degree ~~first~~
150 ~~degree~~ felony of trafficking in illegal drugs under this
151 subparagraph shall be punished by life imprisonment and is
152 ineligible for any form of discretionary early release except
153 pardon or executive clemency or conditional medical release
154 under s. 947.149. However, if the court determines that, in
155 addition to committing any act specified in this paragraph:
156 a. The person intentionally killed an individual or
157 counseled, commanded, induced, procured, or caused the
158 intentional killing of an individual and such killing was the
159 result; or
160 b. The person's conduct in committing that act led to a
161 natural, though not inevitable, lethal result,
162
163 such person commits the capital felony of trafficking in illegal
164 drugs, punishable as provided in ss. 775.082 and 921.142. Any
165 person sentenced for a capital felony under this paragraph shall
166 also be ordered ~~sentenced~~ to pay the maximum fine provided under
167 subparagraph 1.
168 3. Any person who knowingly brings into this state 60
169 kilograms or more of any morphine, opium, oxycodone,
170 hydrocodone, hydromorphone, or any salt, derivative, isomer, or
171 salt of an isomer thereof, including heroin, as described in s.
172 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
173 more of any mixture containing any such substance, and who knows
174 that the probable result of such importation would be the death

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175 of any person, commits capital importation of illegal drugs, a
176 capital felony punishable as provided in ss. 775.082 and
177 921.142. Any person sentenced for a capital felony under this
178 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
179 fine provided under subparagraph 1.
180 (d)1. Any person who knowingly sells, purchases,
181 manufactures, delivers, or brings into this state, or who ~~is~~
182 knowingly is in actual or constructive possession with intent to
183 distribute ~~of~~, 50 ~~28~~ grams or more of phencyclidine or of any
184 mixture containing phencyclidine, as described in s.
185 893.03(2)(b), commits a felony of the first degree, which felony
186 shall be known as "trafficking in phencyclidine," punishable as
187 provided in s. 775.082, s. 775.083, or s. 775.084. If the
188 quantity involved:
189 a. Is 50 ~~28~~ grams or more, but less than 400 ~~200~~ grams,
190 such person shall be sentenced to a mandatory minimum term of
191 imprisonment of 3 years, and the defendant shall be ordered to
192 pay a fine of $50,000.
193 b. Is 400 ~~200~~ grams or more, but less than 4 kilograms ~~400~~
194 ~~grams~~, such person shall be sentenced to a mandatory minimum
195 term of imprisonment of 7 years, and the defendant shall be
196 ordered to pay a fine of $100,000.
197 c. Is 4 kilograms ~~400 grams~~ or more, such person shall be
198 sentenced to a mandatory minimum term of imprisonment of 15
199 calendar years, and the defendant shall be ordered to pay a fine
200 of $250,000.
201 2. Any person who knowingly brings into this state 8
202 kilograms ~~800 grams~~ or more of phencyclidine or of any mixture
203 containing phencyclidine, as described in s. 893.03(2)(b), and

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204 who knows that the probable result of such importation would be
205 the death of any person commits capital importation of
206 phencyclidine, a capital felony punishable as provided in ss.
207 775.082 and 921.142. Any person sentenced for a capital felony
208 under this paragraph shall also be ordered ~~sentenced~~ to pay the
209 maximum fine provided under subparagraph 1.
210 (e)1. Any person who knowingly sells, purchases,
211 manufactures, delivers, or brings into this state, or who ~~is~~
212 knowingly is in actual or constructive possession with intent to
213 distribute ~~of~~, 200 grams or more of methaqualone or of any
214 mixture containing methaqualone, as described in s.
215 893.03(1)(d), commits a felony of the first degree, which felony
216 shall be known as "trafficking in methaqualone," punishable as
217 provided in s. 775.082, s. 775.083, or s. 775.084. If the
218 quantity involved:
219 a. Is 200 grams or more, but less than 5 kilograms, such
220 person shall be sentenced to a mandatory minimum term of
221 imprisonment of 3 years, and the defendant shall be ordered to
222 pay a fine of $50,000.
223 b. Is 5 kilograms or more, but less than 25 kilograms, such
224 person shall be sentenced to a mandatory minimum term of
225 imprisonment of 7 years, and the defendant shall be ordered to
226 pay a fine of $100,000.
227 c. Is 25 kilograms or more, such person shall be sentenced
228 to a mandatory minimum term of imprisonment of 15 calendar
229 years, and the defendant shall be ordered to pay a fine of
230 $250,000.
231 2. Any person who knowingly brings into this state 50
232 kilograms or more of methaqualone or of any mixture containing

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233 methaqualone, as described in s. 893.03(1)(d), and who knows
234 that the probable result of such importation would be the death
235 of any person commits capital importation of methaqualone, a
236 capital felony punishable as provided in ss. 775.082 and
237 921.142. Any person sentenced for a capital felony under this
238 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
239 fine provided under subparagraph 1.
240 (f)1. Any person who knowingly sells, purchases,
241 manufactures, delivers, or brings into this state, or who ~~is~~
242 knowingly is in actual or constructive possession with intent to
243 distribute ~~of~~, 30 ~~14~~ grams or more of amphetamine, as described
244 in s. 893.03(2)(c)2., or methamphetamine, as described in s.
245 893.03(2)(c)4., or of any mixture containing amphetamine or
246 methamphetamine, or phenylacetone, phenylacetic acid,
247 pseudoephedrine, or ephedrine in conjunction with other
248 chemicals and equipment utilized in the manufacture of
249 amphetamine or methamphetamine, commits a felony of the first
250 degree, which felony shall be known as "trafficking in
251 amphetamine," punishable as provided in s. 775.082, s. 775.083,
252 or s. 775.084. If the quantity involved:
253 a. Is 30 ~~14~~ grams or more, but less than 200 ~~28~~ grams, such
254 person shall be sentenced to a mandatory minimum term of
255 imprisonment of 3 years, and the defendant shall be ordered to
256 pay a fine of $50,000.
257 b. Is 200 ~~28~~ grams or more, but less than 400 ~~200~~ grams,
258 such person shall be sentenced to a mandatory minimum term of
259 imprisonment of 7 years, and the defendant shall be ordered to
260 pay a fine of $100,000.
261 c. Is 400 ~~200~~ grams or more, such person shall be sentenced

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262 to a mandatory minimum term of imprisonment of 15 calendar
263 years, and the defendant shall be ordered to pay a fine of
264 $250,000.
265 2. Any person who knowingly manufactures or brings into
266 this state 1.5 kilograms ~~400 grams~~ or more of amphetamine, as
267 described in s. 893.03(2)(c)2., or methamphetamine, as described
268 in s. 893.03(2)(c)4., or of any mixture containing amphetamine
269 or methamphetamine, or phenylacetone, phenylacetic acid,
270 pseudoephedrine, or ephedrine in conjunction with other
271 chemicals and equipment used in the manufacture of amphetamine
272 or methamphetamine, and who knows that the probable result of
273 such manufacture or importation would be the death of any person
274 commits capital manufacture or importation of amphetamine, a
275 capital felony punishable as provided in ss. 775.082 and
276 921.142. Any person sentenced for a capital felony under this
277 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
278 fine provided under subparagraph 1.
279 (g)1. Any person who knowingly sells, purchases,
280 manufactures, delivers, or brings into this state, or who ~~is~~
281 knowingly is in actual or constructive possession with intent to
282 distribute ~~of~~, 4 grams or more of flunitrazepam or any mixture
283 containing flunitrazepam as described in s. 893.03(1)(a) commits
284 a felony of the first degree, which felony shall be known as
285 "trafficking in flunitrazepam," punishable as provided in s.
286 775.082, s. 775.083, or s. 775.084. If the quantity involved:
287 a. Is 4 grams or more but less than 14 grams, such person
288 shall be sentenced to a mandatory minimum term of imprisonment
289 of 3 years, and the defendant shall be ordered to pay a fine of
290 $50,000.

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291 b. Is 14 grams or more but less than 28 grams, such person
292 shall be sentenced to a mandatory minimum term of imprisonment
293 of 7 years, and the defendant shall be ordered to pay a fine of
294 $100,000.
295 c. Is 28 grams or more but less than 30 kilograms, such
296 person shall be sentenced to a mandatory minimum term of
297 imprisonment of 25 calendar years, and the defendant shall be
298 ordered to pay a fine of $500,000.
299 2. Any person who knowingly sells, purchases, manufactures,
300 delivers, or brings into this state, or who ~~is~~ knowingly is in
301 actual or constructive possession with intent to distribute ~~of~~
302 30 kilograms or more of flunitrazepam or any mixture containing
303 flunitrazepam as described in s. 893.03(1)(a) commits the first-
304 degree ~~first degree~~ felony of trafficking in flunitrazepam. A
305 person who has been convicted of the first-degree ~~first degree~~
306 felony of trafficking in flunitrazepam under this subparagraph
307 shall be punished by life imprisonment and is ineligible for any
308 form of discretionary early release except pardon or executive
309 clemency or conditional medical release under s. 947.149.
310 However, if the court determines that, in addition to committing
311 any act specified in this paragraph:
312 a. The person intentionally killed an individual or
313 counseled, commanded, induced, procured, or caused the
314 intentional killing of an individual and such killing was the
315 result; or
316 b. The person's conduct in committing that act led to a
317 natural, though not inevitable, lethal result,
318
319 such person commits the capital felony of trafficking in

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320 flunitrazepam, punishable as provided in ss. 775.082 and
321 921.142. Any person sentenced for a capital felony under this
322 paragraph shall also be ordered ~~sentenced~~ to pay the maximum
323 fine provided under subparagraph 1.
324 (h)1. Any person who knowingly sells, purchases,
325 manufactures, delivers, or brings into this state, or who ~~is~~
326 knowingly is in actual or constructive possession with intent to
327 distribute ~~of~~, 5 kilograms ~~1 kilogram~~ or more of gamma-
328 hydroxybutyric acid (GHB), as described in s. 893.03(1)(d), or
329 any mixture containing gamma-hydroxybutyric acid (GHB), commits
330 a felony of the first degree, which felony shall be known as
331 "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as
332 provided in s. 775.082, s. 775.083, or s. 775.084. If the
333 quantity involved:
334 a. Is 5 kilograms ~~1 kilogram~~ or more but less than 15 ~~5~~
335 kilograms, such person shall be sentenced to a mandatory minimum
336 term of imprisonment of 3 years, and the defendant shall be
337 ordered to pay a fine of $50,000.
338 b. Is 15 ~~5~~ kilograms or more but less than 30 ~~10~~ kilograms,
339 such person shall be sentenced to a mandatory minimum term of
340 imprisonment of 7 years, and the defendant shall be ordered to
341 pay a fine of $100,000.
342 c. Is 30 ~~10~~ kilograms or more, such person shall be
343 sentenced to a mandatory minimum term of imprisonment of 15
344 calendar years, and the defendant shall be ordered to pay a fine
345 of $250,000.
346 2. Any person who knowingly manufactures or brings into
347 this state 150 kilograms or more of gamma-hydroxybutyric acid
348 (GHB), as described in s. 893.03(1)(d), or any mixture

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349 containing gamma-hydroxybutyric acid (GHB), and who knows that
350 the probable result of such manufacture or importation would be
351 the death of any person commits capital manufacture or
352 importation of gamma-hydroxybutyric acid (GHB), a capital felony
353 punishable as provided in ss. 775.082 and 921.142. Any person
354 sentenced for a capital felony under this paragraph shall also
355 be ordered ~~sentenced~~ to pay the maximum fine provided under
356 subparagraph 1.
357 (i)1. Any person who knowingly sells, purchases,
358 manufactures, delivers, or brings into this state, or who ~~is~~
359 knowingly is in actual or constructive possession with intent to
360 distribute ~~of~~, 5 kilograms ~~1 kilogram~~ or more of gamma-
361 butyrolactone (GBL), as described in s. 893.03(1)(d), or any
362 mixture containing gamma-butyrolactone (GBL), commits a felony
363 of the first degree, which felony shall be known as "trafficking
364 in gamma-butyrolactone (GBL)," punishable as provided in s.
365 775.082, s. 775.083, or s. 775.084. If the quantity involved:
366 a. Is 5 kilograms ~~1 kilogram~~ or more but less than 15 ~~5~~
367 kilograms, such person shall be sentenced to a mandatory minimum
368 term of imprisonment of 3 years, and the defendant shall be
369 ordered to pay a fine of $50,000.
370 b. Is 15 ~~5~~ kilograms or more but less than 30 ~~10~~ kilograms,
371 such person shall be sentenced to a mandatory minimum term of
372 imprisonment of 7 years, and the defendant shall be ordered to
373 pay a fine of $100,000.
374 c. Is 30 ~~10~~ kilograms or more, such person shall be
375 sentenced to a mandatory minimum term of imprisonment of 15
376 calendar years, and the defendant shall be ordered to pay a fine
377 of $250,000.

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378 2. Any person who knowingly manufactures or brings into the
379 state 150 kilograms or more of gamma-butyrolactone (GBL), as
380 described in s. 893.03(1)(d), or any mixture containing gamma-
381 butyrolactone (GBL), and who knows that the probable result of
382 such manufacture or importation would be the death of any person
383 commits capital manufacture or importation of gamma-
384 butyrolactone (GBL), a capital felony punishable as provided in
385 ss. 775.082 and 921.142. Any person sentenced for a capital
386 felony under this paragraph shall also be ordered ~~sentenced~~ to
387 pay the maximum fine provided under subparagraph 1.
388 (j)1. Any person who knowingly sells, purchases,
389 manufactures, delivers, or brings into this state, or who ~~is~~
390 knowingly is in actual or constructive possession with intent to
391 distribute ~~of~~, 5 kilograms ~~1 kilogram~~ or more of 1,4-Butanediol
392 as described in s. 893.03(1)(d), or of any mixture containing
393 1,4-Butanediol, commits a felony of the first degree, which
394 felony shall be known as "trafficking in 1,4-Butanediol,"
395 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
396 If the quantity involved:
397 a. Is 5 kilograms ~~1 kilogram~~ or more, but less than 15 ~~5~~
398 kilograms, such person shall be sentenced to a mandatory minimum
399 term of imprisonment of 3 years, and the defendant shall be
400 ordered to pay a fine of $50,000.
401 b. Is 15 ~~5~~ kilograms or more, but less than 30 ~~10~~
402 kilograms, such person shall be sentenced to a mandatory minimum
403 term of imprisonment of 7 years, and the defendant shall be
404 ordered to pay a fine of $100,000.
405 c. Is 30 ~~10~~ kilograms or more, such person shall be
406 sentenced to a mandatory minimum term of imprisonment of 15

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407 calendar years, and the defendant shall be ordered to pay a fine
408 of $500,000.
409 2. Any person who knowingly manufactures or brings into
410 this state 150 kilograms or more of 1,4-Butanediol as described
411 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
412 and who knows that the probable result of such manufacture or
413 importation would be the death of any person commits capital
414 manufacture or importation of 1,4-Butanediol, a capital felony
415 punishable as provided in ss. 775.082 and 921.142. Any person
416 sentenced for a capital felony under this paragraph shall also
417 be ordered ~~sentenced~~ to pay the maximum fine provided under
418 subparagraph 1.
419 (k)1. Any person who knowingly sells, purchases,
420 manufactures, delivers, or brings into this state, or who ~~is~~
421 knowingly is in actual or constructive possession with intent to
422 distribute ~~of~~, 30 ~~10~~ grams or more of any of the following
423 substances described in s. 893.03(1)(a) or (c):
424 a. 3,4-Methylenedioxymethamphetamine (MDMA);
425 b. 4-Bromo-2,5-dimethoxyamphetamine;
426 c. 4-Bromo-2,5-dimethoxyphenethylamine;
427 d. 2,5-Dimethoxyamphetamine;
428 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
429 f. N-ethylamphetamine;
430 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
431 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
432 i. 4-methoxyamphetamine;
433 j. 4-methoxymethamphetamine;
434 k. 4-Methyl-2,5-dimethoxyamphetamine;
435 l. 3,4-Methylenedioxy-N-ethylamphetamine;

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436 m. 3,4-Methylenedioxyamphetamine;
437 n. N,N-dimethylamphetamine; or
438 o. 3,4,5-Trimethoxyamphetamine,
439
440 individually or in any combination of or any mixture containing
441 any substance listed in sub-subparagraphs a.-o., commits a
442 felony of the first degree, which felony shall be known as
443 "trafficking in Phenethylamines," punishable as provided in s.
444 775.082, s. 775.083, or s. 775.084.
445 2. If the quantity involved:
446 a. Is 30 ~~10~~ grams or more but less than 200 grams, such
447 person shall be sentenced to a mandatory minimum term of
448 imprisonment of 3 years, and the defendant shall be ordered to
449 pay a fine of $50,000.
450 b. Is 200 grams or more, but less than 400 grams, such
451 person shall be sentenced to a mandatory minimum term of
452 imprisonment of 7 years, and the defendant shall be ordered to
453 pay a fine of $100,000.
454 c. Is 400 grams or more, such person shall be sentenced to
455 a mandatory minimum term of imprisonment of 15 calendar years,
456 and the defendant shall be ordered to pay a fine of $250,000.
457 3. Any person who knowingly manufactures or brings into
458 this state 30 kilograms or more of any of the following
459 substances described in s. 893.03(1)(a) or (c):
460 a. 3,4-Methylenedioxymethamphetamine (MDMA);
461 b. 4-Bromo-2,5-dimethoxyamphetamine;
462 c. 4-Bromo-2,5-dimethoxyphenethylamine;
463 d. 2,5-Dimethoxyamphetamine;
464 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

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465 f. N-ethylamphetamine;
466 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
467 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
468 i. 4-methoxyamphetamine;
469 j. 4-methoxymethamphetamine;
470 k. 4-Methyl-2,5-dimethoxyamphetamine;
471 l. 3,4-Methylenedioxy-N-ethylamphetamine;
472 m. 3,4-Methylenedioxyamphetamine;
473 n. N,N-dimethylamphetamine; or
474 o. 3,4,5-Trimethoxyamphetamine,
475
476 individually or in any combination of or any mixture containing
477 any substance listed in sub-subparagraphs a.-o., and who knows
478 that the probable result of such manufacture or importation
479 would be the death of any person commits capital manufacture or
480 importation of Phenethylamines, a capital felony punishable as
481 provided in ss. 775.082 and 921.142. Any person sentenced for a
482 capital felony under this paragraph shall also be ordered
483 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
484 (l)1. Any person who knowingly sells, purchases,
485 manufactures, delivers, or brings into this state, or who ~~is~~
486 knowingly is in actual or constructive possession with intent to
487 distribute ~~of~~, 1 gram or more of lysergic acid diethylamide
488 (LSD) as described in s. 893.03(1)(c), or of any mixture
489 containing lysergic acid diethylamide (LSD), commits a felony of
490 the first degree, which felony shall be known as "trafficking in
491 lysergic acid diethylamide (LSD)," punishable as provided in s.
492 775.082, s. 775.083, or s. 775.084. If the quantity involved:
493 a. Is 1 gram or more, but less than 5 grams, such person

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494 shall be sentenced to a mandatory minimum term of imprisonment
495 of 3 years, and the defendant shall be ordered to pay a fine of
496 $50,000.
497 b. Is 5 grams or more, but less than 7 grams, such person
498 shall be sentenced to a mandatory minimum term of imprisonment
499 of 7 years, and the defendant shall be ordered to pay a fine of
500 $100,000.
501 c. Is 7 grams or more, such person shall be sentenced to a
502 mandatory minimum term of imprisonment of 15 calendar years, and
503 the defendant shall be ordered to pay a fine of $500,000.
504 2. Any person who knowingly manufactures or brings into
505 this state 7 grams or more of lysergic acid diethylamide (LSD)
506 as described in s. 893.03(1)(c), or any mixture containing
507 lysergic acid diethylamide (LSD), and who knows that the
508 probable result of such manufacture or importation would be the
509 death of any person commits capital manufacture or importation
510 of lysergic acid diethylamide (LSD), a capital felony punishable
511 as provided in ss. 775.082 and 921.142. Any person sentenced for
512 a capital felony under this paragraph shall also be ordered
513 ~~sentenced~~ to pay the maximum fine provided under subparagraph 1.
514 (2) A person acts knowingly under subsection (1) if that
515 person intends to sell, purchase, manufacture, deliver, or bring
516 into this state, or to actually or constructively possess, any
517 of the controlled substances listed in subsection (1),
518 regardless of which controlled substance listed in subsection
519 (1) is in fact sold, purchased, manufactured, delivered, or
520 brought into this state, or actually or constructively
521 possessed.
522 (3) Notwithstanding the provisions of s. 948.01, with

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

523 respect to any person who is found to have violated this
524 section, adjudication of guilt or imposition of sentence may
525 ~~shall~~ not be suspended, deferred, or withheld, and ~~nor shall~~
526 such person is not ~~be~~ eligible for parole before ~~prior to~~
527 serving the mandatory minimum term of imprisonment prescribed by
528 this section. A person sentenced to a mandatory minimum term of
529 imprisonment under this section is not eligible for any form of
530 discretionary early release, except pardon or executive clemency
531 or conditional medical release under s. 947.149, before ~~prior to~~
532 serving the mandatory minimum term of imprisonment.
533 (4) The state attorney may move the sentencing court to
534 reduce or suspend the sentence of any person who is convicted of
535 a violation of this section and who provides substantial
536 assistance in the identification, arrest, or conviction of any
537 of that person's accomplices, accessories, coconspirators, or
538 principals or of any other person engaged in trafficking in
539 controlled substances. The arresting agency shall be given an
540 opportunity to be heard in aggravation or mitigation in
541 reference to any such motion. Upon good cause shown, the motion
542 may be filed and heard in camera. The judge hearing the motion
543 may reduce or suspend, defer, or withhold the sentence or
544 adjudication of guilt if the judge finds that the defendant
545 rendered such substantial assistance.
546 (5) Any person who agrees, conspires, combines, or
547 confederates with another person to commit any act prohibited by
548 subsection (1) commits a felony of the first degree and is
549 punishable as if he or she had actually committed such
550 prohibited act. ~~Nothing in~~ This subsection does not ~~shall be~~
551 ~~construed to~~ prohibit separate convictions and sentences for a

552 violation of this subsection and any violation of subsection
553 (1).
554 (6) A mixture, as defined in s. 893.02, containing any
555 controlled substance described in this section includes, but is
556 not limited to, a solution or a dosage unit, including, but not
557 limited to, a pill or tablet, containing a controlled substance.
558 For the purpose of clarifying legislative intent regarding the
559 weighing of a mixture containing a controlled substance
560 described in this section, the weight of the controlled
561 substance is the total weight of the mixture, including the
562 controlled substance and any other substance in the mixture.
563 However, if the mixture is a prescription drug as defined in s.
564 499.003 and the weight of the controlled substance in the
565 mixture can be identified using the national drug code, the
566 weight of the controlled substance is the weight identified in
567 the national drug code. If there is more than one mixture
568 containing the same controlled substance, the weight of the
569 controlled substance is calculated by aggregating the total
570 weight of each mixture.
571 (7) For the purpose of further clarifying legislative
572 intent, the Legislature finds that the opinion in *Hayes v.*
573 *State*, 750 So. 2d 1 (Fla. 1999) ~~does not~~ correctly construes
574 ~~construe~~ legislative intent. The Legislature finds that the
575 opinions in *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998)
576 and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) do not
577 correctly construe legislative intent.
578 Section 2. Paragraphs (g), (h), and (i) of subsection (3)
579 of section 921.0022, Florida Statutes, are amended to read:
580 921.0022 Criminal Punishment Code; offense severity ranking

581 chart.—
582 (3) OFFENSE SEVERITY RANKING CHART
583 (g) LEVEL 7
584

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.

409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.

601

465.015(2)	3rd	Practicing pharmacy without a license.

602

466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.

603

467.201	3rd	Practicing midwifery without a license.

604

468.366	3rd	Delivering respiratory care services without a license.

605

483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.

606

483.901(9)	3rd	Practicing medical physics without a license.

607

484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

608

484.053	3rd	Dispensing hearing aids without a license.

609

494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.

610

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.

611

560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.

612

655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.

613

775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

614

775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.

615

775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

616

782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

617

782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.

784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing

		or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
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.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than

		16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
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.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

650

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.

651

812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

652

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

653

812.131(2)(a)	2nd	Robbery by sudden snatching.

654

812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

655

817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

656

817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.

657

817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.

658

817.2341 (2)(b) &	1st	Making false entries of material fact or false statements regarding property

(3)(b)		values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

659

825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

660

825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.

661

827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

662

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.

663

837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.

664

838.015	2nd	Bribery.

665

838.016	2nd	Unlawful compensation or reward for official behavior.

666

838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
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 (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 center.
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 (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 50 ~~28~~ grams, less than 400 ~~200~~ grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 50 ~~28~~ grams, less than 400 ~~200~~ grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 30 ~~14~~ grams, less than 200 ~~28~~ grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms ~~1 kilogram~~ or more, less than 15 ~~5~~ kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 5 kilograms ~~1 kilogram~~ or more, less than 15 ~~5~~ kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 30 ~~10~~ grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after

		indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to

		the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.

560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

714

782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.

715

782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.

716

790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.

717

794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

718

794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.

719

800.04(4)	2nd	Lewd or lascivious battery.

720

806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

721

810.02(2)(a)	1st,PBL	Burglary with assault or battery.

722

810.02(2)(b)	1st,PBL	Burglary; armed with explosives or

dangerous weapon.

723

810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.

724

812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.

725

812.13(2)(b)	1st	Robbery with a weapon.

726

812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

727

817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.

728

825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.

729

825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.

730

825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.

731

837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.

893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 400 ~~200~~ grams, less than 4 kilograms ~~400 grams~~.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 400 ~~200~~ grams, less than 4 kilograms ~~400 grams~~.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 200 ~~28~~ grams, less than 400 ~~200~~ grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 15 ~~5~~ kilograms or more, less than 30 ~~10~~ kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 15 ~~5~~ kilograms or more, less than 30 ~~10~~ kilograms.
893.135	1st	Trafficking in Phenethylamines, 200

(1)(k)2.b.		grams or more, less than 400 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.

764

775.0844	1st	Aggravated white collar crime.

765

782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

766

782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.

767

782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

768

782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.

769

787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.

770

787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.

771

787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.

772

787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

773

790.161	1st	Attempted capital destructive device offense.

774

790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.

775

794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.

776

794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.

777

794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.

778

794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.

779

794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.

859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 4 kilograms ~~400 grams~~, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 4 kilograms ~~400 grams~~.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 400 ~~200~~ grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 30 ~~10~~ kilograms or more.

797

893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 30 ~~10~~ kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

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801
802 Section 3. For the purpose of incorporating the amendments
803 made by this act to section 893.135, Florida Statutes, in a
804 reference thereto, paragraph (a) of subsection (2) of section
805 775.087, Florida Statutes, is reenacted to read:
806 775.087 Possession or use of weapon; aggravated battery;
807 felony reclassification; minimum sentence.—
808 (2)(a)1. Any person who is convicted of a felony or an
809 attempt to commit a felony, regardless of whether the use of a
810 weapon is an element of the felony, and the conviction was for:
811 a. Murder;
812 b. Sexual battery;
813 c. Robbery;
814 d. Burglary;

815 e. Arson;
816 f. Aggravated assault;
817 g. Aggravated battery;
818 h. Kidnapping;
819 i. Escape;
820 j. Aircraft piracy;
821 k. Aggravated child abuse;
822 l. Aggravated abuse of an elderly person or disabled adult;
823 m. Unlawful throwing, placing, or discharging of a
824 destructive device or bomb;
825 n. Carjacking;
826 o. Home-invasion robbery;
827 p. Aggravated stalking;
828 q. Trafficking in cannabis, trafficking in cocaine, capital
829 importation of cocaine, trafficking in illegal drugs, capital
830 importation of illegal drugs, trafficking in phencyclidine,
831 capital importation of phencyclidine, trafficking in
832 methaqualone, capital importation of methaqualone, trafficking
833 in amphetamine, capital importation of amphetamine, trafficking
834 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
835 (GHB), trafficking in 1,4-Butanediol, trafficking in
836 Phenethylamines, or other violation of s. 893.135(1); or
837 r. Possession of a firearm by a felon
838
839 and during the commission of the offense, such person actually
840 possessed a “firearm” or “destructive device” as those terms are
841 defined in s. 790.001, shall be sentenced to a minimum term of
842 imprisonment of 10 years, except that a person who is convicted
843 for aggravated assault, possession of a firearm by a felon, or

844 burglary of a conveyance shall be sentenced to a minimum term of
845 imprisonment of 3 years if such person possessed a “firearm” or
846 “destructive device” during the commission of the offense.
847 2. Any person who is convicted of a felony or an attempt to
848 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
849 regardless of whether the use of a weapon is an element of the
850 felony, and during the course of the commission of the felony
851 such person discharged a “firearm” or “destructive device” as
852 defined in s. 790.001 shall be sentenced to a minimum term of
853 imprisonment of 20 years.
854 3. Any person who is convicted of a felony or an attempt to
855 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
856 regardless of whether the use of a weapon is an element of the
857 felony, and during the course of the commission of the felony
858 such person discharged a “firearm” or “destructive device” as
859 defined in s. 790.001 and, as the result of the discharge, death
860 or great bodily harm was inflicted upon any person, the
861 convicted person shall be sentenced to a minimum term of
862 imprisonment of not less than 25 years and not more than a term
863 of imprisonment of life in prison.
864 Section 4. For the purpose of incorporating the amendments
865 made by this act to section 893.135, Florida Statutes, in
866 references thereto, paragraph (a) of subsection (1) and
867 subsections (3) and (4) of section 782.04, Florida Statutes, are
868 reenacted to read:
869 782.04 Murder.—
870 (1)(a) The unlawful killing of a human being:
871 1. When perpetrated from a premeditated design to effect
872 the death of the person killed or any human being;

873 2. When committed by a person engaged in the perpetration
874 of, or in the attempt to perpetrate, any:
875 a. Trafficking offense prohibited by s. 893.135(1),
876 b. Arson,
877 c. Sexual battery,
878 d. Robbery,
879 e. Burglary,
880 f. Kidnapping,
881 g. Escape,
882 h. Aggravated child abuse,
883 i. Aggravated abuse of an elderly person or disabled adult,
884 j. Aircraft piracy,
885 k. Unlawful throwing, placing, or discharging of a
886 destructive device or bomb,
887 l. Carjacking,
888 m. Home-invasion robbery,
889 n. Aggravated stalking,
890 o. Murder of another human being,
891 p. Resisting an officer with violence to his or her person,
892 q. Felony that is an act of terrorism or is in furtherance
893 of an act of terrorism; or
894 3. Which resulted from the unlawful distribution of any
895 substance controlled under s. 893.03(1), cocaine as described in
896 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
897 compound, derivative, or preparation of opium, or methadone by a
898 person 18 years of age or older, when such drug is proven to be
899 the proximate cause of the death of the user,
900
901 is murder in the first degree and constitutes a capital felony,

902 punishable as provided in s. 775.082.
903 (3) When a person is killed in the perpetration of, or in
904 the attempt to perpetrate, any:
905 (a) Trafficking offense prohibited by s. 893.135(1),
906 (b) Arson,
907 (c) Sexual battery,
908 (d) Robbery,
909 (e) Burglary,
910 (f) Kidnapping,
911 (g) Escape,
912 (h) Aggravated child abuse,
913 (i) Aggravated abuse of an elderly person or disabled
914 adult,
915 (j) Aircraft piracy,
916 (k) Unlawful throwing, placing, or discharging of a
917 destructive device or bomb,
918 (l) Carjacking,
919 (m) Home-invasion robbery,
920 (n) Aggravated stalking,
921 (o) Murder of another human being,
922 (p) Resisting an officer with violence to his or her
923 person, or
924 (q) Felony that is an act of terrorism or is in furtherance
925 of an act of terrorism,
926
927 by a person other than the person engaged in the perpetration of
928 or in the attempt to perpetrate such felony, the person
929 perpetrating or attempting to perpetrate such felony is guilty
930 of murder in the second degree, which constitutes a felony of

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

931 the first degree, punishable by imprisonment for a term of years
932 not exceeding life or as provided in s. 775.082, s. 775.083, or
933 s. 775.084.
934 (4) The unlawful killing of a human being, when perpetrated
935 without any design to effect death, by a person engaged in the
936 perpetration of, or in the attempt to perpetrate, any felony
937 other than any:
938 (a) Trafficking offense prohibited by s. 893.135(1),
939 (b) Arson,
940 (c) Sexual battery,
941 (d) Robbery,
942 (e) Burglary,
943 (f) Kidnapping,
944 (g) Escape,
945 (h) Aggravated child abuse,
946 (i) Aggravated abuse of an elderly person or disabled
947 adult,
948 (j) Aircraft piracy,
949 (k) Unlawful throwing, placing, or discharging of a
950 destructive device or bomb,
951 (l) Unlawful distribution of any substance controlled under
952 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
953 opium or any synthetic or natural salt, compound, derivative, or
954 preparation of opium by a person 18 years of age or older, when
955 such drug is proven to be the proximate cause of the death of
956 the user,
957 (m) Carjacking,
958 (n) Home-invasion robbery,
959 (o) Aggravated stalking,

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

960 (p) Murder of another human being,
961 (q) Resisting an officer with violence to his or her
962 person, or
963 (r) Felony that is an act of terrorism or is in furtherance
964 of an act of terrorism,
965
966 is murder in the third degree and constitutes a felony of the
967 second degree, punishable as provided in s. 775.082, s. 775.083,
968 or s. 775.084.
969 Section 5. This act shall take effect July 1, 2012.

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

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 Judiciary Committee

BILL: CS/SB 1050

INTRODUCER: Banking and Insurance Committee and Senator Bogdanoff

SUBJECT: Mortgages

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Current law allows mortgagors to request and receive, within 14 days, information about their loan, such as the payoff, from the mortgagee. This information is provided by a mortgagee and is known as an estoppels letter. The bill allows a record title owner of a property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property to also obtain an estoppel letter. To receive the information, these authorized persons must provide a copy of the instrument proving title in the property ownership interest or lawful authorization. Once a request is made, the mortgagee must provide the total unpaid balance on a per-day basis, but may also include additional information in the estoppel letter.

The bill also makes a number of clarifying and substantive changes to the Florida Principal and Income Act (act). This bill represents the first broad revision of the act since it was enacted in 2002. The bill implements a smoothing rule where fiduciaries calculate the average fair market value of the current year assets and the preceding years' assets to address spikes due to fluctuations in the market. The bill modifies the default guidelines applicable to unitrusts, distribution of income, the partial liquidation rule, marital tax deductions, liquidating assets, income taxes, and property improvements.

This bill substantially amends the following sections of the Florida Statutes: 701.04, 738.102, 738.103, 738.104, 738.1041, 738.105, 738.201, 738.202, 738.301, 738.302, 738.303, 738.401, 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.601, 738.602, 738.603, 738.604, 738.605, 738.606, 738.607, 738.608, 738.701, 738.702, 738.703, 738.704, 738.705, and 738.801.

II. Present Situation:

Release of Mortgage Information

Chapter 701, F.S., allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days of a written request.[1] The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

Current law does not require the mortgagee to provide information relating to the mortgagor's loan to anyone other than the mortgagor of the encumbered property. However, persons who may have a legitimate interest in knowing the loan information include, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

Privacy Laws Related to the Release of Mortgage Information

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC ss. 6801-6809, addresses privacy requirements and disclosure or nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice disclosing the institution's privacy policy that complies with applicable federal law.[2] Under the Gramm-Leach-Bliley Act, states may enact laws to require financial institutions to disclose loan information to persons other than the mortgagor.[3]

Pursuant to s. 655.059, F.S., the records of a financial institution[4] are confidential and are made available for inspection and examination only in specifically enumerated circumstances or to specifically listed individuals or entities. Under current law, if the mortgagee is a financial

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[1] Section 701.04, F.S.

[2] *See* 15 U.S.C.A. § 6803 which provides requirements for the disclosure of a financial institution's privacy policy.

[3] "[T]o comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law." 15 U.S.C. § 6802(e)(8).

[4] Section 55.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."

institution, the mortgagee may violate privacy laws and face penalties for releasing the mortgagor's mortgage information.

Uniform Principal and Income Act

In 2002, the Florida Legislature enacted a slightly modified version of the Uniform Principal and Income Act (1997), as developed by the National Commissioners on Uniform State Laws.[5] The Florida Uniform Principal and Income Act (act) specifies procedures for trustees administering an estate in separating principal from income and to ensure that the intention of the trust creator is the guiding principle for trustees.[6] The act establishes default rules for trustees and fiduciaries when making allocations of principal and income where the will or trust instrument is silent.[7]

Under the act, "principal" means "property held in trust for distribution to a remainder beneficiary when the trust terminates."[8] Under the act, the term "income" means "money or property that a fiduciary[9] receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in [the act]."[10] "Fiduciary" is defined under the act to mean "a personal representative or a trustee. The term includes an executor, administrator, successor, personal representative, special administrator, or a person performing substantially the same function."[11] "Trustee" is defined under the act, "to includ[e] an original, additional, or successor trustee, whether or not appointed or confirmed by a court."[12]

III. Effect of Proposed Changes:

Release of Mortgage Information

The bill amends s. 701.04(1), F.S., to require a mortgage holder to release mortgage information to a record title owner of the property, as well as a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property. The mortgagee is required to provide the estoppel letter containing such information within 14 days after receipt of a written request.

If the requestor is not the mortgagor, the estoppel letter does not have to contain an itemization of the unpaid balance of the loan secured by the mortgage, but it must include a per-day amount for the unpaid balance. A record title owner of a property, or any person lawfully authorized to

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[5] Chapter 2002-42, Laws of Florida. See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 1166 (2002 Reg. Session) by the Senate Committee on Banking and Insurance (February 26, 2002).
[6] National Conference of Commissioners on Uniform State Laws, *Why States Should Adopt UPIA*, available at http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UPIA (last visited Jan. 21, 2012).
[7] *Id.*
[8] Section 738.102(10), F.S.
[9] *See e.g.*, "Fiduciary" is defined to mean "A person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor. One who must exercise a high standard of care in managing another's money or property." BLACK'S LAW DICTIONARY (9th ed. 2009).
[10] Section 738.102(4), F.S.
[11] Section 738.102(3), F.S.
[12] Section 738.102(13), F.S.

act on behalf of a mortgagor or record title owner must include, along with the request, a copy of the instrument showing title in the property or lawful authorization.

The bill provides that the mortgagee or servicer of the mortgagee, acting pursuant to the request, is not liable to any person because of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter. A mortgagee is authorized to provide the information required under this bill to a person authorized to request the financial information notwithstanding laws that would otherwise prohibit the disclosure of the information.

Uniform Principal and Income Act

Trustee/Fiduciary

The bill changes the term, "trustee" to "fiduciary" throughout ch. 738, F.S., wherever the term, "trustee" should also apply to a fiduciary that is not specifically designated as a trustee.

Section 738.104(11), F.S., is repealed which provides that s. 738.104, F.S., relating to a trustee's power to adjust, "shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered in [Florida] or under Florida law."[13] This provision would be redundant to the bill's changes in s. 738.103, F.S., which provide that ch. 738, F.S., pertains to the administration of trusts administered in Florida or under its law, and to any estate that is administered in Florida unless the provision of the chapter is limited in application to a trustee, rather than a fiduciary.

Carrying Value

The bill amends s. 738.102, F.S., to define "carrying value" to mean the fair market value at the time the assets are received by the fiduciary. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. The bill amends s. 738.202, F.S., to apply the carrying value, which will simplify administration of trusts by not requiring the fiduciary to revalue the assets on each distribution date unless there is a disproportionate distribution to one or more beneficiaries, in which case the bill provides guidelines on how to make the distribution.[14]

Unitrusts

A "unitrust" is defined as "a trust from which a fixed percentage of the fair market value of the trust's assets, valued annually, is paid each year to the beneficiary."[15] The bill creates new rules for valuing assets for unitrusts. The bill amends s. 738.1041(1)(a), F.S., to create a definition of the term, "average fair market value" which includes what is commonly referred to as the

[13] Section 738.104(11), F.S.
[14] See Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on a Proposed Bill to Amend the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes* (2010) (on file with the Senate Committee on Judiciary).
[15] BLACK'S LAW DICTIONARY (9th ed. 2009).

"smoothing rule." The "smoothing rule" is intended to reduce the large differences in amounts distributable to a beneficiary from year to year resulting from large market fluctuations by using the average fair market value over the past three years to value assets.[16]

Determination and Distribution of Net Income

Under current law, a fiduciary is required, to distribute to the beneficiary who receives a pecuniary amount outright the interest provided by will, the terms of the trust, or applicable law. This concept was adopted as part of the UPIA. However, the Real Property, Probate and Trust Law Section of The Florida Bar indicate that there are not any situations to which this law applies in Florida.[17]

The bill amends s. 738.201(3), F.S., to remove unnecessary language referring to "applicable law" where there is no applicable law and to remove UPIA language relating to a statutory right to income on a pecuniary device, which is not a right in Florida.[18]

Character of Receipts

Current law establishes a default provision for determining whether money or property received by a trust should be allocated to principal or income. Payments in excess of 20 percent of an entity's assets are assumed to be liquidating distributions which are allocated to principal (the 20 percent partial liquidation rule). Certain entities pay large dividends that may exceed this limit despite not being liquidating assets.[19]

The bill amends s. 738.401, F.S., to retain the 20 percent partial liquidation for non-publicly-traded entities, but only after the trust or estate has received a cumulative minimum return of 3 percent annually. The bill provides a framework for allocating dividends and other stock payments that exceed 10 percent of the fair market value of the trust's interest in an entity, and provides rules for different types of entities, such as publicly traded companies, partnerships, subchapter S corporations, and other entities.[20]

Marital Trusts and Deduction

Provisions within the act contain a methodology for computing income from assets held in marital trusts and another more complex method of computing the allocation of principal and income from non-marital trusts.[21]

The bill amends s. 738.602(4), F.S., to simplify the method for computing income held in non-marital trusts. The bill also amends s. 738.602(5), F.S., to ensure that the estate or gift tax marital deduction applies not only to federal tax laws, but also to tax laws of other states where the trust

[16] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on a Proposed Bill to Amend the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes* (2010) (on file with the Senate Committee on Judiciary).
[17] *Id.*
[18] *Id.*
[19] Section 738.401, F.S.
[20] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on a Proposed Bill to Amend the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes* (2010) (on file with the Senate Committee on Judiciary).
[21] *Compare* ss. 738.602(4) and 738.602(5), F.S.

is administered in Florida. The bill also amends s. 738.606(1), F.S., to clarify that the marital deduction may apply to the federal tax laws or tax laws of other states.

Liquidating Asset

Assets in a trust which are expected to produce receipts for a limited period of time are allocated so that 10 percent of the payments go to income and the rest are applied to principal. According to the Real Property, Probate, and Trust Law Section of The Florida Bar, the Internal Revenue Service (IRS) recently ruled that the safe harbor for allocations to income was between 3 percent and 5 percent of income, putting Florida trusts at risk for additional tax liabilities.[22]

The bill amends s. 738.603(2), F.S., to change the percentage of limited-duration assets applied to income to 5 percent from 10 percent to comply with an IRS ruling that 5 percent is the maximum safe harbor for such an allocation.

Income Taxes

Current law provides guidelines for paying income taxes out of a trust, including guidelines specifically for paying taxes on an entity's taxable income. Current law also requires payment from income to the extent receipts from the entity are allocated to income and from principal to the extent that receipts from the entity are allocated to principal and the trust's share of the entity's taxable income exceeds the total of such receipts. Receipts allocated to principal or income, are reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.[23]

The bill amends s. 738.705, F.S., to provide new guidelines for paying income taxes out of a trust. The bill provides that an income tax required to be paid on the trust or estate's share of an entity's taxable income is to be paid proportionally from income to the extent the receipts from the entity are allocated to income, from principal to the extent the receipts from the entity are allocated to principal, and from principal to the extent that the income taxes payable by the trust or estate exceed the total distributions from the entity. Then, the fiduciary is to adjust income or principal receipts to the extent that the trust or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary, with additional guidelines to provide clarity to the fiduciary.

Improvements

Under the common law, when a tenant of a property had a life estate, the tenant was generally responsible for the maintenance of the property while the holder of the remainder interest, or the remainderman, was responsible for capital improvements. The original adoption of UPIA attempted to codify the common law rule, but the wording of the act could lead to a different

[22] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on a Proposed Bill to Amend the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes* (2010) (on file with the Senate Committee on Judiciary).
[23] Section 738.705, F.S.

conclusion for the apportionment of expenses because the UPIA used terms commonly used in trust law, which did not exist at common law.[24]

The bill amends s. 738.801, F.S., to provide definitions and additional guidelines for apportioning expenses between the life tenant and the remainderman. Life tenants are responsible for paying ordinary expenses and maintenance, recurring insurance premiums, and other expenses which are attributable to the property's use by the life tenant. The remainderman is responsible for paying mortgage debt (debt secured by the property) not allocated to the tenant, expenses of any proceeding concerning the title to the property other than the title to the tenant's estate, environmental expenses, and extraordinary repairs. If either the life estate tenant or the remainderman incurs an expense for personal benefit without the consent of the other, then he or she bears the expense in full. For improvements that add value to the property forming part of the principal, the expense is split between the life tenant and the remainderman. The tenant pays to the extent that the improvement increases the value of the tenant's estate if the improvement is not reasonably expected to outlast the life tenant's estate.

The bill provides an effective date of January 1, 2013.

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 will allow a record title owner of a property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property access to information in order to pay off a mortgage and clear title to the property. Holders of mortgages may incur some indeterminate costs to accommodate additional requests.

[24] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on a Proposed Bill to Amend the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes* (2010) (on file with the Senate Committee on Judiciary).

In regards to the changes to the Florida Uniform Principal and Income Act, the bill will provide greater clarity and guidance relating to IRS issues and reduce administrative concerns in the determination of income and principal, which will ultimately benefit beneficiaries of a trust or estate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on February 7, 2012:
The bill also makes a number of clarifying and substantive changes to the Florida Principal and Income Act (act). The bill implements a smoothing rule where fiduciaries calculate the average fair market value of the current year assets and the preceding years' assets to address spikes due to fluctuations in the market. The bill modifies the default guidelines applicable to unitrusts, distribution of income, the partial liquidation rule, marital tax deductions, liquidating assets, income taxes, and property improvements.

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 the Committee on Banking and Insurance; and Senator Bogdanoff

597-03059-12 20121050c1

A bill to be entitled

An act relating to fiduciaries; amending s. 701.04, F.S.; requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; allowing financial institutions to release certain mortgagor information to specified persons without penalty; amending s. 738.102, F.S.; defining the term “carrying value”; amending s. 738.103, F.S.; providing for application; amending s. 738.104, F.S.; deleting a provision authorizing a trustee to release the power to adjust between principal and income if the trustee desires to convert the form of certain trusts; limiting the power to adjust a trust; deleting a provision that provides for construction and application relating to the administration of trusts in this state or under this state’s law; amending s. 738.1041, F.S.; defining the term “average fair market value” and revising definition of the term “unitrust amount”; deleting a duplicative provision relating to conclusive determinations of the terms of a unitrust; revising provisions relating to an express total return unitrust; amending s. 738.105, F.S.; substituting the

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597-03059-12 20121050c1

term “trustee” for “fiduciary” with respect to judicial control of discretionary powers; amending s. 738.201, F.S.; revising provisions relating to the determination and distribution of net income; amending s. 738.202, F.S.; revising provisions relating to distributions to residuary and remainder beneficiaries; amending ss. 738.301, 738.302, and 738.303, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries; amending s. 738.401, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries; revising how distributions from entities are allocated between income and principal; amending ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries; amending s. 738.602, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries; revising provisions relating to allocations to trusts; amending s. 738.603, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries; revising provisions relating to the allocation between income and principal when liquidating assets; amending ss. 738.604, 738.605, 738.606, 738.607, 738.608, 738.701, 738.702, 738.703, and 738.704, F.S.; substituting the term “fiduciary” for “trustee” to clarify that provisions apply to all fiduciaries;

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amending s. 738.705, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising the method for allocating income taxes between income and principal; amending s. 738.801, F.S.; clarifying the apportionment of expenses between tenants and remaindermen; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the holder of a mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the request ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.~~,~~

(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the ~~including~~ principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person

lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:

1. The request must include a copy of the instrument showing title in the property or lawful authorization.

2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

3. The mortgagee or servicer of the mortgagee acting in accordance with a request in substantial compliance with this paragraph is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(c) A mortgage holder may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information notwithstanding s. 655.059.

(2) Whenever the amount of money due on any mortgage, lien, or judgment has been ~~shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute in writing an instrument acknowledging satisfaction of the ~~said~~ mortgage, lien, or judgment and have the instrument ~~same~~ acknowledged, or proven, and duly entered ~~of record in the book provided by law for such purposes~~ in the official records of the proper county. Within 60 days after ~~of~~ the date of receipt of the full payment of the mortgage, lien, or judgment, the person

117 required to acknowledge satisfaction of the mortgage, lien, or
118 judgment shall send or cause to be sent the recorded
119 satisfaction to the person who has made the full payment. In the
120 case of a civil action arising out of ~~the provisions of~~ this
121 section, the prevailing party is ~~shall be~~ entitled to attorney
122 ~~attorney's~~ fees and costs.
123 (3) ~~(2)~~ Whenever a writ of execution has been issued,
124 docketed, and indexed with a sheriff and the judgment upon which
125 it was issued has been fully paid, it is ~~shall be~~ the
126 responsibility of the party receiving payment to request, in
127 writing, addressed to the sheriff, return of the writ of
128 execution as fully satisfied.
129 Section 2. Present subsections (3) through (13) of section
130 738.102, Florida Statutes, are renumbered as subsections (4)
131 through (14), respectively, and a new subsection (3) is added to
132 that section, to read:
133 738.102 Definitions.—As used in this chapter, the term:
134 (3) "Carrying value" means the fair market value at the
135 time the assets are received by the fiduciary. For the estates
136 of decedents and trusts described in s. 733.707(3), after the
137 grantor's death, the assets are considered received as of the
138 date of death. If there is a change in fiduciaries, a majority
139 of the continuing fiduciaries may elect to adjust the carrying
140 values to reflect the fair market value of the assets at the
141 beginning of their administration. If such election is made, it
142 must be reflected on the first accounting filed after the
143 election. For assets acquired during the administration of the
144 estate or trust, the carrying value is equal to the acquisition
145 costs of the asset.

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146 Section 3. Subsection (3) is added to section 738.103,
147 Florida Statutes, to read:
148 738.103 Fiduciary duties; general principles.—
149 (3) Except as provided in s. 738.1041(9), this chapter
150 pertains to the administration of a trust and is applicable to
151 any trust that is administered in this state or under its law.
152 This chapter also applies to any estate that is administered in
153 this state unless the provision is limited in application to a
154 trustee, rather than a fiduciary.
155 Section 4. Subsections (5) and (11) of section 738.104,
156 Florida Statutes, are amended to read:
157 738.104 Trustee's power to adjust.—
158 (5) ~~(a) A trustee may release the entire power to adjust~~
159 ~~conferred by subsection (1) if the trustee desires to convert an~~
160 ~~income trust to a total return unitrust pursuant to s. 738.1041.~~
161 ~~(b)~~ A trustee may release the entire power to adjust
162 conferred by subsection (1) or may release only the power to
163 adjust from income to principal or the power to adjust from
164 principal to income if the trustee is uncertain about whether
165 possessing or exercising the power will cause a result described
166 in paragraphs (3)(a)-(e) or paragraph (3)(g) or if the trustee
167 determines that possessing or exercising the power will or may
168 deprive the trust of a tax benefit or impose a tax burden not
169 described in subsection (3).
170 ~~(c)~~ A release under this subsection may be permanent or for
171 a specified period, including a period measured by the life of
172 an individual. ~~Notwithstanding anything contrary to this~~
173 ~~subsection, a release of the power to adjust pursuant to~~
174 ~~paragraph (a) shall remain effective only for as long as the~~

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175 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~
176 ~~(11) This section shall be construed as pertaining to the~~
177 ~~administration of a trust and is applicable to any trust that is~~
178 ~~administered either in this state or under Florida law.~~
179 Section 5. Section 738.1041, Florida Statutes, is amended
180 to read:
181 738.1041 Total return unitrust.—
182 (1) For purposes of this section, the term:
183 (a) "Average fair market value" means the average of the
184 fair market values of assets held by the trust at the beginning
185 of the current and each of the 2 preceding years, or for the
186 entire term of the trust if there are less than 2 preceding
187 years, and adjusted as follows:
188 1. If assets have been added to the trust during the years
189 used to determine the average, the amount of each addition is
190 added to all years in which such addition was not included.
191 2. If assets have been distributed from the trust during
192 the years used to determine the average, other than in
193 satisfaction of the unitrust amount, the amount of each
194 distribution is subtracted from all years in which such
195 distribution was not included.
196 (b) ~~(a)~~ "Disinterested person" means a person who is not a
197 ~~"~~related or subordinate party~~" as defined in s. 672(c) of the~~
198 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~
199 ~~any successor provision thereof,~~ with respect to the person ~~then~~
200 acting as trustee of the trust and excludes the grantor and any
201 interested trustee.
202 (c) ~~(b)~~ "Fair market value" means the fair market value of
203 the assets held by the trust as otherwise determined under this

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204 chapter, reduced by all known noncontingent liabilities.
205 (d) ~~(c)~~ "Income trust" means a trust, created by ~~either~~ an
206 inter vivos or a testamentary instrument, which directs or
207 permits the trustee to distribute the net income of the trust to
208 one or more persons, ~~either~~ in fixed proportions or in amounts
209 or proportions determined by the trustee and regardless of
210 whether the trust directs or permits the trustee to distribute
211 the principal of the trust to one or more such persons.
212 (e) ~~(d)~~ "Interested distributee" means a person to whom
213 distributions of income or principal can currently be made and
214 who has the power to remove the existing trustee and designate
215 as successor a person who may be a ~~"~~related or subordinate
216 party~~," as defined in the Internal Revenue Code, 26 U.S.C. s.~~
217 ~~672(c),~~ with respect to such distributee.
218 (f) ~~(e)~~ "Interested trustee" means an individual trustee to
219 whom the net income or principal of the trust can currently be
220 distributed or would be distributed if the trust were then to
221 terminate and be distributed, any trustee whom an interested
222 distributee has the power to remove and replace with a related
223 or subordinate party ~~as defined in paragraph (d)~~, or an
224 individual trustee whose legal obligation to support a
225 beneficiary may be satisfied by distributions of income and
226 principal of the trust.
227 (g) "Related or subordinate party" has the same meaning as
228 provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or
229 any successor provision thereof.
230 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
231 multiplying the average fair market value of the assets as
232 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage

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233 calculated under paragraph (2)(b).
234 (2) A trustee may, without court approval, convert an
235 income trust to a total return unitrust, reconvert a total
236 return unitrust to an income trust, or change the percentage
237 used to calculate the unitrust amount or the method used to
238 determine the fair market value of the trust if:
239 (a) The trustee adopts a written statement regarding trust
240 distributions which ~~that~~ provides:
241 1. In the case of a trust being administered as an income
242 trust, that future distributions from the trust will be unitrust
243 amounts rather than net income, and indicates the manner in
244 which the unitrust amount will be calculated and the method in
245 which the fair market value of the trust will be determined.
246 2. In the case of a trust being administered as a total
247 return unitrust, that:
248 a. Future distributions from the trust will be net income
249 rather than unitrust amounts; or
250 b. The percentage used to calculate the unitrust amount or
251 the method used to determine the fair market value of the trust
252 will be changed, and indicates the manner in which the new
253 unitrust amount will be calculated and the method in which the
254 new fair market value of the trust will be determined;
255 (b) The trustee determines the terms of the unitrust under
256 one of the following methods:
257 1. A disinterested trustee determines, or if there is no
258 trustee other than an interested trustee, the interested trustee
259 appoints a disinterested person who, in its sole discretion but
260 acting in a fiduciary capacity, determines for the interested
261 trustee:

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262 a. The percentage to be used to calculate the unitrust
263 amount, provided the percentage used is not greater than 5
264 percent nor less than 3 percent;
265 b. The method to be used in determining the fair market
266 value of the trust; and
267 c. Which assets, if any, are to be excluded in determining
268 the unitrust amount; or
269 2. The interested trustee or disinterested trustee
270 administers the trust such that:
271 a. The percentage used to calculate the unitrust amount is
272 50 percent of the ~~applicable federal~~ rate as defined in the
273 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
274 month the conversion under this section becomes effective and
275 for each January thereafter; however, if the percentage
276 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
277 ~~be~~ 5 percent and if the percentage calculated is less than 3
278 percent, the unitrust percentage is ~~shall be~~ 3 percent; and
279 b. The fair market value of the trust shall be determined
280 at least annually on an asset-by-asset basis, reasonably and in
281 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
282 except the following property shall not be included in
283 determining the value of the trust:
284 (I) Any residential property or any tangible personal
285 property that, as of the first business day of the current
286 valuation year, one or more current beneficiaries of the trust
287 have or have had the right to occupy, or have or have had the
288 right to possess or control, ~~(~~other than in his or her capacity
289 as trustee of the trust~~)~~, and instead the right of occupancy or
290 the right to possession and control is ~~shall be deemed to be~~ the

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291 unitrust amount with respect to such property; however, the
292 unitrust amount must ~~shall~~ be adjusted to take into account
293 partial distributions from or receipt into the trust of such
294 property during the valuation year;~~.~~
295 (II) Any asset specifically given to a beneficiary and the
296 return on investment on such property, which return on
297 investment shall be distributable to the ~~such~~ beneficiary; or~~.~~
298 (III) Any asset while held in a decedent's ~~testator's~~
299 estate;
300 (c) The trustee sends written notice of its intention to
301 take such action, along with copies of the ~~such~~ written
302 statement regarding trust distributions and this section, and,
303 if applicable, the determinations of ~~either~~ the trustee or the
304 disinterested person to:
305 1. The grantor of the trust, if living.
306 2. All living persons who are currently receiving or
307 eligible to receive distributions of income from ~~of~~ the trust.
308 3. All living persons who would receive distributions of
309 principal of the trust if the trust were to terminate at the
310 time of ~~the~~ giving ~~of~~ such notice ~~(~~without regard to the
311 exercise of any power of appointment,~~)~~ or, if the trust does not
312 provide for its termination, all living persons who would
313 receive or be eligible to receive distributions of income or
314 principal of the trust if the persons identified in subparagraph
315 2. were deceased.
316 4. All persons acting as advisers or protectors of the
317 trust.
318
319 Notice under this paragraph shall be served informally~~,~~ in the

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320 manner provided in the Florida Rules of Civil Procedure relating
321 to service of pleadings subsequent to the initial pleading.
322 Notice may be served on a legal representative or natural
323 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
324 approval of any court;
325 (d) At least one person receiving notice under each of
326 subparagraphs (c)2. and 3. is legally competent; and
327 (e) No person receiving such notice objects, by written
328 instrument delivered to the trustee, to the proposed action of
329 the trustee or the determinations of the disinterested person
330 within 60 days after service of such notice. An objection ~~under~~
331 ~~this section~~ may be executed by a legal representative or
332 natural guardian of a person without ~~the~~ filing ~~of~~ any
333 proceeding or approval of any court.
334 (3) If a trustee desires to convert an income trust to a
335 total return unitrust, reconvert a total return unitrust to an
336 income trust, or change the percentage used to calculate the
337 unitrust amount or the method used to determine a fair market
338 value of the trust but does not have the ability to or elects
339 not to do it under subsection (2), the trustee may petition the
340 circuit court for such order as the trustee deems appropriate.
341 In that event, the court, in its own discretion or on the
342 petition of such trustee or any person having an income or
343 remainder interest in the trust, may appoint a disinterested
344 person who, acting in a fiduciary capacity, shall present such
345 information to the court as is ~~shall be~~ necessary for the court
346 to make a determination hereunder.
347 ~~(4) All determinations made pursuant to sub-subparagraph~~
348 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~

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349 ~~faith. Such determination shall be conclusively presumed to have~~
350 ~~been made reasonably and in good faith unless proven otherwise~~
351 ~~in a proceeding commenced by or on behalf of a person interested~~
352 ~~in the trust within the time provided in s. 736.1008. The burden~~
353 ~~will be on the objecting interested party to prove that the~~
354 ~~determinations were not made reasonably and in good faith.~~
355 (4) ~~(5)~~ Following the conversion of an income trust to a
356 total return unitrust, the trustee:
357 (a) Shall treat the unitrust amount as if it were net
358 income of the trust for purposes of determining the amount
359 available, from time to time, for distribution from the trust.
360 (b) May allocate to trust income for each taxable year of
361 the trust, or portion thereof:
362 1. Net short-term capital gain described in the Internal
363 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
364 thereof, but only to the extent that the amount so allocated
365 together with all other amounts allocated to trust income, as
366 determined under the provisions of this chapter without regard
367 to this section and s. 738.104, for such year, or portion
368 thereof, does not exceed the unitrust amount for such year, or
369 portion thereof.
370 2. Net long-term capital gain described in the Internal
371 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
372 thereof, but only to the extent that the amount so allocated
373 together with all other amounts, including amounts described in
374 subparagraph 1., allocated to trust income for such year, or
375 portion thereof, does not exceed the unitrust amount for such
376 year, or portion thereof.
377 (5) ~~(6)~~ In administering a total return unitrust, the

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378 trustee may, in its sole discretion but subject to the
379 provisions of the governing instrument, determine:
380 (a) The effective date of the conversion.
381 (b) The timing of distributions, including provisions for
382 prorating a distribution for a short year in which a
383 beneficiary's right to payments commences or ceases.
384 (c) Whether distributions are to be made in cash or in kind
385 or partly in cash and partly in kind.
386 (d) If the trust is reconverted to an income trust, the
387 effective date of such reconversion.
388 (e) Such other administrative issues as may be necessary or
389 appropriate to carry out the purposes of this section.
390 (6) ~~(7)~~ Conversion to a total return unitrust under ~~the~~
391 ~~provisions of~~ this section does ~~shall~~ not affect any other
392 provision of the governing instrument, if any, regarding
393 distributions of principal.
394 (7) ~~(8)~~ Any trustee or disinterested person who in good
395 faith takes or fails to take any action under this section is
396 ~~shall~~ not ~~be~~ liable to any person affected by such action or
397 inaction, regardless of whether such person received written
398 notice as provided in this section or ~~and regardless of whether~~
399 such person was under a legal disability at the time of the
400 delivery of such notice. Such person's exclusive remedy is ~~shall~~
401 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
402 directing the trustee to convert an income trust to a total
403 return unitrust, to reconvert from a total return unitrust to an
404 income trust, or to change the percentage used to calculate the
405 unitrust amount. If a court determines that the trustee or
406 disinterested person has not acted in good faith in taking or

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407 failing to take any action under this section, ~~the provisions of~~
408 s. 738.105(3) applies ~~apply~~.
409 (8) ~~(9)~~ If a majority in interest of ~~either~~ the income or
410 remainder beneficiaries of an income trust has delivered to the
411 trustee a written objection to the amount of the income
412 distributions of the trust, and, if the trustee has failed to
413 resolve the objection to the satisfaction of the objecting
414 beneficiaries within 6 months after ~~from the~~ receipt of such
415 written objection, ~~then~~ the objecting beneficiaries may petition
416 the court in accordance with subsection (3).
417 (9) ~~(10)~~ This section pertains ~~shall be construed as~~
418 ~~pertaining~~ to the administration of a trust and is applicable to
419 any trust that is administered ~~either~~ in this state or under
420 Florida law unless:
421 (a) The governing instrument reflects an intention that the
422 current beneficiary or beneficiaries are to receive an amount
423 other than a reasonable current return from the trust;
424 (b) The trust is a trust described in the Internal Revenue
425 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
426 2702(a)(3), or s. 2702(b);
427 (c) One or more persons to whom the trustee could
428 distribute income have a power of withdrawal over the trust:
429 1. That is not subject to an ascertainable standard under
430 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
431 exceeds in any calendar year the amount set forth in the
432 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or
433 2. A power of withdrawal over the trust that can be
434 exercised to discharge a duty of support he or she possesses; or
435 (d) The governing instrument expressly prohibits use of

436 this section by specific reference to the section. A provision
437 in the governing instrument that, "The provisions of section
438 738.1041, Florida Statutes, as amended, or any corresponding
439 provision of future law, may ~~shall~~ not be used in the
440 administration of this trust," or similar words reflecting such
441 intent are ~~shall be~~ sufficient to preclude the use of this
442 section~~; or~~
443 ~~(c) The trust is a trust with respect to which a trustee~~
444 ~~currently possesses the power to adjust under s. 738.104~~.
445 (10) ~~(11)~~ The grantor of a trust may create an express total
446 return unitrust that ~~which~~ will be ~~become~~ effective as provided
447 in the trust instrument ~~document~~ without requiring a conversion
448 under this section.
449 (a) An express total return unitrust created by the grantor
450 of the trust is ~~shall be~~ treated as a unitrust ~~under this~~
451 ~~section~~ only if the terms of the trust instrument ~~document~~
452 contain all of the following provisions:
453 1. ~~(a)~~ That distributions from the trust will be unitrust
454 amounts and the manner in which the unitrust amount will be
455 calculated; and ~~the method in which the fair market value of the~~
456 ~~trust will be determined.~~
457 2. ~~(b)~~ The percentage to be used to calculate the unitrust
458 amount, provided the percentage used is not greater than 5
459 percent nor less than 3 percent.
460 (b) The trust instrument may also contain provisions
461 specifying:
462 1. ~~(c)~~ The method to be used in determining the fair market
463 value of the trust, including whether to use an average fair
464 market value or the fair market value of the assets held by the

465 trust at the beginning of the current year; or~~.~~
466 2.~~(d)~~ Which assets, if any, are to be excluded in
467 determining the unitrust amount.
468 (c) This section establishes the method of determining the
469 fair market value of the trust if the trust instrument is silent
470 as to subparagraph (b)1., and to specify those assets, if any,
471 which are to be excluded in determining the unitrust amount if
472 the trust instrument is silent as to subparagraph (b)2.
473 Section 6. Subsections (1), (3), and (4) of section
474 738.105, Florida Statutes, are amended to read:
475 738.105 Judicial control of discretionary powers.—
476 (1) A court may ~~shall~~ not change a trustee's ~~fiduciary's~~
477 decision to exercise or not to exercise a discretionary power
478 conferred by this chapter unless the court determines that the
479 decision was an abuse of the trustee's ~~fiduciary's~~ discretion. A
480 court may ~~shall~~ not determine that a trustee ~~fiduciary~~ abused
481 its discretion merely because the court would have exercised the
482 discretion in a different manner or would not have exercised the
483 discretion.
484 (3) If a court determines that a trustee ~~fiduciary~~ has
485 abused its discretion, the remedy is ~~shall be~~ to restore the
486 income and remainder beneficiaries to the positions they would
487 have occupied if the trustee ~~fiduciary~~ had not abused its
488 discretion, in accordance with ~~according to~~ the following ~~rules~~:
489 (a) To the extent the abuse of discretion has resulted in
490 no distribution to a beneficiary or a distribution that is too
491 small, the court shall require the trustee ~~fiduciary~~ to
492 distribute from the trust to the beneficiary an amount the court
493 determines will restore the beneficiary, in whole or in part, to

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494 his or her appropriate position.
495 (b) To the extent the abuse of discretion has resulted in a
496 distribution to a beneficiary that is too large, the court shall
497 restore the beneficiaries, the trust, or both, in whole or in
498 part, to their appropriate positions by requiring the trustee
499 ~~fiduciary~~ to withhold an amount from one or more future
500 distributions to the beneficiary who received the distribution
501 that was too large or requiring that beneficiary to return some
502 or all of the distribution to the trust.
503 (c) To the extent the court is unable, after applying
504 paragraphs (a) and (b), to restore the beneficiaries or~~,~~ the
505 trust, or both, to the positions they would have occupied if the
506 trustee ~~fiduciary~~ had not abused its discretion, the court may
507 require the trustee ~~fiduciary~~ to pay an appropriate amount from
508 its own funds to one or more of the beneficiaries or the trust
509 or both.
510 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
511 the court having jurisdiction over the trust ~~or estate~~ shall
512 determine whether a proposed exercise or nonexercise by the
513 trustee ~~fiduciary~~ of a discretionary power conferred by this
514 chapter will result in an abuse of the trustee's ~~fiduciary's~~
515 discretion. If the petition describes the proposed exercise or
516 nonexercise of the power and contains sufficient information to
517 inform the beneficiaries of the reasons for the proposal, the
518 facts upon which the trustee ~~fiduciary~~ relies, and an
519 explanation of how the income and remainder beneficiaries will
520 be affected by the proposed exercise or nonexercise of the
521 power, a beneficiary who challenges the proposed exercise or
522 nonexercise has the burden of establishing that such exercise or

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523 nonexercise will result in an abuse of discretion.
524 Section 7. Subsections (1) through (4) of section 738.201,
525 Florida Statutes, are amended to read:
526 738.201 Determination and distribution of net income.—After
527 a decedent dies, in the case of an estate, or after an income
528 interest in a trust ends, the following rules apply:
529 (1) A fiduciary of an estate or of a terminating income
530 interest shall determine the amount of net income and net
531 principal receipts received from property specifically given to
532 a beneficiary under ~~the rules in~~ ss. 738.301-738.706 ~~which apply~~
533 ~~to trustees~~ and ~~the rules in~~ subsection (5). The fiduciary shall
534 distribute the net income and net principal receipts to the
535 beneficiary who is to receive the specific property.
536 (2) A fiduciary shall determine the remaining net income of
537 a decedent's estate or a terminating income interest under ~~the~~
538 ~~rules in~~ ss. 738.301-738.706 ~~which apply to trustees~~ and by:
539 (a) Including in net income all income from property used
540 to discharge liabilities.
541 (b) Paying from income or principal, in the fiduciary's
542 discretion, fees of attorneys, accountants, and fiduciaries;
543 court costs and other expenses of administration; and interest
544 on death taxes.~~, but~~ The fiduciary may pay those expenses from
545 income of property passing to a trust for which the fiduciary
546 claims an estate tax marital or charitable deduction under the
547 Internal Revenue Code or comparable law of any state only to the
548 extent the payment of those expenses from income will not cause
549 the reduction or loss of the deduction.
550 (c) Paying from principal all other disbursements made or
551 incurred in connection with the settlement of a decedent's

552 estate or the winding up of a terminating income interest,
553 including debts, funeral expenses, disposition of remains,
554 family allowances, and death taxes and related penalties that
555 are apportioned to the estate or terminating income interest by
556 the will, the terms of the trust, or applicable law.
557 (3) If ~~A fiduciary shall distribute to~~ a beneficiary who
558 receives a pecuniary devise ~~amount~~ outright is also entitled to
559 receive ~~the~~ interest or any other amount on the devise under the
560 terms of ~~provided by~~ the will or~~, the terms of the~~ trust, the
561 fiduciary shall distribute the interest or other amount
562 ~~applicable law~~ from net income determined under subsection (2)
563 or from principal to the extent net income is insufficient. ~~If a~~
564 ~~beneficiary is to receive a pecuniary amount outright from a~~
565 ~~trust after an income interest ends and no interest or other~~
566 ~~amount is provided for by the terms of the trust or applicable~~
567 ~~law, the fiduciary shall distribute the interest or other amount~~
568 ~~to which the beneficiary would be entitled under applicable law~~
569 ~~if the pecuniary amount were required to be paid under a will.~~
570 (4) A fiduciary shall distribute the net income remaining
571 after distributions required under subsections (1)-(3) ~~by~~
572 ~~subsection (3)~~ in the manner described in s. 738.202 to all
573 other beneficiaries, including a beneficiary who receives a
574 pecuniary amount in trust, even if the beneficiary holds an
575 unqualified power to withdraw assets from the trust or other
576 presently exercisable general power of appointment over the
577 trust.
578 Section 8. Section 738.202, Florida Statutes, is amended to
579 read:
580 738.202 Distribution to residuary and remainder

581 beneficiaries.—
582 (1) Each beneficiary described in s. 738.201(4) is entitled
583 to receive a portion of the net income remaining after the
584 application of s. 738.201(1)-(3), which is equal to the
585 beneficiary's fractional interest in undistributed principal
586 assets, using carrying values as of the distribution date. If a
587 fiduciary makes more than one distribution of assets to
588 beneficiaries to whom this section applies, each beneficiary,
589 including one who does not receive part of the distribution, is
590 entitled, as of each distribution date, to the net income the
591 fiduciary ~~has~~ received after the date of death or terminating
592 event or earlier distribution date but has not distributed as of
593 the current distribution date.
594 (2) In determining a beneficiary's share of net income, the
595 following applies ~~rules apply~~:
596 (a) The beneficiary is entitled to receive a portion of the
597 net income equal to the beneficiary's fractional interest in the
598 carrying value of the undistributed principal assets immediately
599 before the distribution date, excluding the amount of unpaid
600 liabilities ~~including assets that later may be sold to meet~~
601 ~~principal obligations~~.
602 (b) The beneficiary's fractional interest in the
603 undistributed principal assets shall be calculated: ~~without~~
604 ~~regard to~~
605 1. At the time the interest began and adjusted for any
606 disproportionate distributions since the interest began;
607 2. By excluding any liabilities of the estate or trust from
608 the calculation;
609 3. By also excluding property specifically given to a

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610 beneficiary and property required to pay pecuniary amounts not
611 in trust; and~~.~~
612 4.~~(c) The beneficiary's fractional interest in the~~
613 ~~undistributed principal assets shall be calculated~~ On the basis
614 of the aggregate carrying value of those assets determined under
615 subsection (1) as of the distribution date ~~without reducing the~~
616 ~~value by any unpaid principal obligation~~.
617 (c) If a disproportionate distribution of principal is made
618 to any beneficiary, the respective fractional interests of all
619 beneficiaries in the remaining underlying assets shall be
620 recomputed by:
621 1. Adjusting the carrying value of the principal assets to
622 their fair market value before the distribution;
623 2. Reducing the fractional interest of the recipient of the
624 disproportionate distribution in the remaining principal assets
625 by the fair market value of the principal distribution; and
626 3. Recomputing the fractional interests of all
627 beneficiaries in the remaining principal assets based upon the
628 now restated carrying values.
629 ~~(d) The distribution date for purposes of this section may~~
630 ~~be the date as of which the fiduciary calculates the value of~~
631 ~~the assets if that date is reasonably near the date on which~~
632 ~~assets are actually distributed.~~
633 (3) If a fiduciary does not distribute all of the collected
634 but undistributed net income to each person as of a distribution
635 date, the fiduciary shall maintain appropriate records showing
636 the interest of each beneficiary in that net income.
637 (4) A fiduciary may apply the provisions of ~~rules in~~ this
638 section, to the extent the fiduciary considers appropriate, to

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639 net gain or loss realized after the date of death or terminating
640 event or earlier distribution date from the disposition of a
641 principal asset if this section applies to the income from the
642 asset.
643 (5) The carrying value or fair market value of trust assets
644 shall be determined on an asset-by-asset basis and are ~~shall be~~
645 conclusive if reasonable and determined in good faith.
646 Determinations of fair market value based on appraisals
647 performed within 2 years before or after the valuation date are
648 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
649 are ~~shall be~~ conclusively presumed to be reasonable and
650 determined in good faith unless proven otherwise in a proceeding
651 commenced by or on behalf of a person interested in the trust
652 within the time provided in s. 736.1008.
653 (6) All distributions to a beneficiary shall be valued
654 based on their fair market value on the date of distribution.
655 Section 9. Subsection (4) of section 738.301, Florida
656 Statutes, is amended to read:
657 738.301 When right to income begins and ends.—An income
658 beneficiary is entitled to net income from the date on which the
659 income interest begins.
660 (4) An income interest ends on the day before an income
661 beneficiary dies or another terminating event occurs, or on the
662 last day of a period during which there is no beneficiary to
663 whom a fiduciary ~~trustee~~ may distribute income.
664 Section 10. Subsections (1) and (2) of section 738.302,
665 Florida Statutes, are amended to read:
666 738.302 Apportionment of receipts and disbursements when
667 decedent dies or income interest begins.—

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668 (1) A fiduciary ~~trustee~~ shall allocate an income receipt or
669 disbursement other than one to which s. 738.201(1) applies to
670 principal if the due date of the receipt or disbursement occurs
671 before a decedent dies in the case of an estate or before an
672 income interest begins in the case of a trust or successive
673 income interest.
674 (2) A fiduciary ~~trustee~~ shall allocate an income receipt or
675 disbursement to income if the due date of the receipt or
676 disbursement occurs on or after the date on which a decedent
677 dies or an income interest begins and the due date is a periodic
678 due date. An income receipt or disbursement shall be treated as
679 accruing from day to day if the due date of the receipt or
680 disbursement is not periodic or the receipt or disbursement has
681 no due date. The portion of the receipt or disbursement accruing
682 before the date on which a decedent dies or an income interest
683 begins shall be allocated to principal and the balance shall be
684 allocated to income.
685 Section 11. Subsections (2) and (3) of section 738.303,
686 Florida Statutes, are amended to read:
687 738.303 Apportionment when income interest ends.—
688 (2) When a mandatory income interest ends, the fiduciary
689 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
690 that date, or the estate of a deceased mandatory income
691 beneficiary whose death causes the interest to end, the
692 beneficiary's share of the undistributed income that is not
693 disposed of under the terms of the trust unless the beneficiary
694 has an unqualified power to revoke more than 5 percent of the
695 trust immediately before the income interest ends. In the latter
696 case, the undistributed income from the portion of the trust

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697 that may be revoked shall be added to principal.
698 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
699 annuity or a fixed fraction of the value of the trust's assets
700 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
701 and to the extent required by applicable law to accomplish a
702 purpose of the trust or its grantor relating to income, gift,
703 estate, or other tax requirements.
704 Section 12. Section 738.401, Florida Statutes, is amended
705 to read:
706 738.401 Character of receipts.—
707 (1) For purposes of this section, the term "entity" means a
708 corporation, partnership, limited liability company, regulated
709 investment company, real estate investment trust, common trust
710 fund, or any other organization in which a fiduciary ~~trustee~~ has
711 an interest other than a trust or estate to which s. 738.402
712 applies, a business or activity to which s. 738.403 applies, or
713 an asset-backed security to which s. 738.608 applies.
714 (2) Except as otherwise provided in this section, a
715 fiduciary ~~trustee~~ shall allocate to income money received from
716 an entity.
717 (3) Except as otherwise provided in this section, a
718 fiduciary ~~trustee~~ shall allocate the following receipts from an
719 entity to principal:
720 (a) Property other than money.
721 (b) Money received in one distribution or a series of
722 related distributions in exchange for part or all of a trust's
723 or estate's interest in the entity.
724 (c) Money received in total or partial liquidation of the
725 entity.

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726 (d) Money received from an entity that is a regulated
727 investment company or a real estate investment trust if the
728 money received ~~distributed~~ represents short-term or long-term
729 capital gain realized within the entity.
730 (e) Money received from an entity listed on a public stock
731 exchange during any year of the trust or estate which exceeds 10
732 percent of the fair market value of the trust's or estate's
733 interest in the entity on the first day of that year. The amount
734 to be allocated to principal must be reduced to the extent that
735 the cumulative distributions from the entity to the trust or
736 estate allocated to income does not exceed a cumulative annual
737 return of 3 percent of the fair market value of the interest in
738 the entity at the beginning of each year or portion of a year
739 for the number of years or portion of years in the period that
740 the interest in the entity has been held by the trust or estate.
741 If a trustee has exercised a power to adjust under s. 738.104
742 during any period the interest in the entity has been held by
743 the trust, the trustee, in determining the total income
744 distributions from that entity, must take into account the
745 extent to which the exercise of that power resulted in income to
746 the trust from that entity for that period. If the income of the
747 trust for any period has been computed under s. 738.1041, the
748 trustee, in determining the total income distributions from that
749 entity for that period, must take into account the portion of
750 the unitrust amount paid as a result of the ownership of the
751 trust's interest in the entity for that period.
752 (4) If a fiduciary ~~trustee~~ elects, or continues an election
753 made by its predecessor, to reinvest dividends in shares of
754 stock of a distributing corporation or fund, whether evidenced

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755 by new certificates or entries on the books of the distributing
756 entity, the new shares ~~shall~~ retain their character as income.
757 (5) Money is received in partial liquidation:
758 (a) To the extent the entity, at or near the time of a
759 distribution, indicates that such money is a distribution in
760 partial liquidation; or
761 (b) To the extent ~~If~~ the total amount of money and property
762 received in a distribution or series of related distributions
763 from an entity that is not listed on a public stock exchange
764 exceeds ~~is greater than~~ 20 percent of the trust's or estate's
765 pro rata share of the entity's gross assets, as shown by the
766 entity's year-end financial statements immediately preceding the
767 initial receipt.
768
769 This subsection does not apply to an entity to which subsection
770 (7) applies.
771 (6) Money may not ~~is not received in partial liquidation,~~
772 ~~nor may money~~ be taken into account in determining any excess
773 under paragraph (5)(b), to the extent that the cumulative
774 distributions from the entity to the trust or the estate
775 allocated to income do not exceed the greater of: ~~such money~~
776 ~~does not exceed the amount of income tax a trustee or~~
777 ~~beneficiary must pay on taxable income of the entity that~~
778 ~~distributes the money.~~
779 (a) A cumulative annual return of 3 percent of the entity's
780 carrying value computed at the beginning of each period for the
781 number of years or portion of years that the entity was held by
782 the fiduciary. If a trustee has exercised a power to adjust
783 under s. 738.104 during any period the interest in the entity

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784 has been held by the trust, the trustee, in determining the
785 total income distributions from that entity, must take into
786 account the extent to which exercise of the power resulted in
787 income to the trust from that entity for that period. If the
788 income of a trust for any period has been computed pursuant to
789 s. 738.1041, the trustee, in determining the total income
790 distributions from the entity for that period, must take into
791 account the portion of the unitrust amount paid as a result of
792 the ownership of the trust's interest in the entity for that
793 period; or
794 (b) If the entity is treated as a partnership, subchapter S
795 corporation, or a disregarded entity pursuant to the Internal
796 Revenue Code of 1986, as amended, the amount of income tax
797 attributable to the trust's or estate's ownership share of the
798 entity, based on its pro rata share of the taxable income of the
799 entity that distributes the money, for the number of years or
800 portion of years that the interest in the entity was held by the
801 fiduciary, calculated as if all of that tax was incurred by the
802 fiduciary.
803 (7) The following applies ~~special rules shall apply~~ to
804 money ~~moneys~~ or property received by a private trustee as a
805 distribution from an investment entity ~~entities~~ described in
806 this subsection:
807 (a) The trustee shall first treat as income of the trust
808 all of the money or property received from the investment entity
809 in the current year which would be considered income under this
810 chapter if the trustee had directly held the trust's pro rata
811 share of the assets of the investment entity. For this purpose,
812 all distributions received in the current year must be

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813 aggregated.
814 (b) The trustee shall next treat as income of the trust any
815 additional money or property received in the current year which
816 would have been considered income in the prior 2 years under
817 paragraph (a) if additional money or property had been received
818 from the investment entity in any of those prior 2 years. The
819 amount to be treated as income shall be reduced by any
820 distributions of money or property made by the investment entity
821 to the trust during the current and prior 2 years which were
822 treated as income under this paragraph.
823 (c) The remainder of the distribution, if any, is treated
824 as principal.
825 (d) As used in this subsection, the term:
826 1. "Investment entity" means an entity, other than a
827 business activity conducted by the trustee described in s.
828 738.403 or an entity that is listed on a public stock exchange,
829 which is treated as a partnership, subchapter S corporation, or
830 disregarded entity pursuant to the Internal Revenue Code of
831 1986, as amended, and which normally derives 50 percent or more
832 of its annual cumulative net income from interest, dividends,
833 annuities, royalties, rental activity, or other passive
834 investments, including income from the sale or exchange of such
835 passive investments.
836 2. "Private trustee" means a trustee who is a natural
837 person, but only if the trustee is unable to use the power to
838 adjust between income and principal with respect to receipts
839 from entities described in this subsection pursuant to s.
840 738.104. A bank, trust company, or other commercial trustee is
841 not considered a private trustee.

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842 (8) This section shall be applied before ss. 738.705 and
843 738.706 and does not modify or change any of the provisions of
844 those sections.
845 ~~(a) Moneys or property received from a targeted entity that~~
846 ~~is not an investment entity which do not exceed the trust's pro~~
847 ~~rata share of the undistributed cumulative net income of the~~
848 ~~targeted entity during the time an ownership interest in the~~
849 ~~targeted entity was held by the trust shall be allocated to~~
850 ~~income. The balance of moneys or property received from a~~
851 ~~targeted entity shall be allocated to principal.~~
852 ~~(b) If trust assets include any interest in an investment~~
853 ~~entity, the designated amount of moneys or property received~~
854 ~~from the investment entity shall be treated by the trustee in~~
855 ~~the same manner as if the trustee had directly held the trust's~~
856 ~~pro rata share of the assets of the investment entity~~
857 ~~attributable to the distribution of such designated amount.~~
858 ~~Thereafter, distributions shall be treated as principal.~~
859 ~~(c) For purposes of this subsection, the following~~
860 ~~definitions shall apply:~~
861 ~~1. "Cumulative net income" means the targeted entity's net~~
862 ~~income as determined using the method of accounting regularly~~
863 ~~used by the targeted entity in preparing its financial~~
864 ~~statements, or if no financial statements are prepared, the net~~
865 ~~book income computed for federal income tax purposes, for every~~
866 ~~year an ownership interest in the entity is held by the trust.~~
867 ~~The trust's pro rata share shall be the cumulative net income~~
868 ~~multiplied by the percentage ownership of the trust.~~
869 ~~2. "Designated amount" means moneys or property received~~
870 ~~from an investment entity during any year that is equal to the~~

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871 ~~amount of the distribution that does not exceed the greater of:~~
872 ~~a. The amount of income of the investment entity for the~~
873 ~~current year, as reported to the trustee by the investment~~
874 ~~entity for federal income tax purposes; or~~
875 ~~b. The amount of income of the investment entity for the~~
876 ~~current year and the prior 2 years, as reported to the trustee~~
877 ~~by the investment entity for federal income tax purposes, less~~
878 ~~any distributions of moneys or property made by the investment~~
879 ~~entity to the trustee during the prior 2 years.~~
880 ~~3. "Investment entity" means a targeted entity that~~
881 ~~normally derives 50 percent or more of its annual cumulative net~~
882 ~~income from interest, dividends, annuities, royalties, rental~~
883 ~~activity, or other passive investments, including income from~~
884 ~~the sale or exchange of such passive investments.~~
885 ~~4. "Private trustee" means a trustee who is an individual,~~
886 ~~but only if the trustee is unable to utilize the power to adjust~~
887 ~~between income and principal with respect to receipts from~~
888 ~~entities described in this subsection pursuant to s. 738.104. A~~
889 ~~bank, trust company, or other commercial trustee shall not be~~
890 ~~considered to be a private trustee.~~
891 ~~5. "Targeted entity" means any entity that is treated as a~~
892 ~~partnership, subchapter S corporation, or disregarded entity~~
893 ~~pursuant to the Internal Revenue Code of 1986, as amended, other~~
894 ~~than an entity described in s. 738.403.~~
895 ~~6. "Undistributed cumulative net income" means the trust's~~
896 ~~pro rata share of cumulative net income, less all prior~~
897 ~~distributions from the targeted entity to the trust that have~~
898 ~~been allocated to income.~~
899 ~~(d) This subsection shall not be construed to modify or~~

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900 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
901 ~~to income taxes.~~
902 ~~(8) A trustee may rely upon a statement made by an entity~~
903 ~~about the source or character of a distribution, about the~~
904 ~~amount of profits of a targeted entity, or about the nature and~~
905 ~~value of assets of an investment entity if the statement is made~~
906 ~~at or near the time of distribution by the entity's board of~~
907 ~~directors or other person or group of persons authorized to~~
908 ~~exercise powers to pay money or transfer property comparable to~~
909 ~~those of a corporation's board of directors.~~
910 Section 13. Section 738.402, Florida Statutes, is amended
911 to read:
912 738.402 Distribution from trust or estate.—A fiduciary
913 ~~trustee~~ shall allocate to income an amount received as a
914 distribution of income from a trust or an estate in which the
915 trust has an interest other than a purchased interest and ~~shall~~
916 allocate to principal an amount received as a distribution of
917 principal from such a trust or estate. If a fiduciary ~~trustee~~
918 purchases an interest in a trust that is an investment entity,
919 or a decedent or donor transfers an interest in such a trust to
920 a fiduciary ~~trustee~~, s. 738.401 or s. 738.608 applies to a
921 receipt from the trust.
922 Section 14. Section 738.403, Florida Statutes, is amended
923 to read:
924 738.403 Business and other activities conducted by
925 fiduciary ~~trustee~~.—
926 (1) If a fiduciary ~~trustee~~ who conducts a business or other
927 activity determines that it is in the best interest of all the
928 beneficiaries to account separately for the business or activity

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929 instead of accounting for the business or activity as part of
930 the trust's or estate's general accounting records, the
931 fiduciary ~~trustee~~ may maintain separate accounting records for
932 the transactions of the ~~such~~ business or other activity, whether
933 or not the assets of such business or activity are segregated
934 from other trust or estate assets.
935 (2) A fiduciary ~~trustee~~ who accounts separately for a
936 business or other activity may determine the extent to which the
937 net cash receipts of the ~~such~~ business or activity must be
938 retained for working capital, the acquisition or replacement of
939 fixed assets, and other reasonably foreseeable needs of the
940 business or activity, and the extent to which the remaining net
941 cash receipts are accounted for as principal or income in the
942 trust's or estate's general accounting records. If a fiduciary
943 ~~trustee~~ sells assets of the business or other activity, other
944 than in the ordinary course of the business or activity, the
945 fiduciary must ~~trustee shall~~ account for the net amount received
946 as principal in the trust's or estate's general accounting
947 records to the extent the fiduciary ~~trustee~~ determines that the
948 amount received is no longer required in the conduct of the
949 business.
950 (3) Activities for which a fiduciary ~~trustee~~ may maintain
951 separate accounting records include:
952 (a) Retail, manufacturing, service, and other traditional
953 business activities.
954 (b) Farming.
955 (c) Raising and selling livestock and other animals.
956 (d) Management of rental properties.
957 (e) Extraction of minerals and other natural resources.

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958 (f) Timber operations.
959 (g) Activities to which s. 738.607 ~~738.608~~ applies.
960 Section 15. Section 738.501, Florida Statutes, is amended
961 to read:
962 738.501 Principal receipts.~~—~~A fiduciary ~~trustee~~ shall
963 allocate to principal:
964 (1) To the extent not allocated to income under this
965 chapter, assets received from a donor ~~transferor~~ during the
966 donor's ~~transferor's~~ lifetime, a decedent's estate, a trust with
967 a terminating income interest, or a payor under a contract
968 naming the trust, estate, or fiduciary ~~its trustee~~ as
969 beneficiary.
970 (2) Money or other property received from the sale,
971 exchange, liquidation, or change in form of a principal asset,
972 including realized profit, subject to this section.
973 (3) Amounts recovered from third parties to reimburse the
974 trust or estate because of disbursements described in s.
975 738.702(1)(g) or for other reasons to the extent not based on
976 the loss of income.
977 (4) Proceeds of property taken by eminent domain; however,
978 ~~but~~ a separate award made for the loss of income with respect to
979 an accounting period during which a current income beneficiary
980 had a mandatory income interest is income.
981 (5) Net income received in an accounting period during
982 which there is no beneficiary to whom a fiduciary ~~trustee~~ may or
983 shall distribute income.
984 (6) Other receipts as provided in ss. 738.601-738.608.
985 Section 16. Section 738.502, Florida Statutes, is amended
986 to read:

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987 738.502 Rental property.—If ~~To the extent~~ a fiduciary
988 ~~trustee~~ accounts for receipts from rental property pursuant to
989 this section, the fiduciary ~~trustee~~ shall allocate to income an
990 amount received as rent of real or personal property, including
991 an amount received for cancellation or renewal of a lease. An
992 amount received as a refundable deposit, including a security
993 deposit or a deposit that is to be applied as rent for future
994 periods, must ~~shall~~ be added to principal and held subject to
995 the terms of the lease and is not available for distribution to
996 a beneficiary until the fiduciary's ~~trustee's~~ contractual
997 obligations have been satisfied with respect to that amount.
998 Section 17. Subsections (1), (2), and (3) of section
999 738.503, Florida Statutes, are amended to read:
1000 738.503 Obligation to pay money.—
1001 (1) An amount received as interest, whether determined at a
1002 fixed, variable, or floating rate, on an obligation to pay money
1003 to the fiduciary ~~trustee~~, including an amount received as
1004 consideration for prepaying principal, shall be allocated to
1005 income without any provision for amortization of premium.
1006 (2) Except as otherwise provided herein, a fiduciary
1007 ~~trustee~~ shall allocate to principal an amount received from the
1008 sale, redemption, or other disposition of an obligation to pay
1009 money to the fiduciary ~~trustee~~.
1010 (3) The increment in value of a bond or other obligation
1011 for the payment of money bearing no stated interest but payable
1012 at a future time in excess of the price at which it was issued
1013 or purchased, if purchased after issuance, is distributable as
1014 income. If the increment in value accrues and becomes payable
1015 pursuant to a fixed schedule of appreciation, it may be

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1016 distributed to the beneficiary who was the income beneficiary at
1017 the ~~this~~ time of increment from the first principal cash
1018 available or, if none is available, when the increment is
1019 realized by sale, redemption, or other disposition. If ~~When~~
1020 unrealized increment is distributed as income but out of
1021 principal, the principal must ~~shall~~ be reimbursed for the
1022 increment when realized. If, in the reasonable judgment of the
1023 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
1024 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
1025 withhold the payment of incremental interest to the income
1026 beneficiary.
1027 Section 18. Subsections (1) and (2) of section 738.504,
1028 Florida Statutes, are amended to read:
1029 738.504 Insurance policies and similar contracts.—
1030 (1) Except as otherwise provided in subsection (2), a
1031 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
1032 life insurance policy or other contract in which the trust,
1033 estate, or fiduciary ~~its trustee~~ is named as beneficiary,
1034 including a contract that insures the trust, estate, or
1035 fiduciary ~~its trustee~~ against loss for damage to, destruction
1036 of, or loss of title to a trust or estate asset. The fiduciary
1037 ~~trustee~~ shall allocate dividends on an insurance policy to
1038 income if the premiums on the policy are paid from income and to
1039 principal if the premiums are paid from principal.
1040 (2) A fiduciary ~~trustee~~ shall allocate to income the
1041 proceeds of a contract that insures the fiduciary ~~trustee~~
1042 against loss of occupancy or other use by an income beneficiary,
1043 loss of income, or, subject to s. 738.403, loss of profits from
1044 a business.

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1045 Section 19. Section 738.601, Florida Statutes, is amended
1046 to read:
1047 738.601 Insubstantial allocations not required.—If a
1048 fiduciary ~~trustee~~ determines that an allocation between
1049 principal and income required by s. 738.602, s. 738.603, s.
1050 738.604, s. 738.605, or s. 738.608 is insubstantial, the
1051 fiduciary ~~trustee~~ may allocate the entire amount to principal
1052 unless one of the circumstances described in s. 738.104(3)
1053 applies to the allocation. This power may be exercised by a
1054 cofiduciary under ~~cotrustee in~~ the circumstances described in s.
1055 738.104(4) and may be released for the reasons and in the manner
1056 described in s. 738.104(5). An allocation is presumed to be
1057 insubstantial if:
1058 (1) The amount of the allocation would increase or decrease
1059 net income in an accounting period, as determined before the
1060 allocation, by less than 10 percent; or
1061 (2) The value of the asset producing the receipt for which
1062 the allocation would be made is less than 10 percent of the
1063 total value of the trust or estate ~~trust's~~ assets at the
1064 beginning of the accounting period.
1065 Section 20. Section 738.602, Florida Statutes, is amended
1066 to read:
1067 738.602 Payments from deferred compensation plans,
1068 annuities, and retirement plans or accounts.—
1069 (1) As used in ~~For purposes of~~ this section, the term:
1070 (a) "Fund" means a private or commercial annuity, an
1071 individual retirement account, an individual retirement annuity,
1072 a deferred compensation plan, a pension plan, a profit-sharing
1073 plan, a stock-bonus plan, an employee stock-ownership plan, or

1074 another similar arrangement in which federal income tax is
1075 deferred.
1076 (b) "Income of the fund" means income that is determined
1077 according to subsection (2) or subsection (3).
1078 (c) "Nonseparate account" means a fund for which the value
1079 of the participant's or account owner's right to receive
1080 benefits can be determined only by the occurrence of a date or
1081 event as defined in the instrument governing the fund.
1082 (d) "Payment" means a distribution from a fund that a
1083 fiduciary ~~trustee~~ may receive over a fixed number of years or
1084 during the life of one or more individuals because of services
1085 rendered or property transferred to the payor in exchange for
1086 future payments. The term includes a distribution made in money
1087 or property from the payor's general assets or from a fund
1088 created by the payor or payee.
1089 (e) "Separate account" means a fund holding assets
1090 exclusively for the benefit of a participant or account owner
1091 and:
1092 1. The value of such assets or the value of the separate
1093 account is ascertainable at any time; or
1094 2. The administrator of the fund maintains records that
1095 show receipts and disbursements associated with such assets.
1096 (2)(a) For a fund that is a separate account, income of the
1097 fund shall be determined:
1098 1. As if the fund were a trust subject to the provisions of
1099 ss. 738.401-738.706; or
1100 2. As a unitrust amount calculated by multiplying the fair
1101 market value of the fund as of the first day of the first
1102 accounting period and, thereafter, as of the last day of the

1103 accounting period that immediately precedes the accounting
1104 period during which a payment is received by the percentage
1105 determined in accordance with s. 738.1041(2)(b)2.a. The
1106 fiduciary ~~trustee~~ shall determine such percentage as of the
1107 first month that the fiduciary's ~~trustee's~~ election to treat the
1108 income of the fund as a unitrust amount becomes effective. For
1109 purposes of this subparagraph, "fair market value" means the
1110 fair market value of the assets held in the fund as of the
1111 applicable valuation date determined as provided in this
1112 subparagraph. The fiduciary ~~trustee~~ is not liable for good faith
1113 reliance upon any valuation supplied by the person or persons in
1114 possession of the fund. If the fiduciary ~~trustee~~ makes or
1115 terminates an election under this subparagraph, the fiduciary
1116 ~~trustee~~ shall make such disclosure in a trust disclosure
1117 document that satisfies the requirements of s. 736.1008(4)(a).
1118 (b) The fiduciary may ~~trustee shall have discretion to~~
1119 elect the method of determining the income of the fund pursuant
1120 to this subsection and may change the method of determining
1121 income of the fund for any future accounting period.
1122 (3) For a fund that is a nonseparate account, income of the
1123 fund is a unitrust amount determined by calculating the present
1124 value of the right to receive the remaining payments under 26
1125 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1126 of the accounting period and multiplying it by the percentage
1127 determined in accordance with s. 738.1041(2)(b)2.a. The
1128 fiduciary ~~trustee~~ shall determine the unitrust amount as of the
1129 first month that the fiduciary's ~~trustee's~~ election to treat the
1130 income of the fund as a unitrust amount becomes effective.
1131 (4) Except for those trusts described in subsection (5),

1132 the fiduciary ~~trustee~~ shall allocate to income the lesser of the
1133 payment received from a fund or the income determined under
1134 subsection (2) or subsection (3). Any remaining amount of the
1135 payment shall be allocated to principal ~~a payment from a fund as~~
1136 ~~follows:~~
1137 ~~(a) That portion of the payment the payor characterizes as~~
1138 ~~income shall be allocated to income, and any remaining portion~~
1139 ~~of the payment shall be allocated to principal~~.
1140 ~~(b) To the extent that the payor does not characterize any~~
1141 ~~portion of a payment as income or principal and the trustee can~~
1142 ~~ascertain the income of the fund by the fund's account~~
1143 ~~statements or any other reasonable source, the trustee shall~~
1144 ~~allocate to income the lesser of the income of the fund or the~~
1145 ~~entire payment and shall allocate to principal any remaining~~
1146 ~~portion of the payment.~~
1147 ~~(c) If the trustee, acting reasonably and in good faith,~~
1148 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1149 ~~and all or part of the payment is required to be made, the~~
1150 ~~trustee shall allocate to income 10 percent of the portion of~~
1151 ~~the payment that is required to be made during the accounting~~
1152 ~~period and shall allocate the balance to principal. If no part~~
1153 ~~of a payment is required to be made or the payment received is~~
1154 ~~the entire amount to which the trustee is entitled, the trustee~~
1155 ~~shall allocate the entire payment to principal. For purposes of~~
1156 ~~this paragraph, a payment is not "required to be made" to the~~
1157 ~~extent the payment is made because the trustee exercises a right~~
1158 ~~of withdrawal.~~
1159 (5) For a trust that ~~which~~, in order to qualify for the
1160 estate or gift tax marital deduction under the Internal Revenue

1161 Code or comparable law of any state, entitles the spouse to all
1162 of the income of the trust, and the terms of the trust are
1163 silent as to the time and frequency for distribution of the
1164 income of the fund~~, then~~:
1165 (a) For a fund that is a separate account, unless the
1166 spouse directs the fiduciary ~~trustee~~ to leave the income of the
1167 fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay
1168 to the spouse, at least ~~no less frequently than~~ annually:
1169 1. All of the income of the fund determined in accordance
1170 with subparagraph (2)(a)1.; or
1171 2. The income of the fund as a unitrust amount determined
1172 in accordance with subparagraph (2)(a)2.
1173 (b) For a fund that is a nonseparate account, the fiduciary
1174 ~~trustee~~ shall withdraw and pay to the spouse, at least ~~no less~~
1175 ~~frequently than~~ annually, the income of the fund as a unitrust
1176 amount determined in accordance with subsection (3).
1177 (6) This section does not apply to payments to which s.
1178 738.603 applies.
1179 Section 21. Section 738.603, Florida Statutes, is amended
1180 to read:
1181 738.603 Liquidating asset.—
1182 (1) For purposes of this section, the term "liquidating
1183 asset" means an asset the value of which will diminish or
1184 terminate because the asset is expected to produce receipts for
1185 a period of limited duration. The term includes a leasehold,
1186 patent, copyright, royalty right, and right to receive payments
1187 for ~~during a period of~~ more than 1 year under an arrangement
1188 that does not provide for the payment of interest on the unpaid
1189 balance. The term does not include a payment subject to s.

1190 738.602, resources subject to s. 738.604, timber subject to s.
1191 738.605, an activity subject to s. 738.607, an asset subject to
1192 s. 738.608, or any asset for which the fiduciary ~~trustee~~
1193 establishes a reserve for depreciation under s. 738.703.
1194 (2) A fiduciary ~~trustee~~ shall allocate to income 5 ~~10~~
1195 percent of the receipts from the carrying value of a liquidating
1196 asset and the balance to principal. Amounts allocated to
1197 principal shall reduce the carrying value of the liquidating
1198 asset, but not below zero. Amounts received in excess of the
1199 remaining carrying value must be allocated to principal.
1200 Section 22. Subsections (1), (3), and (4) of section
1201 738.604, Florida Statutes, are amended to read:
1202 738.604 Minerals, water, and other natural resources.—
1203 (1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for
1204 receipts from an interest in minerals or other natural resources
1205 pursuant to this section, the fiduciary ~~trustee~~ shall allocate
1206 such receipts as follows:
1207 (a) If received as nominal delay rental or nominal annual
1208 rent on a lease, a receipt shall be allocated to income.
1209 (b) If received from a production payment, a receipt shall
1210 be allocated to income if and to the extent the agreement
1211 creating the production payment provides a factor for interest
1212 or its equivalent. The balance shall be allocated to principal.
1213 (c) If an amount received as a royalty, shut-in-well
1214 payment, take-or-pay payment, bonus, or delay rental is more
1215 than nominal, 90 percent shall be allocated to principal and the
1216 balance to income.
1217 (d) If an amount is received from a working interest or any
1218 other interest not provided for in paragraph (a), paragraph (b),

1219 or paragraph (c), 90 percent of the net amount received shall be
1220 allocated to principal and the balance to income.
1221 (3) This chapter applies whether or not a decedent or donor
1222 was extracting minerals, water, or other natural resources
1223 before the interest became subject to the trust or estate.
1224 (4) If a trust or estate owns an interest in minerals,
1225 water, or other natural resources on January 1, 2003, the
1226 fiduciary ~~trustee~~ may allocate receipts from the interest as
1227 provided in this chapter or in the manner used by the fiduciary
1228 ~~trustee~~ before January 1, 2003. If the trust or estate acquires
1229 an interest in minerals, water, or other natural resources after
1230 January 1, 2003, the fiduciary ~~trustee~~ shall allocate receipts
1231 from the interest as provided in this chapter.
1232 Section 23. Section 738.605, Florida Statutes, is amended
1233 to read:
1234 738.605 Timber.—
1235 (1) If ~~To the extent~~ a fiduciary ~~trustee~~ accounts for
1236 receipts from the sale of timber and related products pursuant
1237 to this section, the fiduciary ~~trustee~~ shall allocate such ~~the~~
1238 net receipts as follows:
1239 (a) To income to the extent the amount of timber removed
1240 from the land does not exceed the rate of growth of the timber
1241 during the accounting periods in which a beneficiary has a
1242 mandatory income interest;
1243 (b) To principal to the extent the amount of timber removed
1244 from the land exceeds the rate of growth of the timber or the
1245 net receipts are from the sale of standing timber;
1246 (c) To or between income and principal if the net receipts
1247 are from the lease of timberland or from a contract to cut

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1248 timber from land owned by a trust or estate by determining the
1249 amount of timber removed from the land under the lease or
1250 contract and applying the rules in paragraphs (a) and (b); or
1251 (d) To principal to the extent advance payments, bonuses,
1252 and other payments are not allocated pursuant to paragraph (a),
1253 paragraph (b), or paragraph (c).
1254 (2) In determining net receipts to be allocated pursuant to
1255 subsection (1), a fiduciary ~~trustee~~ shall deduct and transfer to
1256 principal a reasonable amount for depletion.
1257 (3) This chapter applies whether or not a decedent or donor
1258 ~~transferor~~ was harvesting timber from the property before the
1259 property became subject to the trust or estate.
1260 (4) If a trust or estate owns an interest in timberland on
1261 January 1, 2003, the fiduciary ~~trustee~~ may allocate net receipts
1262 from the sale of timber and related products as provided in this
1263 chapter or in the manner used by the fiduciary ~~trustee~~ before
1264 January 1, 2003. If the trust or estate acquires an interest in
1265 timberland after January 1, 2003, the fiduciary ~~trustee~~ shall
1266 allocate net receipts from the sale of timber and related
1267 products as provided in this chapter.
1268 Section 24. Subsection (1) of section 738.606, Florida
1269 Statutes, is amended to read:
1270 738.606 Property not productive of income.—
1271 (1) If a marital deduction under the Internal Revenue Code
1272 or comparable law of any state is allowed for all or part of a
1273 trust the income of which must ~~is required to~~ be distributed to
1274 the grantor's spouse and the assets of which consist
1275 substantially of property that does not provide the spouse with
1276 sufficient income from or use of the trust assets, and if the

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1277 amounts the trustee transfers from principal to income under s.
1278 738.104 and distributes to the spouse from principal pursuant to
1279 the terms of the trust are insufficient to provide the spouse
1280 with the beneficial enjoyment required to obtain the marital
1281 deduction, the spouse may require the trustee to make property
1282 productive of income, convert property within a reasonable time,
1283 or exercise the power conferred by ss. 738.104 and 738.1041. The
1284 trustee may decide which action or combination of actions to
1285 take.
1286 Section 25. Subsections (2) and (3) of section 738.607,
1287 Florida Statutes, are amended to read:
1288 738.607 Derivatives and options.—
1289 (2) To the extent a fiduciary ~~trustee~~ does not account
1290 under s. 738.403 for transactions in derivatives, the fiduciary
1291 ~~trustee~~ shall allocate to principal receipts from and
1292 disbursements made in connection with those transactions.
1293 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1294 from the trust or estate whether or not the trust or estate owns
1295 the property when the option is granted, grants an option that
1296 permits another person to sell property to the trust or estate,
1297 or acquires an option to buy property for the trust or estate or
1298 an option to sell an asset owned by the trust or estate, and the
1299 fiduciary ~~trustee~~ or other owner of the asset is required to
1300 deliver the asset if the option is exercised, an amount received
1301 for granting the option shall be allocated to principal. An
1302 amount paid to acquire the option shall be paid from principal.
1303 A gain or loss realized upon the exercise of an option,
1304 including an option granted to a grantor of the trust or estate
1305 for services rendered, shall be allocated to principal.

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1306 Section 26. Subsections (2) and (3) of section 738.608,
1307 Florida Statutes, are amended to read:
1308 738.608 Asset-backed securities.—
1309 (2) If a trust or estate receives a payment from interest
1310 or other current return and from other proceeds of the
1311 collateral financial assets, the fiduciary ~~trustee~~ shall
1312 allocate to income the portion of the payment which the payor
1313 identifies as being from interest or other current return and
1314 ~~shall~~ allocate the balance of the payment to principal.
1315 (3) If a trust or estate receives one or more payments in
1316 exchange for the trust's or estate's entire interest in an
1317 asset-backed security during a single accounting period, the
1318 fiduciary ~~trustee~~ shall allocate the payments to principal. If a
1319 payment is one of a series of payments that will result in the
1320 liquidation of the trust's or estate's interest in the security
1321 over more than a single accounting period, the fiduciary ~~trustee~~
1322 shall allocate 10 percent of the payment to income and the
1323 balance to principal.
1324 Section 27. Section 738.701, Florida Statutes, is amended
1325 to read:
1326 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1327 shall make the following disbursements from income to the extent
1328 they are not disbursements to which s. 738.201(2)~~(a) or (c)~~
1329 applies:
1330 (1) One-half of the regular compensation of the fiduciary
1331 ~~trustee~~ and of any person providing investment advisory or
1332 custodial services to the fiduciary ~~trustee~~.
1333 (2) One-half of all expenses for accountings, judicial
1334 proceedings, or other matters that involve both the income and

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1335 remainder interests.
1336 (3) All of the other ordinary expenses incurred in
1337 connection with the administration, management, or preservation
1338 of trust property and the distribution of income, including
1339 interest, ordinary repairs, regularly recurring taxes assessed
1340 against principal, and expenses of a proceeding or other matter
1341 that concerns primarily the income interest.
1342 (4) Recurring premiums on insurance covering the loss of a
1343 principal asset or the loss of income from or use of the asset.
1344 Section 28. Subsection (1) of section 738.702, Florida
1345 Statutes, is amended to read:
1346 738.702 Disbursements from principal.—
1347 (1) A fiduciary ~~trustee~~ shall make the following
1348 disbursements from principal:
1349 (a) The remaining one-half of the disbursements described
1350 in s. 738.701(1) and (2).
1351 (b) All of the trustee's compensation calculated on
1352 principal as a fee for acceptance, distribution, or termination
1353 and disbursements made to prepare property for sale.
1354 (c) Payments on the principal of a trust debt.
1355 (d) Expenses of a proceeding that concerns primarily
1356 principal, including a proceeding to construe the trust or will,
1357 or to protect the trust, estate, or its property.
1358 (e) Premiums paid on a policy of insurance not described in
1359 s. 738.701(4) of which the trust or estate is the owner and
1360 beneficiary.
1361 (f) Estate, inheritance, and other transfer taxes,
1362 including penalties, apportioned to the trust.
1363 (g) Disbursements related to environmental matters,

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1364 including reclamation, assessing environmental conditions,
1365 remedying and removing environmental contamination, monitoring
1366 remedial activities and the release of substances, preventing
1367 future releases of substances, collecting amounts from persons
1368 liable or potentially liable for the costs of such activities,
1369 penalties imposed under environmental laws or regulations and
1370 other payments made to comply with those laws or regulations,
1371 statutory or common law claims by third parties, and defending
1372 claims based on environmental matters.
1373 (h) Payments representing extraordinary repairs or expenses
1374 incurred in making a capital improvement to principal, including
1375 special assessments; however, a fiduciary ~~trustee~~ may establish
1376 an allowance for depreciation out of income to the extent
1377 permitted by s. 738.703.
1378 Section 29. Subsection (2) of section 738.703, Florida
1379 Statutes, is amended to read:
1380 738.703 Transfers from income to principal for
1381 depreciation.—
1382 (2) A fiduciary ~~trustee~~ may transfer to principal a
1383 reasonable amount of the net cash receipts from a principal
1384 asset that is subject to depreciation but may not transfer any
1385 amount for depreciation:
1386 (a) Of that portion of real property used or available for
1387 use by a beneficiary as a residence or of tangible personal
1388 property held or made available for the personal use or
1389 enjoyment of a beneficiary;
1390 (b) During the administration of a decedent's estate; or
1391 (c) Under this section if the fiduciary ~~trustee~~ is
1392 accounting under s. 738.403 for the business or activity in

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1393 which the asset is used.
1394 Section 30. Subsections (1), (2), and (3) of section
1395 738.704, Florida Statutes, are amended to read:
1396 738.704 Transfers from income to reimburse principal.—
1397 (1) If a fiduciary ~~trustee~~ makes or expects to make a
1398 principal disbursement described in this section, the fiduciary
1399 ~~trustee~~ may transfer an appropriate amount from income to
1400 principal in one or more accounting periods to reimburse
1401 principal or to provide a reserve for future principal
1402 disbursements.
1403 (2) Principal disbursements to which subsection (1) applies
1404 include the following, but only to the extent the fiduciary
1405 ~~trustee~~ has not been and does not expect to be reimbursed by a
1406 third party:
1407 (a) An amount chargeable to income but paid from principal
1408 because the amount is unusually large.
1409 (b) Disbursements made to prepare property for rental,
1410 including tenant allowances, leasehold improvements, and
1411 broker's commissions.
1412 (c) Disbursements described in s. 738.702(1)(g).
1413 (3) If the asset the ownership of which gives rise to the
1414 disbursements becomes subject to a successive income interest
1415 after an income interest ends, a fiduciary ~~trustee~~ may continue
1416 to transfer amounts from income to principal as provided in
1417 subsection (1).
1418 Section 31. Section 738.705, Florida Statutes, is amended
1419 to read:
1420 738.705 Income taxes.—
1421 (1) A tax required to be paid by a fiduciary ~~trustee~~ based

1422 on receipts allocated to income shall be paid from income.
1423 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
1424 on receipts allocated to principal shall be paid from principal,
1425 even if the tax is called an income tax by the taxing authority.
1426 (3) A tax required to be paid by a fiduciary ~~trustee~~ on the
1427 trust's or estate's share of an entity's taxable income shall be
1428 paid proportionately:
1429 (a) From income to the extent receipts from the entity are
1430 allocated to income; ~~and~~
1431 (b) From principal to the extent~~:~~
1432 ~~1.~~ receipts from the entity are allocated to principal~~; and~~
1433 ~~2. The trust's share of the entity's taxable income exceeds~~
1434 ~~the total receipts described in paragraph (a) and subparagraph~~
1435 ~~1~~.
1436 (c) From principal to the extent that the income taxes
1437 payable by the trust or estate exceed the total receipts from
1438 the entity.
1439 (4) After applying subsections (1)-(3), the fiduciary shall
1440 adjust income or principal receipts to the extent that the
1441 trust's or estate's income taxes are reduced, but not
1442 eliminated, because the trust or estate receives a deduction for
1443 payments made to a beneficiary. The amount distributable to that
1444 beneficiary as income as a result of this adjustment shall be
1445 equal to the cash received by the trust or estate, reduced, but
1446 not below zero, by the entity's taxable income allocable to the
1447 trust or estate multiplied by the trust's or estate's income tax
1448 rate. The reduced amount shall be divided by the difference
1449 between 1 and the trust's or estate's income tax rate in order
1450 to determine the amount distributable to that beneficiary as

1451 income before giving effect to other receipts or disbursements
1452 allocable to that beneficiary's interest. ~~For purposes of this~~
1453 ~~section, receipts allocated to principal or income shall be~~
1454 ~~reduced by the amount distributed to a beneficiary from~~
1455 ~~principal or income for which the trust receives a deduction in~~
1456 ~~calculating the tax.~~
1457 Section 32. Section 738.801, Florida Statutes, is amended
1458 to read:
1459 (Substantial rewording of section. See
1460 s. 738.801, F.S., for present text.)
1461 738.801 Apportionment of expenses; improvements.—
1462 (1) For purposes of this section, the term:
1463 (a) "Remainderman" means the holder of the remainder
1464 interests after the expiration of a tenant's estate in property.
1465 (b) "Tenant" means the holder of an estate for life or term
1466 of years in real property or personal property, or both.
1467 (2) If a trust has not been created, expenses shall be
1468 apportioned between the tenant and remainderman as follows:
1469 (a) The following expenses are allocated to and shall be
1470 paid by the tenant:
1471 1. All ordinary expenses incurred in connection with the
1472 administration, management, or preservation of the property,
1473 including interest, ordinary repairs, regularly recurring taxes
1474 assessed against the property, and expenses of a proceeding or
1475 other matter that concerns primarily the tenant's estate or use
1476 of the property.
1477 2. Recurring premiums on insurance covering the loss of the
1478 property or the loss of income from or use of the property.
1479 3. Any of the expenses described in subparagraph (b)3.

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1480 which are attributable to the use of the property by the tenant.
1481 (b) The following expenses are allocated to and shall be
1482 paid by the remainderman:
1483 1. Payments on the principal of a debt secured by the
1484 property, except to the extent the debt is for expenses
1485 allocated to the tenant.
1486 2. Expenses of a proceeding or other matter that concerns
1487 primarily the title to the property, other than title to the
1488 tenant's estate.
1489 3. Except as provided in subparagraph (a)3., expenses
1490 related to environmental matters, including reclamation,
1491 assessing environmental conditions, remedying and removing
1492 environmental contamination, monitoring remedial activities and
1493 the release of substances, preventing future releases of
1494 substances, collecting amounts from persons liable or
1495 potentially liable for the costs of such activities, penalties
1496 imposed under environmental laws or regulations and other
1497 payments made to comply with those laws or regulations,
1498 statutory or common law claims by third parties, and defending
1499 claims based on environmental matters.
1500 4. Extraordinary repairs.
1501 (c) If the tenant or remainderman incurred an expense for
1502 the benefit of his or her own estate without consent or
1503 agreement of the other, he or she must pay such expense in full.
1504 (d) Except as provided in paragraph (c), the cost of, or
1505 special taxes or assessments for, an improvement representing an
1506 addition of value to property forming part of the principal
1507 shall be paid by the tenant if the improvement is not reasonably
1508 expected to outlast the estate of the tenant. In all other

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1509 cases, only a part shall be paid by the tenant while the
1510 remainder shall be paid by the remainderman. The part payable by
1511 the tenant is ascertainable by taking that percentage of the
1512 total that is found by dividing the present value of the
1513 tenant's estate by the present value of an estate of the same
1514 form as that of the tenant, except that it is limited for a
1515 period corresponding to the reasonably expected duration of the
1516 improvement. The computation of present values of the estates
1517 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1518 then in effect and, in the case of an estate for life, the
1519 official mortality tables then in effect under 26 U.S.C. s.
1520 7520. Other evidence of duration or expectancy may not be
1521 considered.
1522 (3) This section does not apply to the extent it is
1523 inconsistent with the instrument creating the estates, the
1524 agreement of the parties, or the specific direction of the
1525 taxing or other statutes.
1526 (4) The common law applicable to tenants and remaindermen
1527 supplements this section, except as modified by this section or
1528 other laws.
1529 Section 33. This act shall take effect January 1, 2013.

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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 Judiciary Committee

BILL: SB 1738

INTRODUCER: Judiciary Committee and Senator Garcia

SUBJECT: Homestead Exemptions For Seniors

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	White	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill provides that the board of county commissioners or the governing body of a municipality may adopt an ordinance to allow an additional homestead exemption up to the amount of the assessed value of the property.

A person qualifies for the potential additional homestead exemption if she or he has:

- maintained permanent residence on the property for at least 20 years;
- attained the age of 65; and
- has a household income that does not exceed $15,000.

The provisions of this bill would require an amendment to the Florida Constitution prior to implementation.

This bill substantially amends sections 196.075 and 196.031, of the Florida Statutes.

This bill reenacts section 197.252(2)(a), Florida Statutes.

II. Present Situation:

Property Valuation in Florida

Median home values in Florida climbed from $23,100 in 1940 to $105,500 in 2000,[1] but more recently sales prices have been stagnant across the state, with median sales prices for existing homes dropping 3 percent in 2011.[2] Some economists, however, predict renewed increases in home prices "in the Miami and Naples markets" throughout 2012 and the beginning of 2013, with a "recovery [that] is likely to roll northward to Central Florida and then North Florida."[3]

Although Florida homeowners may face the "frustrating paradox[]" of falling real estate markets combined with rising property taxes,[4] Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that "all ad valorem taxation shall be at a uniform rate within each taxing unit."[5] The property tax burden for an owner of any particular piece of real estate will depend on the property's just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.[6]

Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[7]

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[1] U.S. Census Bureau, Housing and Household Economic Statistics Division, *Historical Census of Housing Tables: Home Values* (Last Revised Oct. 31, 2011), *available at* http://www.census.gov/hhes/www/housing/census/historic/values.html (last visited Feb. 2, 2012).
[2] In 2011, the median sales price for existing homes was $131,700, down from $135,900 in 2010. Florida Realtors, *Florida's housing sales activity higher as 2011 ends* (Jan. 20, 2012), http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=270287 (last visited Feb. 2, 2012).
[3] Florida Realtors, *Leading U. S. economists: Fla.'s housing market bouncing back* (Dec. 7, 2011), http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=268417 (last visited Feb. 2, 2012) (quoting Dr. Lawrence Yun, chief economist for the National Association of Realtors®).
[4] See Tim Padgett, TIME, *Florida's Property Taxes Go Wacky in Housing Slump* (June 29, 2009), *available at* http://www.time.com/time/business/article/0,8599,1907198,00.html (last visited Feb. 2, 2012) (quoting Kurt Wenner, research director at Florida Tax Watch in Tallahassee).
[5] FLA. CONST. art. VII, s. 2.
[6] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[7] FLA. CONST. art. VII, s. 4(a).

- Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[8]
- Counties may also provide a reduction in the assessed value of property improvements on existing homesteads which are made to accommodate parents or grandparents who are 62 years of age or older.[9]
- The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[10]
- Certain working waterfront property is assessed based upon the property's current use.[11]

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[12]

Property Tax Exemptions and Assessment Limitations for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[13]

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemption for Qualified Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to $50,000. This additional exemption applies to any person who has legal and equitable title to real estate who maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed $20,000. In the

[8] FLA. CONST. art. VII, s. 4(e).
[9] FLA. CONST. art. VII, s. 4(f).
[10] FLA. CONST. art. VII, s. 4(i).
[11] FLA. CONST. art. VII, s. 4(j).
[12] FLA. CONST. art. VII, ss. 3 and 6.
[13] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

implementing legislation for the exemption, the Legislature indexed the $20,000 figure to inflation. Adjusted for inflation, the current senior low income exemption is around $26,000.[14]

Section 196.075, F.S., is the general law enacted to allow counties and municipalities to grant the additional homestead exemption for qualified senior citizens. The county or municipality must grant this additional exemption by ordinance, which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.[15] For purposes of the exemption, "household income" means "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."[16] The term "household" means "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling."[17] In 2010, 59 boards of county commissioners and 206 city commissions had enacted local ordinances granting the additional exemption for seniors.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 196.075, F.S., to provide that the board of county commissioners of any county, or the governing authority of any municipality, may adopt an ordinance that allows an additional homestead exemption up to the amount of the assessed value. The ad valorem tax exemption created by the bill may be used by a person who:

- Owns legal or equitable title to the real estate,
- Maintains a permanent residence on the real estate for at least 20 years,
- Attains age 65, and
- Has a household income not in excess of $15,000.

This section of the bill also provides that, beginning January 1, 2014, the $15,000 income limitation will be adjusted annually by the percentage change in the average cost of living index.

Additional conforming and clarifying changes are also made.

Section 2 amends s. 196.031, F.S., to make conforming changes.

Section 3 reenacts s. 197.252(2)(a), F.S., for the purposes of incorporating the amendment made by this act to s. 196.075, F.S.

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[14] Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).
[15] *See* s. 196.075, F.S. (Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities.).
[16] Section 196.075(1)(b), F.S.
[17] Section 196.075(1)(a), F.S.
[18] Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, http://dor.myflorida.com/dor/property/resources/limitations.html (last visited Feb. 3, 2012) (Data obtained from tax rolls submitted to the Department of Revenue for 2010).

Section 4 provides that this act takes effect upon the approval of a corresponding Senate Joint Resolution at the general election to be held in November 2012 or at an earlier special election specifically authorized by law for that purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill would allow counties or municipalities the option to grant an additional homestead exemption. As such, the bill does not fall within the purview of Article VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Government Sector Impact.

B. Private Sector Impact:

Qualified, low-income, senior homeowners may benefit from reduced ad valorem taxes if counties or municipalities adopt an ordinance granting the additional homestead exemption.

C. Government Sector Impact:

According to the Department of Revenue (DOR), the bill would have an operational impact on the agency related to rulemaking and forms. DOR deems this fiscal impact as insignificant.[19]

The Revenue Estimating Conference (REC) discussed the provisions of SB 1738 at their January 5, 2012, meeting and adopted an indeterminate negative impact should the electorate approve an enabling Constitutional amendment and all the individual jurisdictions pass the necessary ordinances. Due to the overlapping nature of this exemption with existing authorized additional homestead exemptions for seniors, the EDR identified various scenarios for measuring the impact.[20]

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[19] Florida Department of Revenue, *SB 1738 Analysis* (Jan. 17, 2012) (on file with the Senate Judiciary Committee).
[20] Office of Economic and Demographic Research, The Florida Legislature, *Low Income Tenure Based Senior Exemption*, (January 5, 2012) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact0106.pdf. Possible impact scenarios include 1) impact as if the current senior exemption did not exist; 2) impact as the additional

Based on a state-wide average of 10.9 mils, the REC ultimately estimated a potential loss in taxable value of $4.3 million in FY 14-15 above what is currently authorized by the counties and the municipalities that currently grant the additional homestead exemptions for low-income seniors. The revenue impact to those local jurisdictions due to the loss in taxable value is $14 million in FY 14-15 and $14.3 million in FY 15-16.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SJR 1740 proposes a constitutional amendment to authorize the exemption provided in this bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 16, 2012:
The CS makes a technical change related to the effective date, identifying Senate joint resolution 1740 as authorization for the exemption provided in this bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

exemption that could be authorized beyond what is currently in place; 3) impact as only the new capacity that previously could not be exempted under the low income senior exemption.

937330

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Braynon) recommended the following:

1 **Senate Amendment**
2
3 Delete line 175
4 and insert:
5 Senate Joint Resolution 1740, or a similar joint resolution

By Senator Garcia

40-01682-12 20121738__

A bill to be entitled

An act relating to homestead exemptions for seniors; amending s. 196.075, F.S.; authorizing the board of county commissioners of any county or the governing authority of any municipality to adopt an ordinance granting an additional homestead tax exemption up to the assessed value of the property to an owner who has maintained permanent residency on the property for a specified duration, who has attained age 65, and whose household income does not exceed a specified amount; providing definitions applicable to such additional exemption; providing applicability of requirements relating to the adoption of a local ordinance granting such exemption; providing for annual cost-of-living adjustments of the household-income limitation relating to such additional homestead exemption; amending s. 196.031, F.S.; conforming provisions to changes made by the act; reenacting s. 197.252(2)(a), F.S., relating to homestead tax deferral, to incorporate the amendments made to s. 196.075, F.S., in reference thereto; providing a contingent effective date.

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

Section 1. Section 196.075, Florida Statutes, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

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

40-01682-12 20121738__

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

(a) "Household" means a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.

(b) "Household income" means the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.

(2) In accordance with s. 6(d), Art. VII of the State Constitution, the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow an additional homestead exemption of up to:

(a) Fifty-thousand dollars ~~$50,000~~ for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age 65, and whose household income does not exceed $20,000; and~~.~~

(b) The amount of the assessed value for any person who has the legal or equitable title to real estate and has maintained thereon the permanent residence of the owner for at least 20 years, who has attained age 65, and whose household income does not exceed $15,000.

(3) Beginning January 1, 2001, the $20,000 income limitation and beginning January 1, 2014, the $15,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the stated 12-month period, relative to the United States as

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59 a whole, issued by the United States Department of Labor.
60 (4) An ordinance granting additional homestead exemption as
61 authorized by this section must meet the following requirements:
62 (a) It must be adopted under the procedures for adoption of
63 a nonemergency ordinance specified in chapter 125 by a board of
64 county commissioners~~,~~ or chapter 166 by a municipal governing
65 authority.
66 (b) It must specify that the exemption applies only to
67 taxes levied by the unit of government granting the exemption.
68 Unless otherwise specified by the county or municipality, this
69 exemption will apply to all tax levies of the county or
70 municipality granting the exemption, including dependent special
71 districts and municipal service taxing units.
72 (c) It must specify the amount of the exemption, which may
73 not exceed the applicable amount specified in subsection (2)
74 ~~$50,000~~. If the county or municipality specifies a different
75 exemption amount for dependent special districts or municipal
76 service taxing units, the exemption amount must be uniform in
77 all dependent special districts or municipal service taxing
78 units within the county or municipality.
79 (d) It must require that a taxpayer claiming the exemption
80 annually submit to the property appraiser, not later than March
81 1, a sworn statement of household income on a form prescribed by
82 the Department of Revenue.
83 (5) The department must require by rule that the filing of
84 the statement be supported by copies of any federal income tax
85 returns for the prior year, any wage and earnings statements (W-
86 2 forms), any request for an extension of time to file returns,
87 and any other documents it finds necessary, for each member of

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88 the household, to be submitted for inspection by the property
89 appraiser. The taxpayer's sworn statement shall attest to the
90 accuracy of the documents and grant permission to allow review
91 of the documents if requested by the property appraiser.
92 Submission of supporting documentation is not required for the
93 renewal of an exemption under this section unless the property
94 appraiser requests such documentation. Once the documents have
95 been inspected by the property appraiser, they shall be returned
96 to the taxpayer or otherwise destroyed. The property appraiser
97 is authorized to generate random audits of the taxpayers' sworn
98 statements to ensure the accuracy of the household income
99 reported. If so selected for audit, a taxpayer shall execute
100 Internal Revenue Service Form 8821 or 4506, which authorizes the
101 Internal Revenue Service to release tax information to the
102 property appraiser's office. All reviews conducted in accordance
103 with this section shall be completed on or before June 1. The
104 property appraiser may not grant or renew the exemption if the
105 required documentation requested is not provided.
106 (6) The board of county commissioners or municipal
107 governing authority must deliver a copy of any ordinance adopted
108 under this section to the property appraiser no later than
109 December 1 of the year prior to the year the exemption will take
110 effect. If the ordinance is repealed, the board of county
111 commissioners or municipal governing authority shall notify the
112 property appraiser no later than December 1 of the year prior to
113 the year the exemption expires.
114 (7) Those persons entitled to the homestead exemption in s.
115 196.031 may apply for and receive an additional homestead
116 exemption as provided in this section. Receipt of the additional

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117 homestead exemption provided for in this section shall be
118 subject to the provisions of ss. 196.131 and 196.161, if
119 applicable.
120 (8) If title is held jointly with right of survivorship,
121 the person residing on the property and otherwise qualifying may
122 receive the entire amount of the additional homestead exemption.
123 (9) If the property appraiser determines that for any year
124 within the immediately previous 10 years a person who was not
125 entitled to the additional homestead exemption under this
126 section was granted such an exemption, the property appraiser
127 shall serve upon the owner a notice of intent to record in the
128 public records of the county a notice of tax lien against any
129 property owned by that person in the county, and that property
130 must be identified in the notice of tax lien. Any property that
131 is owned by the taxpayer and is situated in this state is
132 subject to the taxes exempted by the improper homestead
133 exemption, plus a penalty of 50 percent of the unpaid taxes for
134 each year and interest at a rate of 15 percent per annum.
135 However, if such an exemption is improperly granted as a result
136 of a clerical mistake or omission by the property appraiser, the
137 person who improperly received the exemption may not be assessed
138 a penalty and interest. Before any such lien may be filed, the
139 owner must be given 30 days within which to pay the taxes,
140 penalties, and interest. Such a lien is subject to the
141 procedures and provisions set forth in s. 196.161(3).
142 Section 2. Paragraph (d) of subsection (7) of section
143 196.031, Florida Statutes, is amended to read:
144 196.031 Exemption of homesteads.—
145 (7) The exemptions provided in paragraphs (1)(a) and (b)

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146 and other homestead exemptions shall be applied as follows:
147 (d) Other exemptions include and shall be applied in the
148 following order: widows, widowers, blind persons, and disabled
149 persons, as provided in s. 196.202; disabled ex-servicemembers
150 and surviving spouses, as provided in s. 196.24, applicable to
151 all levies; the local option low-income senior exemption ~~up to~~
152 ~~$50,000~~, applicable to county levies or municipal levies, as
153 provided in s. 196.075; and the veterans percentage discount, as
154 provided in s. 196.082.
155 Section 3. For the purpose of incorporating the amendment
156 made by this act to section 196.075, Florida Statutes, in a
157 reference thereto, paragraph (a) of subsection (2) of section
158 197.252, Florida Statutes, is reenacted to read:
159 197.252 Homestead tax deferral.—
160 (2)(a) Approval of an application for homestead tax
161 deferral shall defer the combined total of ad valorem taxes and
162 non-ad valorem assessments:
163 1. Which exceeds 5 percent of the applicant's household
164 income for the prior calendar year if the applicant is younger
165 than 65 years old;
166 2. Which exceeds 3 percent of the applicant's household
167 income for the prior calendar year if the applicant is 65 years
168 old or older; or
169 3. In its entirety if the applicant's household income:
170 a. For the previous calendar year is less than $10,000; or
171 b. Is less than the designated amount for the additional
172 homestead exemption under s. 196.075 and the applicant is 65
173 years old or older.
174 Section 4. This act shall take effect upon the approval of

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175 Senate Joint Resolution ____, or a similar joint resolution
176 having substantially the same specific intent and purpose, at
177 the general election to be held in November 2012 or at an
178 earlier special election specifically authorized by law for that
179 purpose.

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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 Judiciary Committee

BILL: SJR 1740

INTRODUCER: Senator Garcia

SUBJECT: Additional Homestead Tax Exemption

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	White	Cibula	JU	**Favorable**
3.			BC	
4.				
5.				
6.				

I. Summary:

This joint resolution amends Article VII, section 6 of the Florida Constitution, to authorize the Legislature, by general law and subject to conditions set forth in the general law, to allow counties and municipalities to grant an additional homestead tax exemption not exceeding the assessed value of the property to an owner who has maintained permanent residency on the property for not less than 20 years, who has attained age 65, and whose household income does not exceed $15,000. The general law must allow counties and municipalities to grant this additional exemption by ordinance and must provide for periodic adjustment of the household income limitation of $15,000 for changes in the cost of living.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Median home values in Florida climbed from $23,100 in 1940 to $105,500 in 2000,[1] but more recently sales prices have been stagnant across the state, with median sales prices for existing homes dropping 3 percent in 2011.[2] Some economists, however, predict renewed increases in

[1] U.S. Census Bureau, Housing and Household Economic Statistics Division, *Historical Census of Housing Tables: Home Values* (Last Revised Oct. 31, 2011), *available at* http://www.census.gov/hhes/www/housing/census/historic/values.html (last visited Feb. 2, 2012).

[2] In 2011, the median sales price for existing homes was $131,700, down from $135,900 in 2010. Florida Realtors, *Florida's housing sales activity higher as 2011 ends* (Jan. 20, 2012), http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=270287 (last visited Feb. 2, 2012).

home prices "in the Miami and Naples markets" throughout 2012 and the beginning of 2013, with a "recovery [that] is likely to roll northward to Central Florida and then North Florida."[3]

Although Florida homeowners may face the "frustrating paradox[]" of falling real estate markets combined with rising property taxes,[4] Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that "all ad valorem taxation shall be at a uniform rate within each taxing unit."[5] The property tax burden for an owner of any particular piece of real estate will depend on the property's just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.[6]

Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[7]
- Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[8]
- Counties may also provide a reduction in the assessed value of property improvements on existing homesteads which are made to accommodate parents or grandparents who are 62 years of age or older.[9]
- The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[10]
- Certain working waterfront property is assessed based upon the property's current use.[11]

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[3] Florida Realtors, *Leading U. S. economists: Fla.'s housing market bouncing back* (Dec. 7, 2011), http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=268417 (last visited Feb. 2, 2012) (quoting Dr. Lawrence Yun, chief economist for the National Association of Realtors®).
[4] See Tim Padgett, TIME, *Florida's Property Taxes Go Wacky in Housing Slump* (June 29, 2009), *available at* http://www.time.com/time/business/article/0,8599,1907198,00.html (last visited Feb. 2, 2012) (quoting Kurt Wenner, research director at Florida Tax Watch in Tallahassee).
[5] FLA. CONST. art. VII, s. 2.
[6] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).
[7] FLA. CONST. art. VII, s. 4(a).
[8] FLA. CONST. art. VII, s. 4(e).
[9] FLA. CONST. art. VII, s. 4(f).
[10] FLA. CONST. art. VII, s. 4(i).

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[12]

Property Tax Exemptions and Assessment Limitations for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[13]

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemption for Qualified Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to $50,000. This additional exemption applies to any person who has legal and equitable title to real estate who maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed $20,000. In the implementing legislation for the exemption, the Legislature indexed the $20,000 figure to inflation. Adjusted for inflation, the current senior low income exemption is around $26,000.[14]

Section 196.075, F.S., is the general law enacted to allow counties and municipalities to grant the additional homestead exemption for qualified senior citizens. The county or municipality must grant this additional exemption by ordinance, which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.[15] For purposes of the exemption, "household income" means "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."[16] The term

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[11] FLA. CONST. art. VII, s. 4(j).
[12] FLA. CONST. art. VII, ss. 3 and 6.
[13] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).
[14] Florida Department of Revenue, *SJR 838 Analysis* (Nov. 29, 2011) (on file with the Senate Judiciary Committee).
[15] *See* s. 196.075, F.S. (Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities.).
[16] Section 196.075(1)(b), F.S.

"household" means "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling."[17] In 2010, 59 boards of county commissioners and 206 city commissions had enacted local ordinances granting the additional exemption for seniors.[18]

III. Effect of Proposed Changes:

The joint resolution amends Article VII, section 6 of the Florida Constitution, to authorize the Legislature, by general law and subject to conditions set forth in the general law, to allow counties and municipalities to grant an additional homestead tax exemption not exceeding the assessed value of the property to an owner who has maintained permanent residency on the property for not less than 20 years, who has attained age 65, and whose household income does not exceed $15,000. The general law must allow counties and municipalities to grant this additional exemption by ordinance and must provide for periodic adjustment of the household income limitation of $15,000 for changes in the cost of living.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief

[17] Section 196.075(1)(a), F.S.
[18] Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, http://dor.myflorida.com/dor/property/resources/limitations.html (last visited Feb. 3, 2012) (Data obtained from tax rolls submitted to the Department of Revenue for 2010).

purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[19]

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.[20]

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision. The amendment would become effective on January 8, 2013.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Government Sector Impact.

B. Private Sector Impact:

Qualified low-income senior homeowners may benefit from reduced ad valorem taxes if this joint resolution is approved by the voters, and counties or municipalities subsequently adopt an ordinance granting the additional homestead exemption.

C. Government Sector Impact:

The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.[21]

According to the Department of Revenue (DOR), the joint resolution would have an operational impact on the agency related to rulemaking and forms. DOR deems this fiscal impact as insignificant.[22]

The Revenue Estimating Conference (REC) discussed the provisions of SJR 1740 at their meeting on January 5, 2012. The REC adopted an indeterminate negative impact should the electorate approve the joint resolution and all the individual jurisdictions pass the necessary ordinances. Due to the overlapping nature of this exemption with existing

[19] *Roberts v. Doyle*, 43 So. 3d 654, 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).
[20] Department of State, *SJR 314 Analysis* (Oct. 31, 2011) (on file with the Senate Judiciary Committee). SJR 314 also proposes a Constitutional amendment.
[21] *Id*.
[22] Florida Department of Revenue, *SJR 1740 Analysis* (Jan. 17, 2012) (on file with the Senate Judiciary Committee).

authorized additional homestead exemptions for seniors, the EDR identified various scenarios for measuring the impact.[23]

Based on a state-wide average of 10.9 mils, the REC ultimately estimated a potential loss in taxable value of $4.3 million in FY 14-15 above what is currently authorized by the counties and the municipalities that currently grant the additional homestead exemptions for low-income seniors. The revenue impact to those local jurisdictions due to the loss in taxable value is $14 million in FY 14-15 and $14.3 million in FY 15-16.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1738 provides a general law to implement the provisions of this joint resolution.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

[23] Office of Economic and Demographic Research, The Florida Legislature, *Low Income Tenure Based Senior Exemption*, (Jan. 5, 2012) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact0106.pdf. Possible impact scenarios include 1) impact as if the current senior exemption did not exist; 2) impact as the additional exemption that could be authorized beyond what is currently in place; 3) impact as only the new capacity that previously could not be exempted under the low income senior exemption.

By Senator Garcia

40-01681-12 20121740__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to authorize the Legislature, by general law, to allow counties and municipalities to grant an additional homestead tax exemption not exceeding the assessed value of the property to an owner who has maintained permanent residency on the property for a specified duration, who has attained age 65, and whose household income does not exceed a specified amount.

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

That the following amendment to Section 6 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon

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40-01681-12 20121740__

establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding:

(1) Fifty thousand dollars to any person who has the legal

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

59 or equitable title to real estate and maintains thereon the
60 permanent residence of the owner and who has attained age sixty-
61 five and whose household income, as defined by general law, does
62 not exceed twenty thousand dollars; or~~.~~
63 (2) The value assessable to any person who has the legal or
64 equitable title to real estate and who has maintained thereon
65 the permanent residence of the owner for not less than twenty
66 years and who has attained age sixty-five and whose household
67 income, as defined by general law, does not exceed fifteen
68 thousand dollars.
69
70 The general law must allow counties and municipalities to grant
71 this additional exemption, within the limits prescribed in this
72 subsection, by ordinance adopted in the manner prescribed by
73 general law, and must provide for the periodic adjustment of the
74 income limitation prescribed in this subsection for changes in
75 the cost of living.
76 (e) Each veteran who is age 65 or older who is partially or
77 totally permanently disabled shall receive a discount from the
78 amount of the ad valorem tax otherwise owed on homestead
79 property the veteran owns and resides in if the disability was
80 combat related, the veteran was a resident of this state at the
81 time of entering the military service of the United States, and
82 the veteran was honorably discharged upon separation from
83 military service. The discount shall be in a percentage equal to
84 the percentage of the veteran's permanent, service-connected
85 disability as determined by the United States Department of
86 Veterans Affairs. To qualify for the discount granted by this
87 subsection, an applicant must submit to the county property

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

88 appraiser, by March 1, proof of residency at the time of
89 entering military service, an official letter from the United
90 States Department of Veterans Affairs stating the percentage of
91 the veteran's service-connected disability and such evidence
92 that reasonably identifies the disability as combat related, and
93 a copy of the veteran's honorable discharge. If the property
94 appraiser denies the request for a discount, the appraiser must
95 notify the applicant in writing of the reasons for the denial,
96 and the veteran may reapply. The Legislature may, by general
97 law, waive the annual application requirement in subsequent
98 years. This subsection shall take effect December 7, 2006, is
99 self-executing, and does not require implementing legislation.
100 BE IT FURTHER RESOLVED that the following statement be
101 placed on the ballot:
102 CONSTITUTIONAL AMENDMENT
103 ARTICLE VII, SECTION 6
104 ADDITIONAL HOMESTEAD EXEMPTION; LOW-INCOME SENIORS WHO
105 MAINTAIN LONG-TERM RESIDENCY ON PROPERTY; NOT EXCEEDING ASSESSED
106 VALUE.—Proposing an amendment to the State Constitution to
107 authorize the Legislature, by general law and subject to
108 conditions set forth in the general law, to allow counties and
109 municipalities to grant an additional homestead tax exemption
110 not exceeding the assessed value of the property to an owner who
111 has maintained permanent residency on the property for not less
112 than 20 years, who has attained age 65, and whose household
113 income does not exceed $15,000. The general law must allow
114 counties and municipalities to grant this additional exemption
115 by ordinance and must provide for periodic adjustment of the
116 household income limitation of $15,000 for changes in the cost

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

117 of living.

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

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 Judiciary Committee

BILL: CS/CS/SB 1172

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Detert

SUBJECT: Criminal Conduct

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill changes the organizational structure of s. 827.03, F.S., the criminal child abuse statute, by creating a definition section, followed by an offenses section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of "mental injury" to mean "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." (This new definition is the same as the definition of mental injury in s. 39.01, F.S., except that the definition in s. 39.01, F.S., does not include the language relating to expert testimony.) Expert testimony requirements under the bill apply only to criminal court cases, not family or dependency court cases.

Existing, s. 827.03, F.S., subjects a person to criminal penalties for engaging in child abuse for certain acts that may result in a "mental injury" to a child. However, the term "mental injury" is not defined in the statute. The bill adds a definition of "mental injury" to the statute to mean an "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and

substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony."[1]

The bill specifies minimum qualifications for physicians and psychologists who may provide expert testimony regarding a mental injury in criminal child abuse case. Under the bill, a physician must be licensed in this state as a physician or osteopathic physician, be board certified in psychiatry, or have an expert witness certificate issued by the Department of Health. A psychologist must be licensed in this state.

Lastly, the bill makes a minor who was a victim of a crime that resulted in a psychiatric or psychological injury, rather than a physical injury, eligible for certain types of assistance available to crime victims under the Florida Crimes Compensation Act.

This bill amends the following sections of the Florida Statutes: 827.03 and 960.03. This bill also conforms cross-references to the following sections of the Florida Statutes: 775.084, 775.0877, 782.07, 921.0022, and 948.062.

II. Present Situation:

Criminal Child Abuse Statute

Section 827.03, F.S., Florida's criminal child abuse statute, provides as follows.
"Child Abuse" is defined to mean:

- Intentionally inflicting physical or mental injury upon a child;
- Committing an intentional act reasonably expected to result in physical or mental injury to a child; or
- Actively encouraging the commission of an act resulting in physical or mental injury to a child.

It is a third degree felony offense to knowingly or willfully abuse a child without causing great bodily harm, permanent disability, or permanent disfigurement.[2]

"Aggravated child abuse" is defined to mean:

- Committing aggravated battery on a child;
- Willfully torturing, maliciously punishing, or willfully and unlawfully caging a child; or
- Knowingly or willfully abusing a child, thereby causing great bodily harm, permanent disability, or permanent disfigurement.

It is a first degree felony to commit aggravated child abuse.[3]

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[1] This new definition is the same as the definition of mental injury in s. 39.01(42), F.S., which is applicable to dependency cases.
[2] A third degree felony is punishable by potentially serving up to 5 years in prison and paying up to a $5,000 fine. Sections 775.082 and 775.083, F.S.
[3] A first degree felony is punishable by potentially serving up to 30 years in prison and paying up to a $10,000 fine. Sections 775.082 and 775.083, F.S.

Mental Injury

In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague for its failure to define the term "mental injury." In 2002, in *DuFresne v. State*,[4] the Florida Supreme Court considered this issue. In *DuFresne*, the Court acknowledged that "in order to withstand a vagueness challenge, a statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct."[5] The Court noted, however, that "the legislature's failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term."[6]

The Court found that the child protection provisions of ch. 39, F.S., were "plainly interrelated" with the provisions of the criminal child abuse statute and that, as such, the criminal child abuse statute was not unconstitutionally vague because the term "mental injury" was adequately defined in ch. 39, F.S.[7] The Court held, "While it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes."[8]

Section 39.01(42), F.S., defines the term "mental injury" as an "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

Expert Testimony

Florida's evidence code specifically addresses expert testimony. Section 90.702, F.S., provides that if scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion. However, the opinion is admissible only if it can be applied to evidence at trial. The determination of a witness's qualifications to express an expert opinion is within the discretion of the trial judge, whose decision will not be reversed absent a clear showing of error.[9] The weight and credibility given to expert testimony is a matter for the fact finder.[10]

In regards to medical expert testimony, courts have held that whether a doctor is qualified to testify as an expert depends upon whether the doctor is known to have such skill, knowledge, or experience with respect to the subject matter about which the doctor is called to testify that it appears to the trial court that the doctor's opinion will aid a jury in resolving the ultimate issue of fact.[11] For example, Florida's Fourth District Court of Appeal held that the testimony of a

[4] *DuFresne v. State*, 826 So. 2d 272 (Fla. 2002) (internal citations omitted)).
[5] *Id*. at 275.
[6] *Id*. at 275 (internal citations omitted).
[7] *Id*. at 278.
[8] *Id*. at 279.
[9] *See*, *Anderson v. State*, 863 So. 2d 169, 179 (Fla.2003).
[10] *See*, *Horowitz v. American Motorist Inc. Co.*, 343 So. 2d 1305, 1308 (Fla. 2nd DCA 1977).
[11] *See*, *Pearson v. State*, 254 So. 2d 573, 574 (Fla. 3rd DCA 1971).

physician which outlined her formal training and experience and her licensing as a physician in two states with a specialty in child and adolescent psychiatry established her qualifications to render an opinion on whether the victim of alleged sexual assault was suffering from posttraumatic stress syndrome.[12]

Outside of the requirements contained in s. 90.702, F.S., Florida law does not place limitations as to who can provide expert testimony in criminal child abuse cases. In other words, anyone can provide expert testimony in such cases so long as the trial judge determines that the person is qualified to express an expert opinion.

Victim Assistance

The Florida Crimes Compensation Act is established in ss. 960.01-960.28, F.S. For purposes of this Act, the term "victim" is defined to include:

- A person who suffers personal physical injury or death as a direct result of a crime;
- A person less than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.[13]

Also for purposes of the Florida Crimes Compensation Act, the term "crime" is defined to include "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death."[14]

The Florida Crimes Compensation Act provides that the following persons are eligible for awards:

- Victim;
- Intervener;
- Surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervener; and
- Any other person who is dependent for his or her principal support upon a deceased victim or intervener.[15]

The Florida Office of the Attorney General's Division of Crime Victims' Services[16] serves as an advocate for crime victims and victims' rights and administers a compensation program to ensure financial assistance for innocent victims of crime.[17] Injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses and other out-of-pocket

[12] *Kruse v. State*, 483 So. 2d 1383, 1385-1388 (Fla. 4th DCA 1986).
[13] Section 960.03(14), F.S.
[14] Section 960.03(3), F.S.
[15] Section 960.065(1), F.S.
[16] The Division of Crime Victims' Services is housed within the Office of Attorney General/Department of Legal Affairs.
[17] See http://myfloridalegal.com/victims (last visited Feb. 1, 2012).

expenses directly related to the injury.[18] Payment is made from the Crimes Compensation Trust Fund (Trust Fund).[19] The Office of Attorney General may adopt rules establishing compensation award limits. However, compensation awards to eligible victims are statutorily limited as follows:

- No more than $10,000 for treatment;
- No more than $10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of $25,000 for all compensable costs; or
- Fifty thousand dollars when there is a finding that a victim has suffered catastrophic injury.[20]

III. Effect of Proposed Changes:

Criminal Child Abuse Statute

Existing s. 827.03, F.S., subjects a person to criminal penalties for engaging in child abuse. The term "child abuse" is defined to mean:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably expected to result in physical or mental injury to a child.

However, the term "mental injury" as used within the definition of "child abuse" is not defined. The bill adds a definition of "mental injury" to child abuse statute to mean an "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony."[21]

The bill specifies minimum qualifications for physicians and psychologists who may provide expert testimony regarding a mental injury in criminal child abuse case. Under the bill, a physician must be licensed in this state as a physician or osteopathic physician, be board certified in psychiatry, or have an expert witness certificate issued by the Department of Health.[22] A psychologist must be licensed in this state. The bill provides that the minimum qualifications for physicians and psychologists to provide expert testimony in a criminal child abuse case do not apply dependency or family court cases. Additionally, the minimum requirements for a physician

[18] *Id*.
[19] Section 960.21, F.S.
[20] Section 960.13(9)(a), F.S.
[21] This new definition is the same as the definition of mental injury in s. 39.01(42), F.S., which is applicable to dependency cases.
[22] An expert witness certificate is available from the Department of Health to physicians who are licensed in another state or Canada, pay a fee to the department, and have not had a previous expert witness certificate revoked by the Board of Medicine or the Board of Osteopathic Medicine. See ss. 488.3175 and 459.0066, F.S.

to provide expert testimony in a medical malpractice action do not apply to criminal child abuse cases.

Victim Assistance

The bill also amends s. 960.03, F.S., by changing the definition of "crime" and "victim" as used in the Florida Crimes Compensation Act. Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act. As a result the bill makes a minor who was a victim of a crime that resulted in a psychiatric or psychological injury, rather than a physical injury, eligible for certain types of assistance available to crime victims under the Florida Crimes Compensation Act.

Finally, the bill makes conforming changes to the following sections of the Florida Statutes:

- Section 775.084, F.S., relating to the definition of violent career criminals;
- Section 775.0877, F.S., relating to the criminal transmission of HIV;
- Section 782.07, F.S., relating to manslaughter;
- Section 921.0022, F.S., relating to the "Offense Severity Ranking Chart;" and
- Section 948.062, F.S., relating to the review of certain cases involving offenders on probation.

The bill provides an effective date of October 1, 2012.

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, by expanding the definition of crime to include offenses that result in only psychiatric or psychological injury to a minor, increases the number of persons potentially eligible for crime compensation awards.

C. Government Sector Impact:

The bill expands the number of persons eligible to receive crime compensation awards to include minors who suffer psychiatric or psychological injury as the result of an offense. The Office of Attorney General indicates that "unless Victims Compensation can estimate the number of persons under the age of 18 who received a psychiatric or psychological injury and the amount of assistance they will require a fiscal estimate is difficult. Without additional data, the fiscal impact on the Crimes Compensation trust fund would be indeterminate but potentially very significant."[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 February 17, 2012:
The bill provides that the minimum qualifications for a physician to provide expert testimony in a medical negligence case, do not apply to a criminal child abuse case.

CS by Criminal Justice on February 9, 2012:
The bill specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony unless he or she is a physician licensed under chs. 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A physician may not provide expert testimony regarding mental injury unless he or she is a physician licensed under chs. 458 or 459, F.S., who is board certified in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A psychologist may not give expert testimony regarding mental injury unless the psychologist is licensed under ch 490, F.S.

B. Amendments:

None.

[23] E-mail from Legislative Affairs in the Florida Office of the Attorney General, dated January 23, 2012, on file with the Senate Criminal Justice Committee staff.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

347970

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 101 - 117
4 and insert:
5 (3) EXPERT TESTIMONY.—
6 (a) Except as provided in paragraph (b), a physician may
7 not provide expert testimony in a criminal child abuse case
8 unless the physician is a physician licensed under chapter 458
9 or chapter 459 or has obtained certification as an expert
10 witness pursuant to s. 458.3175 or s. 459.0066.
11 (b) A physician may provide expert testimony in a criminal
12 child abuse case regarding mental injury if the physician is a
13 physician licensed under chapter 458 or chapter 459, is board

347970

14 certified in psychiatry, or has obtained certification as an
15 expert witness pursuant to s. 458.3175 or s. 459.0066.
16 (c) Notwithstanding s. 766.102, a physician who obtains an
17 expert witness certificate under s. 458.3145 or s. 459.0066 and
18 who otherwise meets the requirements of this subsection may
19 provide expert testimony in a criminal child abuse case.
20 (d) A psychologist may not give expert testimony in a
21 criminal child abuse case regarding mental injury unless the
22 psychologist is licensed under chapter 490.
23 (e) The expert testimony requirements of this subsection
24 apply only to criminal child abuse cases and not to family court
25 or dependency court cases.

By the Committee on Criminal Justice; and Senator Detert

591-03218-12 20121172c1

A bill to be entitled

An act relating to criminal conduct; amending s. 827.03, F.S.; defining the term "mental injury" with respect to the offenses of abuse, aggravated abuse, and neglect of a child; requiring that a physician or psychologist acting as an expert witness in certain proceedings have certain credentials; amending ss. 775.084, 775.0877, 782.07, 921.0022, and 948.062, F.S.; conforming cross-references; amending s. 960.03, F.S.; redefining the term "crime" for purposes of crime victims compensation to include additional forms of injury; redefining the term "victim" to conform with the modified definition of the term "crime"; providing an effective date.

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

Section 1. Section 827.03, Florida Statutes, is amended to read:

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.—

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

(a) "Aggravated child abuse" occurs when a person:

1. Commits aggravated battery on a child;

2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or

3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

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(b) "Child abuse" means:

1.~~(a)~~ Intentional infliction of physical or mental injury upon a child;

2.~~(b)~~ An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

3.~~(c)~~ Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

~~A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(2) "Aggravated child abuse" occurs when a person:~~

~~(a) Commits aggravated battery on a child;~~

~~(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or~~

~~(c) Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.~~

~~A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(c) "Maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary

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59 purpose of the acts was to cause the victim unjustifiable pain
60 or injury.
61 (d) "Mental injury" means injury to the intellectual or
62 psychological capacity of a child as evidenced by a discernible
63 and substantial impairment in the ability of the child to
64 function within the normal range of performance and behavior as
65 supported by expert testimony.
66 (e) ~~(3)(a)~~ "Neglect of a child" means:
67 1. A caregiver's failure or omission to provide a child
68 with the care, supervision, and services necessary to maintain
69 the child's physical and mental health, including, but not
70 limited to, food, nutrition, clothing, shelter, supervision,
71 medicine, and medical services that a prudent person would
72 consider essential for the well-being of the child; or
73 2. A caregiver's failure to make a reasonable effort to
74 protect a child from abuse, neglect, or exploitation by another
75 person.
76
77 Except as otherwise provided in this section, neglect of a child
78 may be based on repeated conduct or on a single incident or
79 omission that results in, or could reasonably be expected to
80 result in, serious physical or mental injury, or a substantial
81 risk of death, to a child.
82 (2) OFFENSES.—
83 (a) A person who commits aggravated child abuse commits a
84 felony of the first degree, punishable as provided in s.
85 775.082, s. 775.083, or s. 775.084.
86 (b) A person who willfully or by culpable negligence
87 neglects a child and in so doing causes great bodily harm,

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88 permanent disability, or permanent disfigurement to the child
89 commits a felony of the second degree, punishable as provided in
90 s. 775.082, s. 775.083, or s. 775.084.
91 (c) A person who knowingly or willfully abuses a child
92 without causing great bodily harm, permanent disability, or
93 permanent disfigurement to the child commits a felony of the
94 third degree, punishable as provided in s. 775.082, s. 775.083,
95 or s. 775.084.
96 (d) ~~(c)~~ A person who willfully or by culpable negligence
97 neglects a child without causing great bodily harm, permanent
98 disability, or permanent disfigurement to the child commits a
99 felony of the third degree, punishable as provided in s.
100 775.082, s. 775.083, or s. 775.084.
101 (3) EXPERT TESTIMONY.—
102 (a) Except as provided in paragraph (b), a physician may
103 not provide expert testimony in a criminal child abuse case
104 unless the physician is a physician licensed under chapter 458
105 or chapter 459 or has obtained certification as an expert
106 witness pursuant to s. 458.3175.
107 (b) A physician may not provide expert testimony in a
108 criminal child abuse case regarding mental injury unless the
109 physician is a physician licensed under chapter 458 or chapter
110 459 who is board certified in psychiatry or has obtained
111 certification as an expert witness pursuant to s. 458.3175.
112 (c) A psychologist may not give expert testimony in a
113 criminal child abuse case regarding mental injury unless the
114 psychologist is licensed under chapter 490.
115 (d) The expert testimony requirements of this subsection
116 apply only to criminal child abuse cases and not to family court

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117 or dependency court cases.
118 ~~(4) For purposes of this section, "maliciously" means~~
119 ~~wrongfully, intentionally, and without legal justification or~~
120 ~~excuse. Maliciousness may be established by circumstances from~~
121 ~~which one could conclude that a reasonable parent would not have~~
122 ~~engaged in the damaging acts toward the child for any valid~~
123 ~~reason and that the primary purpose of the acts was to cause the~~
124 ~~victim unjustifiable pain or injury.~~
125 Section 2. Paragraph (d) of subsection (1) of section
126 775.084, Florida Statutes, is amended to read:
127 775.084 Violent career criminals; habitual felony offenders
128 and habitual violent felony offenders; three-time violent felony
129 offenders; definitions; procedure; enhanced penalties or
130 mandatory minimum prison terms.—
131 (1) As used in this act:
132 (d) "Violent career criminal" means a defendant for whom
133 the court must impose imprisonment pursuant to paragraph (4)(d),
134 if it finds that:
135 1. The defendant has previously been convicted as an adult
136 three or more times for an offense in this state or other
137 qualified offense that is:
138 a. Any forcible felony, as described in s. 776.08;
139 b. Aggravated stalking, as described in s. 784.048(3) and
140 (4);
141 c. Aggravated child abuse, as described in s. 827.03(2)(a);
142 d. Aggravated abuse of an elderly person or disabled adult,
143 as described in s. 825.102(2);
144 e. Lewd or lascivious battery, lewd or lascivious
145 molestation, lewd or lascivious conduct, or lewd or lascivious

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146 exhibition, as described in s. 800.04 or s. 847.0135(5);
147 f. Escape, as described in s. 944.40; or
148 g. A felony violation of chapter 790 involving the use or
149 possession of a firearm.
150 2. The defendant has been incarcerated in a state prison or
151 a federal prison.
152 3. The primary felony offense for which the defendant is to
153 be sentenced is a felony enumerated in subparagraph 1. and was
154 committed on or after October 1, 1995, and:
155 a. While the defendant was serving a prison sentence or
156 other sentence, or court-ordered or lawfully imposed supervision
157 that is imposed as a result of a prior conviction for an
158 enumerated felony; or
159 b. Within 5 years after the conviction of the last prior
160 enumerated felony, or within 5 years after the defendant's
161 release from a prison sentence, probation, community control,
162 control release, conditional release, parole, or court-ordered
163 or lawfully imposed supervision or other sentence that is
164 imposed as a result of a prior conviction for an enumerated
165 felony, whichever is later.
166 4. The defendant has not received a pardon for any felony
167 or other qualified offense that is necessary for the operation
168 of this paragraph.
169 5. A conviction of a felony or other qualified offense
170 necessary to the operation of this paragraph has not been set
171 aside in any postconviction proceeding.
172 Section 3. Subsection (1) of section 775.0877, Florida
173 Statutes, is amended to read:
174 775.0877 Criminal transmission of HIV; procedures;

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175 penalties.—
176 (1) In any case in which a person has been convicted of or
177 has pled nolo contendere or guilty to, regardless of whether
178 adjudication is withheld, any of the following offenses, or the
179 attempt thereof, which offense or attempted offense involves the
180 transmission of body fluids from one person to another:
181 (a) Section 794.011, relating to sexual battery;
182 (b) Section 826.04, relating to incest;
183 (c) Section 800.04, relating to lewd or lascivious offenses
184 committed upon or in the presence of persons less than 16 years
185 of age;
186 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
187 relating to assault;
188 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
189 relating to aggravated assault;
190 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
191 relating to battery;
192 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
193 relating to aggravated battery;
194 (h) Section 827.03(2)(c)~~(1)~~, relating to child abuse;
195 (i) Section 827.03(2)(a), relating to aggravated child
196 abuse;
197 (j) Section 825.102(1), relating to abuse of an elderly
198 person or disabled adult;
199 (k) Section 825.102(2), relating to aggravated abuse of an
200 elderly person or disabled adult;
201 (l) Section 827.071, relating to sexual performance by
202 person less than 18 years of age;
203 (m) Sections 796.03, 796.07, and 796.08, relating to

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204 prostitution; or
205 (n) Section 381.0041(11)(b), relating to donation of blood,
206 plasma, organs, skin, or other human tissue,
207
208 the court shall order the offender to undergo HIV testing, to be
209 performed under the direction of the Department of Health in
210 accordance with s. 381.004, unless the offender has undergone
211 HIV testing voluntarily or pursuant to procedures established in
212 s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or
213 rule providing for HIV testing of criminal offenders or inmates,
214 subsequent to her or his arrest for an offense enumerated in
215 paragraphs (a)-(n) for which she or he was convicted or to which
216 she or he pled nolo contendere or guilty. The results of an HIV
217 test performed on an offender pursuant to this subsection are
218 not admissible in any criminal proceeding arising out of the
219 alleged offense.
220 Section 4. Subsection (3) of section 782.07, Florida
221 Statutes, is amended to read:
222 782.07 Manslaughter; aggravated manslaughter of an elderly
223 person or disabled adult; aggravated manslaughter of a child;
224 aggravated manslaughter of an officer, a firefighter, an
225 emergency medical technician, or a paramedic.—
226 (3) A person who causes the death of any person under the
227 age of 18 by culpable negligence under s. 827.03(2)(b)~~(3)~~
228 commits aggravated manslaughter of a child, a felony of the
229 first degree, punishable as provided in s. 775.082, s. 775.083,
230 or s. 775.084.
231 Section 5. Paragraphs (f), (g), and (i) of subsection (3)
232 of section 921.0022, Florida Statutes, are amended to read:

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233 921.0022 Criminal Punishment Code; offense severity ranking
234 chart.—
235 (3) OFFENSE SEVERITY RANKING CHART
236 (f) LEVEL 6
237

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.

784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.

256
790.161(2) 2nd Make, possess, or throw destructive device with intent to do bodily harm or damage property.

257
790.164(1) 2nd False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

258
790.19 2nd Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

259
794.011(8)(a) 3rd Solicitation of minor to participate in sexual activity by custodial adult.

260
794.05(1) 2nd Unlawful sexual activity with specified minor.

261
800.04(5)(d) 3rd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.

262
800.04(6)(b) 2nd Lewd or lascivious conduct; offender 18 years of age or older.

263
806.031(2) 2nd Arson resulting in great bodily harm to firefighter or any other person.

264
810.02(3)(c) 2nd Burglary of occupied structure; unarmed;

no assault or battery.

265
812.014(2)(b)1. 2nd Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.

266
812.014(6) 2nd Theft; property stolen $3,000 or more; coordination of others.

267
812.015(9)(a) 2nd Retail theft; property stolen $300 or more; second or subsequent conviction.

268
812.015(9)(b) 2nd Retail theft; property stolen $3,000 or more; coordination of others.

269
812.13(2)(c) 2nd Robbery, no firearm or other weapon (strong-arm robbery).

270
817.034(4)(a)1. 1st Communications fraud, value greater than $50,000.

271
817.4821(5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

272
825.102(1) 3rd Abuse of an elderly person or disabled adult.

273
825.102(3)(c) 3rd Neglect of an elderly person or disabled

		adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.
827.03(2)(c) ~~827.03(1)~~	3rd	Abuse of a child.
827.03(2)(d) ~~827.03(3)(c)~~	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

291

292 (g) LEVEL 7

293

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.

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409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.

310

465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
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.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act,

		procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement

		officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

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790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

345

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

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790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

347

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.

348

796.03	2nd	Procuring any person under 16 years for prostitution.

349

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

350

800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

351

806.01(2)	2nd	Maliciously damage structure by fire or explosive.

352

810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.

353

810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.

354

810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.

355

810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.

356

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.

357

812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.

358

812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

359

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
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.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2) ~~827.03(3)(b)~~	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.

838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
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 (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 center.
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 (2)(c)4., within 1,000 feet

		of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135	1st	Trafficking in gamma-hydroxybutyric

(1)(h)1.a.		acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to

		comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

407

985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

408

985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

409

410 (i) LEVEL 9

411

Florida Statute	Felony Degree	Description

412

316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.

413

327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.

414

409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.

415

499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.

416

560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding

		$100,000 by money transmitter.

417

560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.

418

655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.

419

775.0844	1st	Aggravated white collar crime.

420

782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

421

782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.

422

782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

423

782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.

424

787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on

		a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or

		person exercising custodial authority.
827.03(2)(a) ~~827.03(2)~~	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135	1st	Trafficking in phencyclidine, more

(1)(d)1.c.		than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 6. Subsection (1) of section 948.062, Florida Statutes, is amended to read:

948.062 Reviewing and reporting serious offenses committed

460 by offenders placed on probation or community control.—
461 (1) The department shall review the circumstances related
462 to an offender placed on probation or community control who has
463 been arrested while on supervision for the following offenses:
464 (a) Any murder as provided in s. 782.04;
465 (b) Any sexual battery as provided in s. 794.011 or s.
466 794.023;
467 (c) Any sexual performance by a child as provided in s.
468 827.071;
469 (d) Any kidnapping, false imprisonment, or luring of a
470 child as provided in s. 787.01, s. 787.02, or s. 787.025;
471 (e) Any lewd and lascivious battery or lewd and lascivious
472 molestation as provided in s. 800.04(4) or (5);
473 (f) Any aggravated child abuse as provided in s.
474 827.03(2)(a) ~~s. 827.03(2)~~;
475 (g) Any robbery with a firearm or other deadly weapon, home
476 invasion robbery, or carjacking as provided in s. 812.13(2)(a),
477 s. 812.135, or s. 812.133;
478 (h) Any aggravated stalking as provided in s. 784.048(3),
479 (4), or (5);
480 (i) Any forcible felony as provided in s. 776.08, committed
481 by a ~~any~~ person on probation or community control who is
482 designated as a sexual predator; or
483 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),
484 or vehicular or vessel homicide as provided in s. 782.071 or s.
485 782.072, committed by a ~~any~~ person who is on probation or
486 community control for an offense involving death or injury
487 resulting from a driving incident.
488 Section 7. Paragraph (a) of subsection (3) and subsection

489 (14) of section 960.03, Florida Statutes, are amended to read:
490 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
491 960.01-960.28, unless the context otherwise requires, the term:
492 (3) "Crime" means:
493 (a) A felony or misdemeanor offense committed by either an
494 adult or a juvenile which results in physical injury or death,
495 including a felony or misdemeanor offense committed by either an
496 adult or a juvenile which results in psychiatric or
497 psychological injury to a person younger than 18 years of age
498 who was not physically injured by the criminal act. The term
499 also includes any ~~such~~ criminal act that ~~which~~ is committed
500 within this state but that ~~which~~ falls exclusively within
501 federal jurisdiction.
502 (14) "Victim" means:
503 (a) A person who suffers personal physical injury or death
504 as a direct result of a crime;
505 (b) A person younger than 18 years of age who was present
506 at the scene of a crime, saw or heard the crime, and suffered a
507 psychiatric or psychological injury because of the crime, but
508 who was not physically injured; ~~or~~
509 (c) A person younger than 18 years of age who was the
510 victim of a felony or misdemeanor offense that resulted in a
511 psychiatric or psychological injury, but who was not physically
512 injured; or
513 (d) ~~(c)~~ A person against whom a forcible felony was
514 committed and who suffers a psychiatric or psychological injury
515 as a direct result of that crime but who does not otherwise
516 sustain a personal physical injury or death.
517 Section 8. This act shall take effect October 1, 2012.

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 Judiciary Committee

BILL: CS/CS/SB 2054

INTRODUCER: Judiciary Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Domestic Violence

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	**Fav/CS**
2.	O'Connor	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill makes statutory changes to conform to proviso included in the FY 2011-2012 General Appropriations Act (GAA).[1]

The bill revises the duties and functions of the Department of Children and Family Services (DCF or department) relating to the domestic violence program. Specifically, the bill:

- Limits the department's role in certification of domestic violence shelters to initial certification, suspension and revocation. Ongoing certification of domestic violence shelters will be performed by the Florida Coalition Against Domestic Violence (FCADV or coalition).
- Requires the department to partner with the FCADV to coordinate and administer the statewide activities related to the prevention of domestic violence.
- Requires the department to contract with the coalition for the delivery and management of services for the state's domestic violence program.

[1] SB 2000 (2011 Reg. Session).

- Eliminates certification of batterers' intervention programs as well as the authority for the department to collect fees associated with the certification program.

This bill substantially amends ss. 39.902, 39.903, 39.904, 39.905, 381.006, 381.0072, 741.281, 741.2902, 741.30, 741.316, 741.32, 741.325, 948.038, and 938.01, creates s. 39.9035, and repeals s. 741.327, Florida Statutes.

II. Present Situation:

The initiative to transfer multiple functions related to domestic violence from the department to the FCADV was first introduced in the Governor's budget recommendations for the 2011-12 fiscal year. The bill to carry out the transfer was not enacted during the 2011 Legislative Session.[2] However, proviso language was added to the General Appropriations Act giving the coalition funding and authority to implement statutory directives contained in Chapter 39, F.S., relating to the domestic violence program. The department negotiated a contract with the coalition to perform these tasks, which was effective July 1, 2011.

Domestic Violence Program

The department has historically been responsible for the statewide domestic violence program, which provides supervision, direction, coordination, and administration of activities related to domestic violence prevention and intervention services.[3] Specifically, the department was required to:

- Develop criteria for the approval or rejection of certification or funding of domestic violence centers.
- Develop minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.
- Receive and approve or reject applications for certification of domestic violence centers.
- Evaluate each certified domestic violence center annually to ensure compliance with the minimum standards. The department has the right to enter and inspect the premises of certified domestic violence centers at any reasonable hour in order to effectively evaluate the state of compliance of these centers.
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the districts and the state;
- Serve as a clearinghouse for information relating to domestic violence.
- Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent domestic violence and to treat persons engaged in or subject to domestic violence.
- Develop and provide educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to domestic violence, professional persons, or

[2] HB 5309 was heard only in the House Health Care Appropriations Subcommittee and the House Appropriations Committee. A bill addressing these issues was not filed in the Senate.
[3] Section 39.903, F.S.

others who care for or may be engaged in the care and treatment of persons engaged in or subject to domestic violence.[4]

Florida Coalition Against Domestic Violence

The department was also required to contract with a statewide association whose primary purpose is to represent and provide technical assistance to certified domestic violence centers. This association implements, administers, and evaluates all services provided by the certified domestic violence centers.[5]

The coalition serves as the professional association for the state's 42 certified domestic violence centers and is the primary representative of battered women and their children in the public policy arena.[6] Funding sources for the coalition have included the federal Family Violence Prevention Services Act,[7] the federal Violence Against Women Act,[8] membership fees, private donations, and funds from the state. The coalition administers state and federal funding earmarked to the 42 domestic violence centers in the state.

Effective January 1, 2004, the coalition became responsible for approving or rejecting applications for funding and contracting with certified centers. In order to receive state funds, a center must obtain certification by the state. However, the issuance of certification does not obligate the coalition to provide state funding. The coalition monitors the centers fiscally and programmatically under their new authority to administer funds. This review process also includes a review of a center's compliance with rules and laws.

Domestic Violence Centers

Domestic violence centers are community-based agencies that provide services to the victims of domestic violence. Minimum services include temporary emergency shelter; information and referrals; safety planning, counseling, and case management; a 24-hour emergency hotline; educational services for community awareness; assessment and appropriate referral of resident children; and training for law enforcement officers and other professionals.[9]

Domestic violence centers have been required to be certified since 1978.[10] The department is responsible for monitoring certification on an annual basis to ensure that the certified centers

[4] *Id.*
[5] *Id.*
[6] In 1977, 14 shelters in Florida formed a network of battered women's advocates known as the Refuge Information Network. Several years later, this initial organization was incorporated as the Florida Coalition Against Domestic Violence. The Coalition, like the Network, was founded on principles of cooperation and unity among shelters. Members share the goal of ending domestic violence through community education, public policy development and services for victims. Retrieved January 9, 2012 from http://www.fcadv.org/
[7] 42 U.S.C.A. s. 10401.
[8] 42 U.S.C.A. s. 13701.
[9] Section 39.905, F.S.
[10] Chapter 78-281, Laws of Fla.

continue to remain in compliance with the standards for certification.[11] A domestic violence center must be certified in order to receive funding.[12]

Batterers' Intervention Programs

The department has been responsible for certifying batterers' intervention programs since 2001.[13] The Office for Certification and Monitoring of Batterers' Intervention Programs was created in the Department of Corrections in 1995 and transferred to the department in 2001[14] for the purpose of uniformly and systematically standardizing programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence.[15]

Section 741.325, F.S., requires the department to promulgate guidelines setting forth certain requirements of the programs. Those guidelines require programs to:

- Have a primary purpose of victims and their children, if present;
- Hold batterers accountable for acts of domestic violence;
- Be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming;
- Be a psychoeducational model that employs a program content based on tactics of power and control by one person over another; and
- Have facilitators, supervisors, and trainees who meet certification requirements established by the program.

Several sections of statute authorize or require judges to order an offender to participate in a batterers' intervention program. For example, section 948.038, F.S., provides that as a condition of probation, community control, or any other court-ordered community supervision, a judge must, with certain exceptions, order a person convicted of an offense of domestic violence to attend and successfully complete a batterers' intervention program. This section requires that the batterers' intervention program be certified under section 741.32, F.S., and the offender must pay the cost of attending the program.

Fees

The department was authorized to assess and collect fees for the certification of batterers' intervention programs as follows:[16]

- An annual certification fee not to exceed $300 for the certification and monitoring of batterers' intervention programs; and

[11] Section 39.903(1)(d), F.S.
[12] Section 39.905(6)(a), F.S.
[13] Section 741.325, F.S.
[14] Chapter 95-195, Laws of Fla., created the office in the Department of Corrections. Chapter 2001-183, Laws of Fla., transferred the office to the department.
[15] Section 741.325, F.S.
[16] Section 741.327, F.S.

- An annual certification fee not to exceed $200 for the certification and monitoring of assessment personnel providing direct services to persons who:
  - Are ordered by the court to participate in a domestic violence prevention program;
  - Are adjudged to have committed an act of domestic violence as defined in section 741.28, F.S.;
  - Have an injunction entered for protection against domestic violence; or
  - Agree to attend a program as part of a diversion or pretrial intervention agreement by the offender with the state attorney.[17]

In addition, all persons required by the court to attend domestic violence programs certified by the department are required to pay an additional $30 fee for each program to the department.[18] The fees assessed and collected under this section are deposited in the Executive Office of the Governor's Domestic Violence Trust Fund[19] and directed to the department to fund the cost of certifying and monitoring batterers' intervention programs.[20]

III. Effect of Proposed Changes:

The bill maintains the department's operation of the domestic violence program, but requires the department to contract with the coalition to perform specific duties currently performed by the department.

Responsibilities of the department under the bill include:

- Developing criteria for the approval, suspension, or rejection of certification of domestic violence centers;
- Developing minimum standards for domestic violence centers;
- Receiving and approving or rejecting applications for **initial** certification of domestic violence centers;[21]
- Having the authorization to enter and inspect at any reasonable hour the premises of domestic violence centers applying for initial certification;
- Coordinating with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation;
- Entering into partnerships with the coalition to coordinate and administer statewide activities related to the prevention of domestic violence; and
- Considering and awarding applications from certified domestic violence centers for capital improvement grants pursuant to section 39.9055, F.S.

Responsibilities of the coalition under the bill include:

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[17] *Id*.
[18] *Id*. The intent that the programs be user-fee funded with fees from the batterers who attend the program as payment for programs is important to the batterer taking responsibility for the act of violence. An exception is made for those local, state, or federal programs that fund batterers' intervention programs in whole or in part.
[19] Section 741.01, F.S.
[20] The department has indicated that the current fee collections do not support the cost associated with the certifying and monitoring batterers' intervention programs.
[21] Certification will be renewed annually by the department upon a favorable monitoring report by the coalition.

- Having the authorization to enter and inspect the premises of certified domestic violence centers for monitoring purposes;
- Delivering and managing services for the state's domestic violence program;[22]
- Implementing, administering, and evaluating all domestic violence services provided by the certified domestic violence centers;
- Receiving and approving or rejecting applications for funding of certified domestic violence centers; and
- Evaluating certified domestic violence centers in order to determine compliance with minimum certification standards.

When approving funding for a newly certified domestic violence center, the coalition is required to make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the coalition must make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated for certified domestic violence centers, the coalition is required to use a formula approved by the department as specified in section 39.905(7)(a), F.S.

The bill also revises current law by:

- Creating a definition for the term "coalition" to mean the Florida Coalition Against Domestic Violence;
- Requiring the coalition, rather than the department, to submit the annual report on the status of domestic violence in the state to the Legislature;[23]
- Requiring a new center applying for certification in an area where a center already exists to demonstrate the unmet need by the existing center and describe efforts to reduce duplication of services;
- Requiring domestic violence centers to file with the coalition, rather that the department, the list of employees and volunteers who may claim a privilege to refuse to disclose confidential communications between a domestic violence victim and an advocate;
- Specifying that the coalition, rather than the department, will conduct annual food service inspection functions for domestic violence shelters and that the coalition will not apply the term "food service establishment" if the center does not prepare and serve food; and
- Eliminating the requirement that a batterers' intervention program must be a certified program under section 741.32, F.S.[24]

[22] Services include, but are not limited to, the administration of contracts and grants.
[23] Section 39.905, F.S.
[24] Due to previous budget cuts, the department suspended the acceptance and approval of new applicants for certification as a batterer intervention program or as an assessor. Certifications for all currently certified programs and assessors in good standing were extended for one year. Retrieved January 6, 2012, from http://www.dcf.state.fl.us/programs/domesticviolence/bip/bip.shtml.

With respect to the batterers' intervention programs, the bill:

- Amends legislative intent relating to certifying batterers' intervention programs;
- Eliminates the role of the department related to the certification of these programs;
- Eliminates statutory references to certified batterers' intervention programs;
- Requires that batterers' intervention programs meet the requirements currently in law but removing the authority for the department to promulgate rules to establish these requirements; and
- Retains references to batterers' intervention programs in statute but eliminates references to the programs being certified by the department.

This bill provides an effective date of July 1, 2012.

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 repeals the requirement for providers of batterers' intervention programs to submit an initial application fee and annual certification fee to the department. Currently, the application fee is $300 and the annual renewal fee is $150 for batterers' intervention programs, and there is a $100 application fee and a $74 annual renewal fee for assessors. The bill also repeals the requirement for persons court-ordered to attend batterers' intervention to pay an additional $30 fee to the department.

B. Private Sector Impact:

See Tax/Fee Issues above.

C. Government Sector Impact:

The department reports that the General Appropriations Act (GAA) for the 2011-12 for fiscal year transferred $951,851 of budget from the department to the coalition to perform certain duties rather than the department. The bill repeals the department's authority to collect fees; however, there is no fiscal impact because the department's budget for the batterer intervention program was not approved in the fiscal year 2011-12 GAA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 February 16, 2012:
The committee substitute deletes language that states "[t]he grant, denial, suspension, or revocation of certification does not constitute agency action under chapter 120."

CS by Children, Families, and Elder Affairs on January 25, 2012:
The committee substitute:

- Removes the phrase "as directed by the department" because this function is no longer a responsibility of the department;
- Clarifies that the coalition also delivers some services; and
- Narrows the scope of services to be implemented, administered, and evaluated by the coalition from "all" services to "domestic violence" services.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

341986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 256 - 257.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 24 - 27
8 and insert:
9 revising provisions relating to expiration of a

By the Committees on Children, Families, and Elder Affairs; and Children, Families, and Elder Affairs

586-02385-12 20122054c1

A bill to be entitled

An act relating to domestic violence; amending s. 39.902, F.S.; defining the term "coalition" as it relates to domestic violence; amending s. 39.903, F.S.; revising provisions relating to certification of domestic violence centers; providing specified additional duties for and authority of the Florida Coalition Against Domestic Violence; revising the duties of the Department of Children and Family Services; requiring the department to contract with coalition for specified purposes; creating s. 39.9035, F.S.; providing the duties of the coalition as it manages the delivery of services to the state's domestic violence program; amending s. 39.904, F.S.; requiring the coalition, rather than the department, to make a specified annual report; revising the contents of the report; amending s. 39.905, F.S.; requiring the coalition, rather than the department, to perform certain duties relating to certification of domestic violence centers; revising provisions relating to certification of domestic violence centers; requiring a demonstration of need for certification of a new domestic violence center; providing the grant, denial, suspension, or revocation of certification of a domestic violence center is not agency action for purposes of appeal under ch. 120, F.S.; revising provisions relating to expiration of a center's annual certificate; prohibiting a domestic violence center from receiving funding from the

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

586-02385-12 20122054c1

coalition for services that are exempted from certification; amending ss. 381.006, 381.0072, 741.281, 741.2902, 741.30, and 741.316, F.S.; conforming provisions to changes made by the act; amending s. 741.32, F.S.; deleting provisions relating to the certification of batterers' intervention programs; amending s. 741.325, F.S.; revising the requirements for batterers' intervention programs; repealing s. 741.327, F.S., relating to the certification and monitoring of batterers' intervention programs; amending ss. 948.038 and 938.01, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (1), (2), and (3) of section 39.902, Florida Statutes, are redesignated as subsections (2), (3), and (4), respectively, and a new subsection (1) is added to that section, to read:

39.902 Definitions.—As used in this part, the term:

(1) "Coalition" means the Florida Coalition Against Domestic Violence.

Section 2. Section 39.903, Florida Statutes, is amended to read:

39.903 Duties and functions of the department with respect to domestic violence.—The department shall:

(1) Operate the domestic violence program and, in collaboration with the coalition, shall coordinate and

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

59 administer statewide activities related to the prevention of
60 domestic violence. ~~The department shall:~~
61 ~~(a) Develop by rule criteria for the approval or rejection~~
62 ~~of certification or funding of domestic violence centers.~~
63 ~~(b) Develop by rule minimum standards for domestic violence~~
64 ~~centers to ensure the health and safety of the clients in the~~
65 ~~centers.~~
66 (2) ~~(c)~~ Receive and approve or reject applications for
67 initial certification of domestic violence centers. The
68 department shall annually renew the certification thereafter
69 upon receipt of a favorable monitoring report by the coalition.
70 ~~If any of the required services are exempted from certification~~
71 ~~by the department under s. 39.905(1)(c), the center shall not~~
72 ~~receive funding for those services~~.
73 (3) ~~(d)~~ Have ~~Evaluate each certified domestic violence~~
74 ~~center annually to ensure compliance with the minimum standards.~~
75 ~~The department has~~ the right to enter and inspect the premises
76 of domestic violence centers that are applying for an initial
77 certification or facing potential suspension or revocation of
78 certification ~~certified domestic violence centers at any~~
79 ~~reasonable hour in order~~ to effectively evaluate the state of
80 compliance with minimum standards ~~of these centers with this~~
81 ~~part and rules relating to this part~~.
82 ~~(c) Adopt rules to implement this part.~~
83 (4) ~~(f)~~ Promote the involvement of certified domestic
84 violence centers in the coordination, development, and planning
85 of domestic violence programming in the circuits ~~districts and~~
86 ~~the state~~.
87 ~~(2) The department shall serve as a clearinghouse for~~

88 ~~information relating to domestic violence.~~
89 ~~(3) The department shall operate the domestic violence~~
90 ~~program, which provides supervision, direction, coordination,~~
91 ~~and administration of statewide activities related to the~~
92 ~~prevention of domestic violence.~~
93 (5) ~~(4)~~ Coordinate with state agencies that have health,
94 education, or criminal justice responsibilities to raise
95 awareness of domestic violence and promote consistent policy
96 implementation. ~~The department shall enlist the assistance of~~
97 ~~public and voluntary health, education, welfare, and~~
98 ~~rehabilitation agencies in a concerted effort to prevent~~
99 ~~domestic violence and to treat persons engaged in or subject to~~
100 ~~domestic violence. With the assistance of these agencies, the~~
101 ~~department, within existing resources, shall formulate and~~
102 ~~conduct a research and evaluation program on domestic violence.~~
103 ~~Efforts on the part of these agencies to obtain relevant grants~~
104 ~~to fund this research and evaluation program must be supported~~
105 ~~by the department.~~
106 ~~(5) The department shall develop and provide educational~~
107 ~~programs on domestic violence for the benefit of the general~~
108 ~~public, persons engaged in or subject to domestic violence,~~
109 ~~professional persons, or others who care for or may be engaged~~
110 ~~in the care and treatment of persons engaged in or subject to~~
111 ~~domestic violence.~~
112 (6) ~~The department shall~~ Cooperate with, assist in, and
113 participate in, programs of other properly qualified state
114 agencies, including any agency of the Federal Government,
115 schools of medicine, hospitals, and clinics, in planning and
116 conducting research on the prevention of domestic violence and

117 the provision of services to clients~~, care, treatment, and~~
118 ~~rehabilitation of persons engaged in or subject to domestic~~
119 ~~violence~~.
120 (7) ~~The department shall~~ Contract with the coalition for
121 the delivery and management of services for the state's domestic
122 violence program. Services under this contract include, but are
123 not limited to, the administration of contracts and grants. ~~a~~
124 ~~statewide association whose primary purpose is to represent and~~
125 ~~provide technical assistance to certified domestic violence~~
126 ~~centers. This association shall implement, administer, and~~
127 ~~evaluate all services provided by the certified domestic~~
128 ~~violence centers. The association shall receive and approve or~~
129 ~~reject applications for funding of certified domestic violence~~
130 ~~centers. When approving funding for a newly certified domestic~~
131 ~~violence center, the association shall make every effort to~~
132 ~~minimize any adverse economic impact on existing certified~~
133 ~~domestic violence centers or services provided within the same~~
134 ~~service area. In order to minimize duplication of services, the~~
135 ~~association shall make every effort to encourage subcontracting~~
136 ~~relationships with existing certified domestic violence centers~~
137 ~~within the same service area. In distributing funds allocated by~~
138 ~~the Legislature for certified domestic violence centers, the~~
139 ~~association shall use a formula approved by the department as~~
140 ~~specified in s. 39.905(7)(a).~~
141 (8) Consider applications from certified domestic violence
142 centers for capital improvement grants and award those grants
143 pursuant to s. 39.9055.
144 (9) Adopt by rule procedures to administer this section,
145 including developing criteria for the approval, suspension, or

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146 rejection of certification of domestic violence centers and
147 developing minimum standards for domestic violence centers to
148 ensure the health and safety of the clients in the centers.
149 Section 3. Section 39.9035, Florida Statutes, is created to
150 read:
151 39.9035 Duties and functions of the coalition with respect
152 to domestic violence.—As part of its delivery and management of
153 the delivery of services for the state's domestic violence
154 program, the coalition shall:
155 (1) Implement, administer, and evaluate all domestic
156 violence services provided by the certified domestic violence
157 centers.
158 (2) Receive and approve or reject applications for funding
159 of certified domestic violence centers. When approving funding
160 for a newly certified domestic violence center, the coalition
161 shall make every effort to minimize any adverse economic impact
162 on existing certified domestic violence centers or services
163 provided within the same service area. In order to minimize
164 duplication of services, the coalition shall make every effort
165 to encourage subcontracting relationships with existing
166 certified domestic violence centers within the same service
167 area. In distributing funds allocated by the Legislature for
168 certified domestic violence centers, the coalition shall use a
169 formula approved by the department as specified in s.
170 39.905(7)(a).
171 (3) Evaluate certified domestic violence centers in order
172 to determine compliance with minimum certification standards.
173 (4) Have the right to enter and inspect the premises of
174 certified domestic violence centers for monitoring purposes.

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175 Section 4. Section 39.904, Florida Statutes, is amended to
176 read:
177 39.904 Report to the Legislature on the status of domestic
178 violence cases.—On or before January 1 of each year, the
179 coalition ~~department~~ shall furnish to the President of the
180 Senate and the Speaker of the House of Representatives a report
181 on the status of domestic violence in this state, which must
182 ~~report shall~~ include, but need ~~is~~ not be limited to, the
183 following:
184 (1) The incidence of domestic violence in this state.
185 (2) An identification of the areas of the state where
186 domestic violence is of significant proportions, indicating the
187 number of cases of domestic violence officially reported, as
188 well as an assessment of the degree of unreported cases of
189 domestic violence.
190 (3) An identification and description of the types of
191 programs in the state which ~~that~~ assist victims of domestic
192 violence or persons who commit domestic violence, including
193 information on funding for the programs.
194 (4) The number of persons who receive services from ~~are~~
195 ~~treated by or assisted by~~ local certified domestic violence
196 programs that receive funding through the coalition ~~department~~.
197 (5) The incidence of domestic violence homicides in the
198 state, including information and data collected from state and
199 local domestic violence fatality review teams. ~~A statement on~~
200 ~~the effectiveness of such programs in preventing future domestic~~
201 ~~violence.~~
202 ~~(6) An inventory and evaluation of existing prevention~~
203 ~~programs.~~

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204 ~~(7) A listing of potential prevention efforts identified by~~
205 ~~the department; the estimated annual cost of providing such~~
206 ~~prevention services, both for a single client and for the~~
207 ~~anticipated target population as a whole; an identification of~~
208 ~~potential sources of funding; and the projected benefits of~~
209 ~~providing such services.~~
210 Section 5. Paragraphs (c), (g), and (i) of subsection (1),
211 subsections (2), (3), and (5), paragraph (a) of subsection (6),
212 and paragraph (b) of subsection (7) of section 39.905, Florida
213 Statutes, are amended, and subsection (8) is added to that
214 section, to read:
215 39.905 Domestic violence centers.—
216 (1) Domestic violence centers certified under this part
217 must:
218 (c) Provide minimum services that ~~which~~ include, but are
219 not limited to, information and referral services, counseling
220 and case management services, temporary emergency shelter for
221 more than 24 hours, a 24-hour hotline, training for law
222 enforcement personnel, assessment and appropriate referral of
223 resident children, and educational services for community
224 awareness relative to the incidence of domestic violence, the
225 prevention of such violence, and the services available ~~care,~~
226 ~~treatment, and rehabilitation~~ for persons engaged in or subject
227 to domestic violence. If a 24-hour hotline, professional
228 training, or community education is already provided by a
229 certified domestic violence center within its designated service
230 area ~~a district~~, the department may exempt such certification
231 requirements for a new center serving the same service area
232 ~~district~~ in order to avoid duplication of services.

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233 (g) File with the coalition ~~department~~ a list of the names
234 of the domestic violence advocates who are employed or who
235 volunteer at the domestic violence center who may claim a
236 privilege under s. 90.5036 to refuse to disclose a confidential
237 communication between a victim of domestic violence and the
238 advocate regarding the domestic violence inflicted upon the
239 victim. The list must include the title of the position held by
240 the advocate whose name is listed and a description of the
241 duties of that position. A domestic violence center must file
242 amendments to this list as necessary.
243 (i) If its center is a new center applying for
244 certification, demonstrate that the services provided address a
245 need identified in the most current statewide needs assessment
246 approved by the department. If the center applying for initial
247 certification proposes providing services in an area that has an
248 existing certified domestic violence center, the center applying
249 for initial certification must demonstrate the unmet need in
250 that service area and describe its efforts to avoid duplication
251 of services.
252 (2) If the department finds that there is failure by a
253 center to comply with the requirements established under this
254 part or with the rules adopted pursuant thereto, the department
255 may deny, suspend, or revoke the certification of the center.
256 The grant, denial, suspension, or revocation of certification
257 does not constitute agency action under chapter 120.
258 (3) The annual certificate ~~shall~~ automatically expires
259 ~~expire~~ on June 30 of each state fiscal year unless the
260 certification is temporarily extended to allow the center to
261 implement a corrective action plan ~~the termination date shown on~~

262 ~~the certificate~~.
263 (5) Domestic violence centers may be established throughout
264 the state when private, local, state, or federal funds are
265 available and a need is demonstrated.
266 (6) In order to receive state funds, a center must:
267 (a) Obtain certification pursuant to this part. However,
268 the issuance of a certificate does ~~will~~ not obligate the
269 coalition ~~department~~ to provide funding.
270 (7)
271 (b) A contract between the coalition ~~statewide association~~
272 and a certified domestic violence center shall contain
273 provisions ensuring ~~assuring~~ the availability and geographic
274 accessibility of services throughout the service area ~~district~~.
275 For this purpose, a center may distribute funds through
276 subcontracts or to center satellites, if ~~provided~~ such
277 arrangements and any subcontracts are approved by the coalition
278 ~~statewide association~~.
279 (8) If any of the required services are exempted from
280 certification by the department under this section, the center
281 may not receive funding from the coalition for those services.
282 Section 6. Subsection (18) of section 381.006, Florida
283 Statutes, is amended to read:
284 381.006 Environmental health.—The department shall conduct
285 an environmental health program as part of fulfilling the
286 state's public health mission. The purpose of this program is to
287 detect and prevent disease caused by natural and manmade factors
288 in the environment. The environmental health program shall
289 include, but not be limited to:
290 (18) A food service inspection function for domestic

291 violence centers that are certified by department and monitored
292 by the coalition ~~Department of Children and Family Services~~
293 under part XII of chapter 39 and group care homes as described
294 in subsection (16), which shall be conducted annually and be
295 limited to the requirements in department rule applicable to
296 community-based residential facilities with five or fewer
297 residents.
298
299 The department may adopt rules to carry out the provisions of
300 this section.
301 Section 7. Paragraph (b) of subsection (1) of section
302 381.0072, Florida Statutes, is amended to read:
303 381.0072 Food service protection.—It shall be the duty of
304 the Department of Health to adopt and enforce sanitation rules
305 consistent with law to ensure the protection of the public from
306 food-borne illness. These rules shall provide the standards and
307 requirements for the storage, preparation, serving, or display
308 of food in food service establishments as defined in this
309 section and which are not permitted or licensed under chapter
310 500 or chapter 509.
311 (1) DEFINITIONS.—As used in this section, the term:
312 (b) "Food service establishment" means detention
313 facilities, public or private schools, migrant labor camps,
314 assisted living facilities, adult family-care homes, adult day
315 care centers, short-term residential treatment centers,
316 residential treatment facilities, homes for special services,
317 transitional living facilities, crisis stabilization units,
318 hospices, prescribed pediatric extended care centers,
319 intermediate care facilities for persons with developmental

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320 disabilities, boarding schools, civic or fraternal
321 organizations, bars and lounges, vending machines that dispense
322 potentially hazardous foods at facilities expressly named in
323 this paragraph, and facilities used as temporary food events or
324 mobile food units at any facility expressly named in this
325 paragraph, where food is prepared and intended for individual
326 portion service, including the site at which individual portions
327 are provided, regardless of whether consumption is on or off the
328 premises and regardless of whether there is a charge for the
329 food. The term does not include any entity not expressly named
330 in this paragraph; nor does the term include a domestic violence
331 center certified by the department and monitored by the
332 coalition ~~Department of Children and Family Services~~ under part
333 XII of chapter 39 if the center does not prepare and serve food
334 to its residents and does not advertise food or drink for public
335 consumption.
336 Section 8. Section 741.281, Florida Statutes, is amended to
337 read:
338 741.281 Court to order batterers' intervention program
339 attendance.—If a person is found guilty of, has ~~had~~ adjudication
340 withheld on, or pleads ~~has pled~~ nolo contendere to a crime of
341 domestic violence, as defined in s. 741.28, that person shall be
342 ordered by the court to a minimum term of 1 year's probation and
343 the court shall order that the defendant attend a batterers'
344 intervention program as a condition of probation. The court must
345 impose the condition of the batterers' intervention program for
346 a defendant under this section, but the court, in its
347 discretion, may determine not to impose the condition if it
348 states on the record why a batterers' intervention program might

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349 be inappropriate. The court must impose the condition of the
350 batterers' intervention program for a defendant placed on
351 probation unless the court determines that the person does not
352 qualify for the batterers' intervention program pursuant to s.
353 741.325. ~~Effective July 1, 2002, the batterers' intervention~~
354 ~~program must be a certified program under s. 741.32.~~ The
355 imposition of probation under this section does ~~shall~~ not
356 preclude the court from imposing any sentence of imprisonment
357 authorized by s. 775.082.
358 Section 9. Paragraph (g) of subsection (2) of section
359 741.2902, Florida Statutes, is amended to read:
360 741.2902 Domestic violence; legislative intent with respect
361 to judiciary's role.—
362 (2) It is the intent of the Legislature, with respect to
363 injunctions for protection against domestic violence, issued
364 pursuant to s. 741.30, that the court shall:
365 (g) Consider requiring the perpetrator to complete a
366 batterers' intervention program. It is preferred that such
367 program meet the requirements specified in s. 741.325 ~~be~~
368 ~~certified under s. 741.32~~.
369 Section 10. Paragraphs (a) and (e) of subsection (6) of
370 section 741.30, Florida Statutes, are amended to read:
371 741.30 Domestic violence; injunction; powers and duties of
372 court and clerk; petition; notice and hearing; temporary
373 injunction; issuance of injunction; statewide verification
374 system; enforcement.—
375 (6)(a) Upon notice and hearing, when it appears to the
376 court that the petitioner is either the victim of domestic
377 violence as defined by s. 741.28 or has reasonable cause to

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378 believe he or she is in imminent danger of becoming a victim of
379 domestic violence, the court may grant such relief as the court
380 deems proper, including an injunction:
381 1. Restraining the respondent from committing any acts of
382 domestic violence.
383 2. Awarding to the petitioner the exclusive use and
384 possession of the dwelling that the parties share or excluding
385 the respondent from the residence of the petitioner.
386 3. On the same basis as provided in chapter 61, providing
387 the petitioner with 100 percent of the time-sharing in a
388 temporary parenting plan that remains ~~shall remain~~ in effect
389 until the order expires or an order is entered by a court of
390 competent jurisdiction in a pending or subsequent civil action
391 or proceeding affecting the placement of, access to, parental
392 time with, adoption of, or parental rights and responsibilities
393 for the minor child.
394 4. On the same basis as provided in chapter 61,
395 establishing temporary support for a minor child or children or
396 the petitioner. An order of temporary support remains in effect
397 until the order expires or an order is entered by a court of
398 competent jurisdiction in a pending or subsequent civil action
399 or proceeding affecting child support.
400 5. Ordering the respondent to participate in treatment,
401 intervention, or counseling services to be paid for by the
402 respondent. When the court orders the respondent to participate
403 in a batterers' intervention program, the court, or any entity
404 designated by the court, must provide the respondent with a list
405 of ~~all certified~~ batterers' intervention programs ~~and all~~
406 ~~programs which have submitted an application to the Department~~

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407 ~~of Children and Family Services to become certified under s.~~
408 ~~741.32,~~ from which the respondent must choose a program in which
409 to participate. ~~If there are no certified batterers'~~
410 ~~intervention programs in the circuit, the court shall provide a~~
411 ~~list of acceptable programs from which the respondent must~~
412 ~~choose a program in which to participate.~~
413 6. Referring a petitioner to a certified domestic violence
414 center. The court must provide the petitioner with a list of
415 certified domestic violence centers in the circuit which the
416 petitioner may contact.
417 7. Ordering such other relief as the court deems necessary
418 for the protection of a victim of domestic violence, including
419 injunctions or directives to law enforcement agencies, as
420 provided in this section.
421 (e) An injunction for protection against domestic violence
422 entered pursuant to this section, on its face, may order that
423 the respondent attend a batterers' intervention program as a
424 condition of the injunction. Unless the court makes written
425 factual findings in its judgment or order which are based on
426 substantial evidence, stating why batterers' intervention
427 programs would be inappropriate, the court shall order the
428 respondent to attend a batterers' intervention program if:
429 1. It finds that the respondent willfully violated the ex
430 parte injunction;
431 2. The respondent, in this state or any other state, has
432 been convicted of, had adjudication withheld on, or pled nolo
433 contendere to a crime involving violence or a threat of
434 violence; or
435 3. The respondent, in this state or any other state, has

436 had at any time a prior injunction for protection entered
437 against the respondent after a hearing with notice.
438
439 ~~It is mandatory that such programs be certified under s. 741.32.~~
440 Section 11. Subsection (5) of section 741.316, Florida
441 Statutes, is amended to read:
442 741.316 Domestic violence fatality review teams;
443 definition; membership; duties.—
444 (5) The domestic violence fatality review teams are
445 assigned to the Florida Coalition Against Domestic Violence
446 ~~Department of Children and Family Services~~ for administrative
447 purposes.
448 Section 12. Section 741.32, Florida Statutes, is amended to
449 read:
450 741.32 ~~Certification of~~ Batterers' intervention programs.—
451 ~~(1)~~ The Legislature finds that the incidence of domestic
452 violence in this state ~~Florida~~ is disturbingly high~~,~~ and that,
453 despite the efforts of many to curb this violence, ~~that~~ one
454 person dies at the hands of a spouse, ex-spouse, or cohabitant
455 approximately every 3 days. Further, a child who witnesses the
456 perpetration of this violence becomes a victim as he or she
457 hears or sees it occurring. This child is at high risk of also
458 being the victim of physical abuse by the parent who is
459 perpetrating the violence and, to a lesser extent, by the parent
460 who is the victim. These children are also at a high risk of
461 perpetrating violent crimes as juveniles and, later, becoming
462 perpetrators of the same violence that they witnessed as
463 children. The Legislature finds that there should be
464 standardized programming available to the justice system to

465 protect victims and their children and to hold the perpetrators
466 of domestic violence accountable for their acts. Finally, the
467 Legislature recognizes that in order for batterers' intervention
468 programs to be successful in protecting victims and their
469 children, all participants in the justice system as well as
470 social service agencies and local and state governments must
471 coordinate their efforts at the community level.
472 ~~(2) There is hereby established in the Department of~~
473 ~~Children and Family Services an Office for Certification and~~
474 ~~Monitoring of Batterers' Intervention Programs. The department~~
475 ~~may certify and monitor both programs and personnel providing~~
476 ~~direct services to those persons who are adjudged to have~~
477 ~~committed an act of domestic violence as defined in s. 741.28,~~
478 ~~those against whom an injunction for protection against domestic~~
479 ~~violence is entered, those referred by the department, and those~~
480 ~~who volunteer to attend such programs. The purpose of~~
481 ~~certification of programs is to uniformly and systematically~~
482 ~~standardize programs to hold those who perpetrate acts of~~
483 ~~domestic violence responsible for those acts and to ensure~~
484 ~~safety for victims of domestic violence. The certification and~~
485 ~~monitoring shall be funded by user fees as provided in s.~~
486 ~~741.327.~~
487 Section 13. Section 741.325, Florida Statutes, is amended
488 to read:
489 741.325 Requirements for batterers' intervention programs
490 ~~Guideline authority.~~
491 (1) A batterers' intervention program must meet the
492 following requirements ~~The Department of Children and Family~~
493 ~~Services shall promulgate guidelines to govern purpose,~~

494 ~~policies, standards of care, appropriate intervention~~
495 ~~approaches, inappropriate intervention approaches during the~~
496 ~~batterers' program intervention phase (to include couples~~
497 ~~counseling and mediation), conflicts of interest, assessment,~~
498 ~~program content and specifics, qualifications of providers, and~~
499 ~~credentials for facilitators, supervisors, and trainees. The~~
500 ~~department shall, in addition, establish specific procedures~~
501 ~~governing all aspects of program operation, including~~
502 ~~administration, personnel, fiscal matters, victim and batterer~~
503 ~~records, education, evaluation, referral to treatment and other~~
504 ~~matters as needed. In addition, the rules shall establish~~:
505 (a) ~~(1) That~~ The primary purpose of the program ~~programs~~
506 shall be victim safety and the safety of ~~the~~ children, if
507 present.
508 (b) ~~(2) That~~ The batterer shall be held accountable for acts
509 of domestic violence.
510 (c) ~~(3) That~~ The program ~~programs~~ shall be at least 29 weeks
511 in length and ~~shall~~ include 24 weekly sessions, plus appropriate
512 intake, assessment, and orientation programming.
513 (d) ~~(4) That~~ The program content shall be based on ~~be~~ a
514 psychoeducational model that addresses ~~employs a program content~~
515 ~~based on~~ tactics of power and control by one person over
516 another.
517 ~~(5) That the programs and those who are facilitators,~~
518 ~~supervisors, and trainees be certified to provide these programs~~
519 ~~through initial certification and that the programs and~~
520 ~~personnel be annually monitored to ensure that they are meeting~~
521 ~~specified standards.~~
522 (e) ~~(6) The intent that~~ The program shall ~~programs~~ be ~~user-~~

523 ~~fee~~ funded by user ~~with~~ fees paid by ~~from~~ the batterers who
524 attend the program, which allows them to take ~~as payment for~~
525 ~~programs is important to the batterer taking~~ responsibility for
526 their acts ~~the act~~ of violence~~, and from those seeking~~
527 ~~certification~~. An exception shall be made for ~~those~~ local,
528 state, or federal programs that fund batterers' intervention
529 programs in whole or in part.
530 ~~(7) Standards for rejection and suspension for failure to~~
531 ~~meet certification standards.~~
532 (2)~~(8)~~ The requirements of this section ~~That these~~
533 ~~standards shall~~ apply only to programs that address the
534 perpetration of violence between intimate partners, spouses, ex-
535 spouses, or those who share a child in common or who are
536 cohabitants in intimate relationships for the purpose of
537 exercising power and control by one over the other. It will
538 endanger victims if courts and other referral agencies refer
539 family and household members who are not perpetrators of the
540 type of domestic violence encompassed by these requirements
541 ~~standards~~. Accordingly, the court and others who make referrals
542 should refer perpetrators only to programming that appropriately
543 addresses the violence committed.
544 Section 14. Section 741.327, Florida Statutes, is repealed.
545 Section 15. Section 948.038, Florida Statutes, is amended
546 to read:
547 948.038 Batterers' intervention program as a condition of
548 probation, community control, or other court-ordered community
549 supervision.—As a condition of probation, community control, or
550 any other court-ordered community supervision, the court shall
551 order a person convicted of an offense of domestic violence, as

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552 defined in s. 741.28, to attend and successfully complete a
553 batterers' intervention program unless the court determines that
554 the person does not qualify for the batterers' intervention
555 program pursuant to s. 741.325. The ~~batterers' intervention~~
556 ~~program must be a program certified under s. 741.32, and the~~
557 offender must pay the cost of attending the program.
558 Section 16. Paragraph (a) of subsection (1) of section
559 938.01, Florida Statutes, is amended to read:
560 938.01 Additional Court Cost Clearing Trust Fund.—
561 (1) All courts created by Art. V of the State Constitution
562 shall, in addition to any fine or other penalty, require every
563 person convicted for violation of a state penal or criminal
564 statute or convicted for violation of a municipal or county
565 ordinance to pay $3 as a court cost. Any person whose
566 adjudication is withheld pursuant to the provisions of s.
567 318.14(9) or (10) shall also be liable for payment of such cost.
568 In addition, $3 from every bond estreature or forfeited bail
569 bond related to such penal statutes or penal ordinances shall be
570 remitted to the Department of Revenue as described in this
571 subsection. However, no such assessment may be made against any
572 person convicted for violation of any state statute, municipal
573 ordinance, or county ordinance relating to the parking of
574 vehicles.
575 (a) All costs collected by the courts pursuant to this
576 subsection shall be remitted to the Department of Revenue in
577 accordance with administrative rules adopted by the executive
578 director of the Department of Revenue for deposit in the
579 Additional Court Cost Clearing Trust Fund. These funds and the
580 funds deposited in the Additional Court Cost Clearing Trust Fund

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581 pursuant to s. 318.21(2)(c) shall be distributed as follows:
582 1. Ninety-two percent to the Department of Law Enforcement
583 Criminal Justice Standards and Training Trust Fund.
584 2. Six and three-tenths percent to the Department of Law
585 Enforcement Operating Trust Fund for the Criminal Justice Grant
586 Program.
587 3. One and seven-tenths percent to the Department of
588 Children and Family Services Domestic Violence Trust Fund for
589 the domestic violence program pursuant to s. 39.903(1) ~~(3)~~.
590 Section 17. This act shall take effect July 1, 2012.

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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 Judiciary Committee

BILL: CS/CS/SB 1166

INTRODUCER: Judiciary Committee, and Regulated Industries Committee, and Senator Simmons

SUBJECT: Clerks of Court

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Irwin	Cibula	JU	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill amends current law relating to the responsibilities of the clerks of the court to enhance the collection of court fees and fines and to improve the efficiency of their operations. The bill requires a broader use of the Comprehensive Case Information System (CCIS) among state agencies to reduce operational costs and duties of the clerks of the court.

The bill:

- Makes discretionary the clerk's review of property and motor vehicle records of persons seeking an indigency determination for purposes of obtaining a public defender.
- Provides that filing fees are due when a party files a pleading to initiate a proceeding.
- Provides that fees are due upon filing a pleading to reopen a case that has been closed at least 90 days.
- Requires clerks to collect a $10 service charge for issuing a certified copy of an electronic certified copy of a summons rather than only for an original summons.
- Updates jury legislation to reflect modern practices and current procedures.
- Allows an action for the collection of court costs and fines to be brought at any time.

- Requires the state attorney to notify the clerk of the court when a defendant is a public officer charged with a specified offense before the clerk must send notice of the proceedings to the Commission on Ethics.
- Ranks claims for the collection of unpaid fees, court costs, and fines at level three for payment of claims against a decedent's estate by a personal representative.
- Removes the requirement for clerks of the court to send certified copies of felony drug convictions to agencies issuing business or professional licenses, and replaces it with a requirement for the licensing agency to obtain such information from the CCIS.
- Provides that with respect to criminal financial obligations, a previously imposed criminal or civil judgment constitutes a civil lien against the judgment debtor's real or personal property when recorded as required by s. 55.10, F.S. The bill exempts such liens from the current 10 year re-recording requirement of the statute.
- Adds the payment of fines, fees, and other court related costs as a condition of parole in addition to the current condition of paying restitution.

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.24, 28.241, 28.37, 34.041, 40.011, 40.02, 40.022, 40.221, 40.225, 57.081, 95.11, 112.3173, 318.18, 668.50, 733.707, 893.11, 938.27, 938.30, and 947.181.

This bill creates section 28.2405, Florida Statutes.

II. Present Situation:

Determinations of Indigency

Section 27.52(2), F.S., requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent. The clerk must consider the applicant to be indigent if the applicant:

- Is at or below 200 percent of the federal poverty guidelines;
- Is receiving Temporary Assistance for Needy Families-Cash Assistance;
- Is receiving poverty-related veterans' benefits; or
- Is receiving Supplemental Security Income (SSI).[1]

There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of $2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under $5,000.[2]

The clerk must conduct a review of property records for the county in which an applicant resides and motor vehicle records of the state to identify any property interests of the applicant.[3] The clerk must evaluate and consider the results of its review in making a determination of indigency. The clerk is also required to maintain the results of the review in a file with the application and

[1] Section 27.52(2)(a)1., F.S.
[2] Section 27.52(2)(a)2.a., F.S.
[3] Section 27.52(2)(a)2.b., F.S.

provide the file to the court if the applicant seeks a court review of the clerk's determination that the applicant is not indigent.[4]

Filing Fees

A party "instituting any civil action" must pay the statutorily prescribed filing fees to the clerk of the court. Under current law, a party reopening a civil action or proceeding in circuit court must pay a filing fee not exceeding $50.[5] In county court, reopening fees are up to $25 for all claims not more than $500, and up to $50 for claims over $500.[6] A case is "reopened" when it has previously been reported as disposed of and is resubmitted to the court.[7] However, section 28.241(1)(b), F.S., and s. 34.041, F.S., list several exceptions to the payment of a reopening fee.[8]

Service Charges

The clerk of the court must collect a $10 service charge for issuing a summons from a party seeking to have a summons issued.[9]

Juror Legislation

Section 40.01, F.S., provides that jurors in this state must be taken from all persons at least 18 years of age who are citizens of the United States and residents of this state and their respective counties and who possess a drivers' license or state issued identification card. Persons without drivers' licenses or identification cards may also be added to the list if they execute an affidavit at the office of the clerk of the court.[10] Section 40.013, F.S., lists persons who are disqualified or excused from jury service, including but not limited to, persons under prosecution for any crime, the Governor, and the clerk of the court. Section 40.011, F.S., requires the Department of Highway Safety and Motor Vehicles to deliver quarterly to the clerk of the circuit court in each county a list of the names of persons eligible for jury duty.

The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, must request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable.[11]

The chief judge or the chief judge's designee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors . . . and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected [at

[4] *Id*.
[5] Section 28.241(1)(b), F.S.
[6] Section 34.041(2), F.S.
[7] Section 34.041(2), F.S.
[8] *See* ss. 28.241(1)(b) and 34.041, F.S. (providing a complete list of 18 circuit court and 10 county court prescribed circumstances when a party is exempt from paying the fee to reopen a case).
[9] Section 34.041(1)(d), F.S.
[10] Section 40.011(1), F.S.
[11] Section 40.02(1), F.S.

random]. A circuit judge in a county to which he or she has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted.[12]

The clerk of the court is responsible for preserving the security of the jury lists.[13]

Statute of Limitations

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law.[14] Section 95.11, F.S., specifies limitations on time periods to initiate actions other than for the recovery of real property. Under this section, an action on a judgment or decree of court must be commenced within 20 years.[15]

Notice of Breach of Public Trust

Section 112.3173, F.S., requires the clerk of the court to provide notice to the Commission on Ethics when a proceeding against a public official for a "specified offense" is being conducted in its court. Under s. 112.3173(4)(a), F.S., a copy of an information, indictment, or other document containing the charges is sufficient for notice. Section 112.3173(2)(e), F.S., defines a "specified offense" as:

- The committing, aiding, or abetting of an embezzlement of public funds;
- The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Any felony specified in ch. 838, F.S., except ss. 838.15-838.16, F.S.;
- The committing of an impeachable offense;
- The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or positions of his or her public office or employment position; or
- The committing on or after October 1, 2008, of any felony defined in s. 800.04, F.S.,[16] against a victim younger than 16 years of age, or any felony defined in ch. 794, F.S.,[17] against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

[12] Section 40.02(1), F.S.
[13] Section 40.02(2), F.S.
[14] Section 95.11(6), F.S. *See generally* 35 FLA. JUR 2D s. 1 *Limitations and Laches* (2012).
[15] Section 95.11(1), F.S.
[16] Section 800.04, F.S. (pertaining to lewd and lascivious offenses).
[17] Chapter 794, F.S. (pertaining to sexual battery).

Community Service in Lieu of Civil Penalty

If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and is unable to do so due to a financial hardship, the court must allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.[18] Such persons either receive credit for community service hours against the civil penalty at a specified hourly rate based on the wage rate specified under the federal Fair Labor Standards Act of 1938 or, if the person has a trade or profession, at the average prevailing wage rate for that trade or profession.[19]

The supervision of the performance of community service hours is conducted by "a community service agency" that agrees to accept community service from persons unable to pay their civil penalties.[20] The community service agency must record the number of community service hours completed along with the date of the completion to the clerk of the court on the letterhead of the community service agency and signed by the designated representative of the community service agency.[21]

Section 668.50, F.S., is known as the "Uniform Electronic Transaction Act."[22] The act applies to electronic records and electronic signatures relating to a transaction.[23] The act does not apply to the transactions to the extent they are governed by:

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code other than s. 671.107, F.S., and chs. 672 and 680, F.S.;
- The Uniform Computer Information Transactions Act; or
- Rules relating to judicial procedure.[24]

Priority of Payment of Expenses and Obligations

Section 733.707, F.S., sets forth the order in which the personal representative of a decedent's estate must pay the expenses of the estate's administration and obligations against creditors. It provides the following order of payment:

[18] Section 318.18(8)(b)1.a., F.S.
[19] Section 318.18(8), F.S.
[20] Section 318.18(8)(b), F.S. (defining "community service agency" as a "not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.").
[21] Section 318.18(8)(b)3.a., F.S.
[22] Section 668.50(1), F.S.
[23] Section 668.50(2), F.S. (defining an "electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means." An "electronic signature" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." A "transaction" is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs.").
[24] Section 668.50(3)(b), F.S.

- Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3), F.S.
- Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of $6,000.
- Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28, F.S.
- Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.
- Class 5.—Family allowance.
- Class 6.—Arrearage from court-ordered child support.
- Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), F.S., but only to the extent of the assets of that business.
- Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed as Class 2 or Class 4 expenses.[25]

Suspension of License to Practice upon Conviction of Certain Felonies

The clerk of the court must send a certified copy of a judgment of conviction of any person holding a license, permit, or certificate issued by a state agency, to the head of the licensing agency when such conviction is for a felony offense of selling, trafficking, or conspiracy to sell or traffic in a controlled substance.[26] The certified copy of the judgment must show the person's license number, permit number, or certificate number on the face of the document.[27] The agency head must suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business.[28]

Costs of Prosecution and Investigation

Section 938.27(2)(a), F.S., requires a court to impose costs of prosecution and investigation notwithstanding a defendant's present inability to pay. These costs are to be paid within a specified period or in specified installments.[29] Section 28.246, F.S., provides for a monthly payment plan. The court may review the reasonableness of the payment plan.[30]

Financial Obligations in Criminal Cases

A judgment lien generally refers to a lien against property which is based on an underlying monetary judgment.[31] A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records.[32] Under s. 55.10, F.S.,

[25] Section 733.707(1)(a)-(h), F.S.
[26] Section 893.11, F.S.
[27] *Id.*
[28] *Id.*
[29] Section 938.27(2)(a), F.S.
[30] Section 28.246(4), F.S.
[31] 34 FLA. JUR 2D s. 1 *Liens* (2012).
[32] Section 55.10(1), F.S.

the judgment shall be a lien for an initial period of 10 years from the date of the recording. A lien may be extended for an additional 10 years by re-recording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment.[33] Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered.

Parole and Fines, Costs, and Restitution

Section 947.181, F.S., provides that the Parole Commission must require restitution to the victim as a condition of parole unless the commission states reasons on the record for not ordering it. The amount of restitution is determined by the commission unless restitution has previously been ordered by the court under s. 775.089, F.S.[34] Court ordered restitution must be made a condition of parole.[35] If a parolee fails to make restitution as ordered it is considered a violation of parole and may be cause for revocation of parole.[36]

Section 775.089(3)(a), F.S., provides that the court may require that the defendant make restitution within a specified period or in specified installments. Section 775.089(3)(b), F.S., provides that the end of such period or the last installment for restitution shall be no later than:

- The end of the period of probation if probation is ordered;
- Five years after the end of the term of imprisonment imposed if the court does not order probation; or
- Five years after the date of sentencing in any other case.

III. Effect of Proposed Changes:

Section 1. Amends s. 27.52, F.S., to provide that the clerk of the court may, instead of must, conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records to identify any property interests of the applicant for a determination of indigent status for an appointment of a public defender. If a review is completed, the clerk must maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks review of the clerk's determination of indigent status.

Section 2. Amends s. 28.24, F.S., to delete a requirement that all clerks must participate in the CCIS on or before January 1, 2006.

Section 3. Creates s. 28.2405, F.S., to provide that all clerks of the circuit court shall participate in the CCIS and shall submit electronic case data to the system based on the case types designated by the Supreme Court.

Section 4. Amends s. 28.241, F.S., to provide that circuit court filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief, and reopen fees are

[33] Section 55.10(2), F.S.
[34] Section 947.181(1)(a), F.S.
[35] Section 775.089(4), F.S.
[36] Section 947.181(b), F.S.

due at the time a party files a pleading to reopen a proceeding. If a fee is not paid upon the filing of the pleading, the clerk shall pursue collection of the fee pursuant to s. 28.246, F.S.

The section provides a revised definition for when a case is "reopened." The bill provides that a case is reopened after all appeals have been exhausted or time to file an appeal from a final order or final judgment has expired. A reopen fee may not be assessed by the clerk for any motion filed by any party until 90 days after a final order or final judgment has been filed with the clerk. When the case has been reopened, an additional reopen fee may not be assessed until the reopened matter is resolved. A reservation of jurisdiction by a court does not cause a case to remain open for purposes of this section or exempt a party from paying a reopen fee. The bill provides two additional circumstances for when a party is not required to pay the fee to reopen a case to include motions to enforce stipulations or motions for contempt.

The bill provides that the clerk of court shall collect a service charge of $10 for issuing an original, a certified copy, or an electronic certified copy of a summons.

Section 5. Amends s. 28.37, F.S., to provide that except for penalties or fines distributed to counties or municipalities under ss. 316.0083(1)(b)3. or 318.18(15)(a), F.S., 10 percent of all court-related fines collected by the clerk must be deposited into the clerk's Public Records Modernization Trust Fund.

Section 6. Amends s. 34.041, F.S., to provide that all county court filing and reopen fees shall be paid by the party filing the case at the time the case is filed. If the fee is not paid at that time, the clerk shall pursue collection of these filing fees pursuant to s. 28.246, F.S.

The bill provides that the clerk of the county court shall collect a service charge of $10 for issuing a summons or an electronic certified copy of a summons. The section provides a revised definition for when a case is "reopened." The definition is the same as in section 5 of this CS but applies to county courts. The bill provides that a case is reopened after all appeals have been exhausted or time to file an appeal from a final order or final judgment has expired. A reopen fee may not be assessed by the clerk for any motion filed by any party under 90 days after a final order or final judgment has been filed with the clerk. When the case has been reopened, an additional reopen fee may not be assessed until the reopened matter is resolved. A reservation of jurisdiction by a court does not cause a case to remain open for purposes of this section. The bill provides two additional circumstances for when a party is not required to pay the fee to reopen a case to include motions to enforce stipulations or motions for contempt.

Section 7. Amends s. 40.011, F.S., to provide that a clerk of the court shall generate a set of juror candidate lists derived from the source lists described in s. 40.01, F.S. The source lists and the juror candidate list must be maintained as specified in ch. 40. F.S., and in accordance with the juror selection plan approved in s. 40.225, F.S.

The bill provides that in addition to the list of licensed drivers and identification card holders, the clerk of the circuit court must add to the list of jurors the name of any person who is at least 18 years of age or older and who is a citizen of the United States and resident of this state if the person desires to be a juror.

The bill provides that a clerk of the court may generate juror candidate lists as necessary to ensure a valid and consistent juror selection process. The initial juror candidate list is derived from the name sources described in s. 40.01, F.S., which must be the master list from which prospective jurors are drawn for summons. The final juror candidate list must contain a list of those persons, drawn from the initial candidate list as prescribed in ch. 40, F.S., who are to be summoned as a pool for possible juror service.

Section 8. Amends s. 40.02, F.S., to delete the requirement that the chief judge of each circuit must request the selection of a jury list in each county within the first week of January of each year, or as soon as practicable thereafter. Alternatively, the bill provides that the chief judge or designee must direct the clerk of the court to select, by lot and at random, a sufficient number of names from the initial juror candidate list of not fewer than 250 persons to serve as jurors as provided for in s. 40.221, F.S.

The bill provides that the final juror candidate list may be created, updated, or supplemented as often as necessary to prevent the selection list from being exhausted, but in no case less than annually during the first week of January of each year, or as soon as practicable thereafter. The bill provides that the circuit judge may also request that the final juror candidate list be updated or supplemented, or that a new list be created as necessary.

Section 9. Amends s. 40.022, F.S., to provide that each clerk of the circuit court must, upon receipt of the list of persons in the department database from the Department of Highway Safety and Motor Vehicles, purge the final juror candidate lists of, at a minimum, the names of those persons adjudicated mentally incompetent, convicted of a felony, or deceased. The bill provides that this purge is necessary to ensure that the juror candidate summons satisfy the requirements of ss. 40.01 and 40.013, F.S.

Section 10. Amends s. 40.221, F.S., to provide that a clerk of the court, under supervision of a judge of any court, must, in a manner deemed to produce a result by lot and at random, select from the final juror candidate list such number of persons as he or she deems necessary for a jury venire.

Section 11. Amends s. 40.225, F.S., to remove the alternative method for drawing jury venire. The bill provides that the chief judge of each circuit must review and consent to the process for selecting juror candidate within his or her circuit. The clerk of the court must implement an automated electronic system as the exclusive method for maintaining the names of prospective jurors and other data for the purpose of drawing juror candidates. The clerk of the circuit in each county must have the administrative responsibility for developing the automated system of jury venire selection, obtaining approval for the juror candidate selection process, and operating and updated the system in accordance with ch. 40, F.S., and the technical standards and procedures adopted by the Chief Justice.

The bill provides that the clerk of the court, or the chief judge of the circuit if performing the duties of juror candidate selection, must submit for approval a plan for the selection of juror candidates to the Chief Justice.

Section 12. Amends s. 57.081, F.S., to reword the provision that a party who has obtained a certification of indigence pursuant to s. 27.52, F.S.,[37] or s. 57.082, F.S.,[38] is not required to prepay costs, filing fees, or charges for issuance of a summons.

Section 13. Amends s. 95.11, F.S., to extend the statute of limitations for the collection of court costs or fines owed to the state. The bill provides that such an action may be commenced at any time.

Section 14. Amends s. 112.3173, F.S., to provide that the clerk of the court in a proceeding involving a specified offense being conducted against a public officer or employee must provide notice of the proceeding to the Commission on Ethics *after* the state attorney advises the clerk that the defendant is a public officer or employee and that the defendant is alleged to have committed a qualifying offense.

Section 15. Amends s. 318.18, F.S., to require the signature of the person designated to represent a community service agency be notarized on letterhead that indicates the number of hours of community service completed and the date the community service hours were completed by a person who is ordered to perform community service as a penalty for specified offenses.

Section 16. Amends s. 668.50, F.S., related to the Uniform Electronic Transaction Act. The bill provides that the Uniform Electronic Transaction Act does apply to rules relating to judicial procedure, except with respect to subsections (2), (9), and (11), of s. 668.50, F.S., to the extent the transaction is governed by rules relating to judicial procedure.[39]

Section 17. Amends s. 773.707, F.S., to add claims in favor of the state for unpaid court costs, fees, or fines, to a Class 3 debt for purposes of classification for the order of payments due from a decedent's estate.

Section 18. Amends s. 893.11, F.S., to restate that a state agency must immediately suspend the business or professional license of a person licensed by the agency if that person is convicted of a felony for the sale of, or trafficking in, a controlled substance or for the conspiracy to sell, or traffic in, a controlled substance. The bill provides that a state agency that renews a business or professional license must use the CCIS to obtain information relating to the conviction. The clerk of the court must provide a certified copy of the judgment upon request to the agency, rather than automatically upon conviction of the person. The bill provides that the term "business or professional license" includes any license, permit, or certificate that authorizes a person to practice his or her profession or to carry on his or her business.

Section 19. Amends s. 938.27, F.S., to provide that a court must require the defendant to pay the costs of prosecution and investigation pursuant to a payment plan under s. 28.246(4), F.S., rather than installments specified by the court.

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[37] Section 27.52, F.S. (providing criteria for determining criminal indigency status).
[38] Section 57.082, F.S. (providing criteria for the clerk to determine if a civil litigant is indigent).
[39] Subsection (2) provides definitions; subsection (9) provides the effect of an electronic signature; and subsection (11) specifies how an electronic signature is notarized or acknowledged.

Section 20. Amends s. 938.30, F.S., to provide that if a criminal or civil judgment has previously been entered on a court-imposed financial obligation, the judgment constitutes a civil lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S., except that a judgment on a court-imposed financial obligation is not subject to the 10-year re-recording requirement of s. 55.10, F.S. The judgment must secure all unpaid court-imposed financial obligations that are due and may accrue subsequent to the recording of the judgment, as well as interest and reasonable costs for issuing a satisfaction and recording of the satisfaction in the official records.

The bill provides that the clerk must enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected under s. 938.30, F.S., in the same manner as prescribed in s. 938.29(3), F.S., relating to indigent criminal defense fees and costs.

Section 21. Amends s. 947.181, F.S., to rename the section "Fines, fees, restitution, or other costs ordered to be paid by a court as conditions of parole."[40] The bill provides that the Parole Commission must require the payment of fines, fees, restitution, or other court-ordered costs as condition of parole unless the commission finds reasons to the contrary. If the commission does not require payment of fines, fees, restitution, or other court-ordered costs, or requires partial payment, the commission must state on the record the reasons for its decision. Failure of a parolee to make the above payments must be considered by the commission as a violation of parole. The bill provides that restitution to the aggrieved party for injury, damage, or loss caused by the offense for which the parolee was imprisoned must have first priority in the payment of amounts owed under s. 947.181, F.S.

The bill deletes the provision that required the commission to revoke parole if the parolee failed to make restitution payments, but maintains current law that the commission must consider the defendant's employment status, earning ability, financial resources, willfulness of the defendant's failure to pay, and other special circumstances that may have bearing on the defendant's ability to pay prior to revoking parole.[41]

Section 22. Provides that this act shall take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[40] Section 947.181, F.S. (currently relating only to "victim restitution as condition of parole").
[41] Section 947.181(2), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill adds additional fees for services provided by the Clerks of the Court.

B. Private Sector Impact:

This bill adds additional fees for services provided by the Clerks of the Court.

C. Government Sector Impact:

According to the Florida Association of Court Clerks, the bill provides for increased efficiencies in day-to-day office operations for the clerks and should result in an indeterminate, positive fiscal impact.[42]

According to the Office of the State Courts Administrator, the bill will likely have a minimal fiscal impact on expenditures of the State Court Systems.[43] However, the Office of State Courts Administrator indicated that the more narrowly drawn definition for when a case is "reopened" may result in a reduction of the amount of revenues that are generated from reopening cases.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 February 16, 2012:
The Committee Substitute (CS) removes a provision requiring the Department of the Lottery to use the CCIS, rather than rely on notification from the judiciary and other state agencies to enforce the current prohibition on paying a prize of $600 or more before collecting outstanding fines and support obligations.

The CS also removes a provision imposing a $70 fee for rescheduling a judicial sale.

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[42] Florida Association of Court Clerks, *Senate Bill # 1166 Clerks of Court* (January 4, 2012) (on file with the Senate Committee on Judiciary).
[43] Office of the State Courts Administrator, *2012 Judicial Impact Statement SB 1166* (January 12, 2012) (on file with the Senate Committee on Judiciary).
[44] *Id.*

CS by Regulated Industries on February 7, 2012:
The Committee Substitute provides that except for penalties or fines distributed to counties, 10 percent of all court-related fines collected by the clerk must be deposited into the clerk's Public Records Modernization Trust Fund. The bill adds sections 8-12 of the bill to amend ch. 40, F.S., to be consistent with modern practices and current procedures concerning jury legislation. The bill provides that licensing agencies must use the CCIS when renewing a license to obtain conviction information. The bill clarifies that payment of restitution takes priority over payment of court costs. The bill deletes the requirement in the original bill for circuit and county courts to require a prisoner to make monthly payments of at least 20 percent of the balance of the prisoner's trust account as payment of the court costs while imprisoned. The bill amends the effective date of the act.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (2) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking appointment of a public defender is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor

342522

14 or an adult tax-dependent person, is indigent if the applicant's
15 income is equal to or below 200 percent of the then-current
16 federal poverty guidelines prescribed for the size of the
17 household of the applicant by the United States Department of
18 Health and Human Services or if the person is receiving
19 Temporary Assistance for Needy Families-Cash Assistance,
20 poverty-related veterans' benefits, or Supplemental Security
21 Income (SSI).
22 2.a. There is a presumption that the applicant is not
23 indigent if the applicant owns, or has equity in, any intangible
24 or tangible personal property or real property or the expectancy
25 of an interest in any such property having a net equity value of
26 $2,500 or more, excluding the value of the person's homestead
27 and one vehicle having a net value not exceeding $5,000.
28 b. Notwithstanding the information that the applicant
29 provides, the clerk may ~~shall~~ conduct a review of the property
30 records for the county in which the applicant resides and the
31 motor vehicle title records of the state to identify any
32 property interests of the applicant under this subparagraph. The
33 clerk may ~~shall~~ evaluate and consider the results of the review
34 in making a determination under this subsection. If the review
35 is completed by the clerk, the clerk shall maintain the results
36 of the review in a file with the application and provide the
37 file to the court if the applicant seeks review under subsection
38 (4) of the clerk's determination of indigent status.
39 Section 2. Paragraph (e) of subsection (12) of section
40 28.24, Florida Statutes, is amended to read:
41 28.24 Service charges by clerk of the circuit court.—The
42 clerk of the circuit court shall charge for services rendered by

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43 the clerk's office in recording documents and instruments and in
44 performing the duties enumerated in amounts not to exceed those
45 specified in this section. Notwithstanding any other provision
46 of this section, the clerk of the circuit court shall provide
47 without charge to the state attorney, public defender, guardian
48 ad litem, public guardian, attorney ad litem, criminal conflict
49 and civil regional counsel, and private court-appointed counsel
50 paid by the state, and to the authorized staff acting on behalf
51 of each, access to and a copy of any public record, if the
52 requesting party is entitled by law to view the exempt or
53 confidential record, as maintained by and in the custody of the
54 clerk of the circuit court as provided in general law and the
55 Florida Rules of Judicial Administration. The clerk of the
56 circuit court may provide the requested public record in an
57 electronic format in lieu of a paper format when capable of
58 being accessed by the requesting entity.
59
60 Charges
61
62 (12) For recording, indexing, and filing any instrument not
63 more than 14 inches by 8 1/2 inches, including required notice
64 to property appraiser where applicable:
65 (e) An additional service charge of $4 per page shall be
66 paid to the clerk of the circuit court for each instrument
67 listed in s. 28.222, except judgments received from the courts
68 and notices of lis pendens, recorded in the official records.
69 From the additional $4 service charge collected:
70 1. If the counties maintain legal responsibility for the
71 costs of the court-related technology needs as defined in s.

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72 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
73 Florida Association of Court Clerks and Comptroller, Inc., for
74 the cost of development, implementation, operation, and
75 maintenance of the clerks' Comprehensive Case Information
76 System~~, in which system all clerks shall participate on or~~
77 ~~before January 1, 2006~~; $1.90 shall be retained by the clerk to
78 be deposited in the Public Records Modernization Trust Fund and
79 used exclusively for funding court-related technology needs of
80 the clerk as defined in s. 29.008(1)(f)2. and (h); and $2 shall
81 be distributed to the board of county commissioners to be used
82 exclusively to fund court-related technology, and court
83 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
84 state trial courts, state attorney, public defender, and
85 criminal conflict and civil regional counsel in that county. If
86 the counties maintain legal responsibility for the costs of the
87 court-related technology needs as defined in s. 29.008(1)(f)2.
88 and (h), notwithstanding any other provision of law, the county
89 is not required to provide additional funding beyond that
90 provided herein for the court-related technology needs of the
91 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
92 and official records are the property of the State of Florida,
93 including any records generated as part of the Comprehensive
94 Case Information System funded pursuant to this paragraph and
95 the clerk of court is designated as the custodian of such
96 records, except in a county where the duty of maintaining
97 official records exists in a county office other than the clerk
98 of court or comptroller, such county office is designated the
99 custodian of all official records, and the clerk of court is
100 designated the custodian of all court records. The clerk of

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101 court or any entity acting on behalf of the clerk of court,
102 including an association, shall not charge a fee to any agency
103 as defined in s. 119.011, the Legislature, or the State Court
104 System for copies of records generated by the Comprehensive Case
105 Information System or held by the clerk of court or any entity
106 acting on behalf of the clerk of court, including an
107 association.
108 2. If the state becomes legally responsible for the costs
109 of court-related technology needs as defined in s.
110 29.008(1)(f)2. and (h), whether by operation of general law or
111 by court order, $4 shall be remitted to the Department of
112 Revenue for deposit into the General Revenue Fund.
113 Section 3. Section 28.2405, Florida Statutes, is created to
114 read:
115 28.2405 Comprehensive Case Information System.—All clerks
116 of the circuit court shall participate in the Comprehensive Case
117 Information System of the Florida Association of Clerks and
118 Comptroller, Inc., and shall submit electronic case data to the
119 system based on the case types designated by the Supreme Court.
120 Section 4. Subsection (1) of section 28.241, Florida
121 Statutes, is amended to read:
122 28.241 Filing fees for trial and appellate proceedings.—
123 (1) Filing fees are due at the time a party files a
124 pleading to initiate a proceeding or files a pleading for
125 relief. Reopen fees are due at the time a party files a pleading
126 to reopen a proceeding if at least 90 days have elapsed since
127 the filing of a final order or final judgment with the clerk. If
128 a fee is not paid upon the filing of the pleading as required
129 under this section, the clerk shall pursue collection of the fee

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130 pursuant to s. 28.246.
131 (a)1.a. Except as provided in sub-subparagraph b. and
132 subparagraph 2., the party instituting any civil action, suit,
133 or proceeding in the circuit court shall pay to the clerk of
134 that court a filing fee of up to $395 in all cases in which
135 there are not more than five defendants and an additional filing
136 fee of up to $2.50 for each defendant in excess of five. Of the
137 first $280 in filing fees, $80 must be remitted by the clerk to
138 the Department of Revenue for deposit into the General Revenue
139 Fund, $195 must be remitted to the Department of Revenue for
140 deposit into the State Courts Revenue Trust Fund, $3.50 must be
141 remitted to the Department of Revenue for deposit into the
142 Clerks of the Court Trust Fund within the Justice Administrative
143 Commission and used to fund the Florida Clerks of Court
144 Operations Corporation created in s. 28.35, and $1.50 shall be
145 remitted to the Department of Revenue for deposit into the
146 Administrative Trust Fund within the Department of Financial
147 Services to fund clerk budget reviews conducted by the
148 Department of Financial Services. One third of any filing fees
149 collected by the clerk of the circuit court in excess of $100
150 shall be remitted to the Department of Revenue for deposit into
151 the Clerks of the Court Trust Fund within the Justice
152 Administrative Commission.
153 b. The party instituting any civil action, suit, or
154 proceeding in the circuit court under chapter 39, chapter 61,
155 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
156 753 shall pay to the clerk of that court a filing fee of up to
157 $295 in all cases in which there are not more than five
158 defendants and an additional filing fee of up to $2.50 for each

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159 defendant in excess of five. Of the first $180 in filing fees,
160 $80 must be remitted by the clerk to the Department of Revenue
161 for deposit into the General Revenue Fund, $95 must be remitted
162 to the Department of Revenue for deposit into the State Courts
163 Revenue Trust Fund, $3.50 must be remitted to the Department of
164 Revenue for deposit into the Clerks of the Court Trust Fund
165 within the Justice Administrative Commission and used to fund
166 the Florida Clerks of Court Operations Corporation created in s.
167 28.35, and $1.50 shall be remitted to the Department of Revenue
168 for deposit into the Administrative Trust Fund within the
169 Department of Financial Services to fund clerk budget reviews
170 conducted by the Department of Financial Services.
171 c. An additional filing fee of $4 shall be paid to the
172 clerk. The clerk shall remit $3.50 to the Department of Revenue
173 for deposit into the Court Education Trust Fund and shall remit
174 50 cents to the Department of Revenue for deposit into the
175 Clerks of the Court Trust Fund within the Justice Administrative
176 Commission to fund clerk education. An additional filing fee of
177 up to $18 shall be paid by the party seeking each severance that
178 is granted. The clerk may impose an additional filing fee of up
179 to $85 for all proceedings of garnishment, attachment, replevin,
180 and distress. Postal charges incurred by the clerk of the
181 circuit court in making service by certified or registered mail
182 on defendants or other parties shall be paid by the party at
183 whose instance service is made. ~~No~~ Additional fees, charges, or
184 costs may not ~~shall~~ be added to the filing fees imposed under
185 this section, except as authorized in this section or by general
186 law.
187 2.a. Notwithstanding the fees prescribed in subparagraph

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188 1., a party instituting a civil action in circuit court relating
189 to real property or mortgage foreclosure shall pay a graduated
190 filing fee based on the value of the claim.
191 b. A party shall estimate in writing the amount in
192 controversy of the claim upon filing the action. For purposes of
193 this subparagraph, the value of a mortgage foreclosure action is
194 based upon the principal due on the note secured by the
195 mortgage, plus interest owed on the note and any moneys advanced
196 by the lender for property taxes, insurance, and other advances
197 secured by the mortgage, at the time of filing the foreclosure.
198 The value shall also include the value of any tax certificates
199 related to the property. In stating the value of a mortgage
200 foreclosure claim, a party shall declare in writing the total
201 value of the claim, as well as the individual elements of the
202 value as prescribed in this sub-subparagraph.
203 c. In its order providing for the final disposition of the
204 matter, the court shall identify the actual value of the claim.
205 The clerk shall adjust the filing fee if there is a difference
206 between the estimated amount in controversy and the actual value
207 of the claim and collect any additional filing fee owed or
208 provide a refund of excess filing fee paid.
209 d. The party shall pay a filing fee of:
210 (I) Three hundred and ninety-five dollars in all cases in
211 which the value of the claim is $50,000 or less and in which
212 there are not more than five defendants. The party shall pay an
213 additional filing fee of up to $2.50 for each defendant in
214 excess of five. Of the first $280 in filing fees, $80 must be
215 remitted by the clerk to the Department of Revenue for deposit
216 into the General Revenue Fund, $195 must be remitted to the

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217 Department of Revenue for deposit into the State Courts Revenue
218 Trust Fund, $3.50 must be remitted to the Department of Revenue
219 for deposit into the Clerks of the Court Trust Fund within the
220 Justice Administrative Commission and used to fund the Florida
221 Clerks of Court Operations Corporation created in s. 28.35, and
222 $1.50 shall be remitted to the Department of Revenue for deposit
223 into the Administrative Trust Fund within the Department of
224 Financial Services to fund clerk budget reviews conducted by the
225 Department of Financial Services;
226 (II) Nine hundred dollars in all cases in which the value
227 of the claim is more than $50,000 but less than $250,000 and in
228 which there are not more than five defendants. The party shall
229 pay an additional filing fee of up to $2.50 for each defendant
230 in excess of five. Of the first $785 in filing fees, $80 must be
231 remitted by the clerk to the Department of Revenue for deposit
232 into the General Revenue Fund, $700 must be remitted to the
233 Department of Revenue for deposit into the State Courts Revenue
234 Trust Fund, $3.50 must be remitted to the Department of Revenue
235 for deposit into the Clerks of the Court Trust Fund within the
236 Justice Administrative Commission and used to fund the Florida
237 Clerks of Court Operations Corporation described in s. 28.35,
238 and $1.50 shall be remitted to the Department of Revenue for
239 deposit into the Administrative Trust Fund within the Department
240 of Financial Services to fund clerk budget reviews conducted by
241 the Department of Financial Services; or
242 (III) One thousand nine hundred dollars in all cases in
243 which the value of the claim is $250,000 or more and in which
244 there are not more than five defendants. The party shall pay an
245 additional filing fee of up to $2.50 for each defendant in

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246 excess of five. Of the first $1,785 in filing fees, $80 must be
247 remitted by the clerk to the Department of Revenue for deposit
248 into the General Revenue Fund, $1,700 must be remitted to the
249 Department of Revenue for deposit into the State Courts Revenue
250 Trust Fund, $3.50 must be remitted to the Department of Revenue
251 for deposit into the Clerks of the Court Trust Fund within the
252 Justice Administrative Commission to fund the Florida Clerks of
253 Court Operations Corporation created in s. 28.35, and $1.50
254 shall be remitted to the Department of Revenue for deposit into
255 the Administrative Trust Fund within the Department of Financial
256 Services to fund clerk budget reviews conducted by the
257 Department of Financial Services.
258 e. An additional filing fee of $4 shall be paid to the
259 clerk. The clerk shall remit $3.50 to the Department of Revenue
260 for deposit into the Court Education Trust Fund and shall remit
261 50 cents to the Department of Revenue for deposit into the
262 Clerks of the Court Trust Fund within the Justice Administrative
263 Commission to fund clerk education. An additional filing fee of
264 up to $18 shall be paid by the party seeking each severance that
265 is granted. The clerk may impose an additional filing fee of up
266 to $85 for all proceedings of garnishment, attachment, replevin,
267 and distress. Postal charges incurred by the clerk of the
268 circuit court in making service by certified or registered mail
269 on defendants or other parties shall be paid by the party at
270 whose instance service is made. ~~No~~ Additional fees, charges, or
271 costs may not ~~shall~~ be added to the filing fees imposed under
272 this section, except as authorized in this section or by general
273 law.
274 (b) A party reopening any civil action, suit, or proceeding

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275 in the circuit court shall pay to the clerk of court a filing
276 fee set by the clerk in an amount not to exceed $50. For
277 purposes of this section, a case is reopened after all appeals
278 have been exhausted or time to file an appeal from a final order
279 or final judgment has expired. A reopen fee may be assessed by
280 the clerk for any motion filed by any party at least 90 days
281 after a final order or final judgment has been filed with the
282 clerk in the initial case. A reservation of jurisdiction by a
283 court does not cause a case to remain open for purposes of this
284 section or exempt a party from paying a reopen fee ~~when a case~~
285 ~~previously reported as disposed of is resubmitted to a court and~~
286 ~~includes petitions for modification of a final judgment of~~
287 ~~dissolution~~. A party is exempt from paying the fee for any of
288 the following:
289 1. A writ of garnishment;
290 2. A writ of replevin;
291 3. A distress writ;
292 4. A writ of attachment;
293 5. A motion for rehearing filed within 10 days;
294 6. A motion for attorney's fees filed within 30 days after
295 entry of a judgment or final order;
296 7. A motion for dismissal filed after a mediation agreement
297 has been filed;
298 8. A disposition of personal property without
299 administration;
300 9. Any probate case prior to the discharge of a personal
301 representative;
302 10. Any guardianship pleading prior to discharge;
303 11. Any mental health pleading;

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304 12. Motions to withdraw by attorneys;
305 13. Motions exclusively for the enforcement of child
306 support orders;
307 14. A petition for credit of child support;
308 15. A Notice of Intent to Relocate and any order issuing as
309 a result of an uncontested relocation;
310 16. Stipulations and motions to enforce stipulations;
311 17. Responsive pleadings; ~~or~~
312 18. Cases in which there is no initial filing fee; or
313 19. Motions for contempt.
314 (c)1. A party in addition to a party described in sub-
315 subparagraph (a)1.a. who files a pleading in an original civil
316 action in circuit court for affirmative relief by cross-claim,
317 counterclaim, counterpetition, or third-party complaint shall
318 pay the clerk of court a fee of $395. A party in addition to a
319 party described in sub-subparagraph (a)1.b. who files a pleading
320 in an original civil action in circuit court for affirmative
321 relief by cross-claim, counterclaim, counterpetition, or third-
322 party complaint shall pay the clerk of court a fee of $295. The
323 clerk shall remit the fee to the Department of Revenue for
324 deposit into the General Revenue Fund.
325 2. A party in addition to a party described in subparagraph
326 (a)2. who files a pleading in an original civil action in
327 circuit court for affirmative relief by cross-claim,
328 counterclaim, counterpetition, or third-party complaint shall
329 pay the clerk of court a graduated fee of:
330 a. Three hundred and ninety-five dollars in all cases in
331 which the value of the pleading is $50,000 or less;
332 b. Nine hundred dollars in all cases in which the value of

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333 the pleading is more than $50,000 but less than $250,000; or
334 c. One thousand nine hundred dollars in all cases in which
335 the value of the pleading is $250,000 or more.
336
337 The clerk shall remit the fees collected under this subparagraph
338 to the Department of Revenue for deposit into the General
339 Revenue Fund, except that the clerk shall remit $100 of the fee
340 collected under sub-subparagraph a., $605 of the fee collected
341 under sub-subparagraph b., and $1,605 of the fee collected under
342 sub-subparagraph c. to the Department of Revenue for deposit
343 into the State Courts Revenue Trust Fund.
344 (d) The clerk of court shall collect a service charge of
345 $10 for issuing an original, a certified copy, or an electronic
346 certified copy of a summons. The clerk shall assess the fee
347 against the party seeking to have the summons issued.
348 Section 5. Subsection (2) of section 28.37, Florida
349 Statutes, is amended to read:
350 28.37 Fines, fees, service charges, and costs remitted to
351 the state.—
352 (2) Except as otherwise provided in ss. 28.241 and 34.041,
353 all court-related fines, fees, service charges, and costs are
354 considered state funds and shall be remitted by the clerk to the
355 Department of Revenue for deposit into the Clerks of the Court
356 Trust Fund within the Justice Administrative Commission.
357 However, 10 percent of all court-related fines collected by the
358 clerk, except for penalties or fines distributed to counties or
359 municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a),
360 shall be deposited into the clerk's Public Records Modernization
361 Trust Fund to be used exclusively for additional clerk court-

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362 related operational needs and program enhancements.
363 Section 6. Paragraphs (a) and (d) of subsection (1) and
364 subsection (2) of section 34.041, Florida Statutes, are amended
365 to read:
366 34.041 Filing fees.—
367 (1)(a) Filing fees are due at the time a party files a
368 pleading to initiate a proceeding or files a pleading for
369 relief. Reopen fees are due at the time a party files a pleading
370 to reopen a proceeding if at least 90 days have elapsed since
371 the filing of a final order or final judgment with the clerk. If
372 a fee is not paid upon the filing of the pleading as required
373 under this section, the clerk shall pursue collection of the fee
374 pursuant to s. 28.246. Upon the institution of any civil action,
375 suit, or proceeding in county court, the party shall pay the
376 following filing fee, not to exceed:
377 1. For all claims less than $100 $50.
378 2. For all claims of $100 or more but not more than $500
379 $75.
380 3. For all claims of more than $500 but not more than
381 $2,500 $170.
382 4. For all claims of more than $2,500 $295.
383 5. In addition, for all proceedings of garnishment,
384 attachment, replevin, and distress $85.
385 6. Notwithstanding subparagraphs 3. and 5., for all claims
386 of not more than $1,000 filed simultaneously with an action for
387 replevin of property that is the subject of the claim $125.
388 7. For removal of tenant action $180.
389
390 The filing fee in subparagraph 6. is the total fee due under

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391 this paragraph for that type of filing, and no other filing fee
392 under this paragraph may be assessed against such a filing.
393 (d) The clerk of court shall collect a service charge of
394 $10 for issuing a summons or an electronic certified copy of a
395 summons. The clerk shall assess the fee against the party
396 seeking to have the summons issued.
397 (2) A party reopening any civil action, suit, or proceeding
398 in the county court shall pay to the clerk of court a filing fee
399 set by the clerk in an amount not to exceed $25 for all claims
400 of not more than $500 and an amount not to exceed $50 for all
401 claims of more than $500. For purposes of this section, a case
402 is reopened after all appeals have been exhausted, or time to
403 file an appeal from a final order or final judgment has expired.
404 A reopen fee may be assessed by the clerk for any motion filed
405 by any party at least 90 days after a final order or final
406 judgment has been filed with the clerk in the initial case. A
407 reservation of jurisdiction by a court does not cause a case to
408 remain open for purposes of this section or exempt a party from
409 paying a reopen fee ~~when a case previously reported as disposed~~
410 ~~of is resubmitted to a court~~. A party is exempt from paying the
411 fee for any of the following:
412 (a) A writ of garnishment;
413 (b) A writ of replevin;
414 (c) A distress writ;
415 (d) A writ of attachment;
416 (e) A motion for rehearing filed within 10 days;
417 (f) A motion for attorney's fees filed within 30 days of
418 the entry of the judgment or final order;
419 (g) A motion for dismissal filed after a mediation

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420 agreement has been filed;
421 (h) A motion to withdraw by attorneys;
422 (i) Stipulations and motions to enforce stipulations; ~~or~~
423 (j) Responsive pleadings; or
424 (k) Motions for contempt.
425 Section 7. Section 40.011, Florida Statutes, is amended to
426 read:
427 40.011 Jury lists.—
428 (1) A clerk of the court shall generate a set of juror
429 candidate lists derived from the source lists described in s.
430 40.01. The source name lists and the juror candidate lists shall
431 be maintained as specified in this chapter and in accordance
432 with the juror selection plan approved in s. 40.225.
433 (2) ~~(1)~~ Pursuant to s. 40.01, the Department of Highway
434 Safety and Motor Vehicles shall deliver quarterly to the clerk
435 of the circuit court in each county a list of names of persons
436 who reside in that county, who are citizens of the United
437 States, who are legal residents of Florida, who are 18 years of
438 age or older, and for whom the department has a driver's license
439 or identification card record.
440 (3) The clerk of the circuit court shall add to the list of
441 licensed drivers and identification cardholders the name of any
442 person who is 18 years of age or older and who is a citizen of
443 the United States and a legal resident of this state ~~Florida~~ and
444 who indicates a desire to serve as a juror, but whose name does
445 not appear on the department list, by requiring such person to
446 execute an affidavit at the office of the clerk.
447 (4) ~~(2)~~ The affidavit executed pursuant to subsection (3)
448 ~~(1)~~ must be in substantially the following form:

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449
450 State of Florida
451
452 I, ..., do solemnly swear (or affirm) that I am .... years of
453 age; that I am a citizen of the United States and a legal
454 resident of Florida and .... County; that I personally make
455 application for jury duty; that I am eligible to serve as a
456 juror under the Constitution and laws of Florida; and that I
457 reside at .....(Address).....
458
459 .....(Signature).....
460
461 Sworn to and subscribed before me this .... day of ....,
462 ...(year)..., at .... County, Florida.
463
464 .....
465 (Signature and title of officer
466 administering oath)
467 (5) Using the source name lists described subsections (2)
468 and (3), a clerk of court may generate juror candidate lists as
469 necessary to ensure a valid and consistent juror selection
470 process.
471 (a) The initial juror candidate list is derived from the
472 name sources and shall be the master list from which prospective
473 jurors are drawn for summons.
474 (b) The final juror candidate list shall contain a list of
475 those persons, drawn from the initial candidate list as
476 prescribed in this chapter, who are to be summoned as a pool for
477 possible juror service.

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478 Section 8. Section 40.02, Florida Statutes, is amended to
479 read:
480 40.02 Selection of jury lists.—
481 (1) ~~The chief judge of each circuit, or a circuit judge in~~
482 ~~each county within the circuit who is designated by the chief~~
483 ~~judge, shall request the selection of a jury list in each county~~
484 ~~within the circuit during the first week of January of each~~
485 ~~year, or as soon thereafter as practicable.~~ The chief judge or
486 the chief judge's designee shall direct the clerk of the court
487 to select, by lot and at random, a sufficient number of names,
488 with their addresses, from the initial juror candidate list of
489 persons who are qualified to serve as jurors under the
490 provisions of s. 40.01 and to generate a final juror candidate
491 list of not fewer than 250 persons to serve as jurors as
492 provided for in s. 40.221. The final juror candidate~~, which~~ list
493 must ~~shall~~ be signed and verified by the clerk of the court as
494 having been selected as aforesaid. The final juror candidate
495 list may be created, updated, or supplemented as often as
496 necessary to prevent the selection list from becoming exhausted,
497 but in no case less than annually during the first week of
498 January of each year, or as soon thereafter as practicable. A
499 circuit judge in a county to which he or she has been assigned
500 may also request that the final juror candidate list be updated
501 or supplemented, or that a new list be created ~~additional jury~~
502 ~~lists~~ as necessary ~~to prevent the jury list from becoming~~
503 ~~exhausted~~.
504 (2) When the final juror candidate ~~annual jury~~ list is
505 prepared pursuant to the request of a chief judge or the chief
506 judge's designee, the previously prepared final juror candidate

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507 lists ~~prepared the previous year~~ shall be withdrawn from further
508 use. If, notwithstanding this provision, some names are not
509 withdrawn, such error or irregularity shall not invalidate any
510 subsequent proceeding or jury. The fact that any person so
511 selected had been on a former jury list or had served as a juror
512 in any court at any time shall not be grounds for challenge of
513 such person as a juror. If any person so selected shall be
514 ascertained to be disqualified or incompetent to serve as a
515 juror, such disqualification shall not affect the legality of
516 such list or be cause of challenge to the array of any jury
517 chosen from such list, but any person ascertained to be
518 disqualified to serve as a juror shall be subject to challenge
519 for cause, as defined by law. The set of juror candidate lists,
520 although they may be defective or irregular in form or other
521 formal requirement, or in the number or qualification of the
522 persons so named, shall be the lists from which the names of
523 persons for jury service are to be drawn as prescribed by law.
524 (3) ~~(2)~~ The clerk of the court shall be responsible for
525 preserving the security of the source and juror candidate ~~jury~~
526 lists.
527 (4) ~~(3)~~ The clerk of the court shall perform the duties set
528 forth in this section and in ss. 40.221, 40.23, and 40.231 in
529 counties having an approved, computerized jury selection system,
530 the provisions of any special law or general law of local
531 application to the contrary notwithstanding. However, the chief
532 judge may designate the court administrator to perform these
533 duties if the county provides funding to the court administrator
534 to provide the personnel and other costs associated with jury
535 services.

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536 Section 9. Subsection (1) of section 40.022, Florida
537 Statutes, is amended to read:
538 40.022 Clerk to purge jury selection lists; restoration.—
539 (1) To ensure that the juror candidates summoned satisfy
540 the requirements of ss. 40.01 and 40.013, each clerk of the
541 circuit court shall, upon receipt of the list of persons in the
542 department database from the Department of Highway Safety and
543 Motor Vehicles and at least once each month thereafter, purge
544 the final juror candidate ~~jury selection~~ lists of, at a minimum,
545 the names of those persons:
546 (a) Adjudicated mentally incompetent;
547 (b) Convicted of a felony; or
548 (c) Deceased.
549 Section 10. Section 40.221, Florida Statutes, is amended to
550 read:
551 40.221 Drawing jury venire.—A clerk of the court, under
552 supervision of a judge of any court of record, shall, in a
553 manner deemed to produce a result by lot and at random, ~~randomly~~
554 select from the final juror candidate ~~jury~~ list such number of
555 persons as he or she deems necessary or expedient for a jury
556 venire, to be returnable at such time as the judge shall
557 specify, from which such venire or venires any jury may be
558 organized, including a grand jury when drawn by or upon order of
559 a judge of the circuit court. The clerk of the court shall keep
560 the list in a secure place.
561 Section 11. Section 40.225, Florida Statutes, is amended to
562 read:
563 40.225 Jury selection plan ~~Drawing jury venire; alternative~~
564 ~~method~~.—

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565 (1) Pursuant to s. 40.001, the chief judge of each circuit
566 shall review and consent to the process for selecting juror
567 candidates within his or her circuit. The clerk of court shall
568 implement an automated electronic system in which ~~Whenever a~~
569 ~~majority of the judges authorized to conduct jury trials in a~~
570 ~~county consents,~~ the names of prospective jurors and other data
571 pertinent thereto shall be maintained for the purpose of the
572 drawing of juror candidates. This system shall be used as the
573 exclusive method ~~may be fed into a mechanical, electronic, or~~
574 ~~electrical device and drawn therefrom as an alternative to other~~
575 ~~methods~~ authorized by law for obtaining jury venires, if such
576 drawing is by lot and at random and is approved by the Supreme
577 Court as hereinafter provided. Subject to the provisions of ss.
578 40.001 and 40.02, the clerk of the circuit court in each county
579 shall have the administrative responsibility for developing the
580 automated system of jury venire selection, obtaining approval
581 for the juror candidate selection process, and operating and
582 updating the system in accordance with this chapter and
583 technical standards and procedures adopted by the Chief Justice.
584 (2) The clerk of the court, or the chief judge of the
585 circuit if performing the duties of juror candidate selection as
586 provided in s. 40.02, shall submit for approval a plan for the
587 selection of juror candidates as required in this section to the
588 Chief Justice. The plan must be reapproved whenever required by
589 a change in the law, a change in the technical standards and
590 procedures, or a change in the approved clerk-maintained
591 hardware or software used in the automated system of jury venire
592 selection. The proposed plan, if submitted by the clerk, must be
593 approved by the chief judge of the judicial circuit in which the

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594 county is located, and must include a description of the
595 equipment, methods, and mode of operation to be used, in a
596 manner consistent with the technical standards and procedures
597 established by the Chief Justice. ~~When a majority of the trial~~
598 ~~judges authorizes the alternative method of drawing a jury~~
599 ~~venire as provided in subsection (1), the chief judge of the~~
600 ~~judicial circuit in which the county is located shall make a~~
601 ~~certificate to that effect and transmit the same to the Chief~~
602 ~~Justice of the Supreme Court, together with a description of the~~
603 ~~equipment, methods, and mode of operation to be used.~~
604 (3) The Chief Justice shall examine the proposed plan for
605 compliance with applicable statutory requirements and with
606 established technical standards and procedures ~~cause the~~
607 ~~certificate and data accompanying it to be presented to the~~
608 ~~justices of the Supreme Court~~. If the Chief Justice ~~court~~ finds
609 that the proposed plan ~~method will produce venires selected by~~
610 ~~lot and at random,~~ is in compliance with applicable statutory
611 requirements and established technical standards and procedures,
612 will produce venires selected by lot and at random ~~all~~
613 ~~constitutional requirements of jury selection~~, and is otherwise
614 feasible and practicable, an administrative order of approval of
615 same shall be made and filed. Thereafter, the ~~alternative method~~
616 ~~so~~ approved system for automated selection of jury venires shall
617 ~~may~~ be used in the county so authorized.
618 ~~(4) The chief judge of the judicial circuit in which the~~
619 ~~county is located shall supervise the use of such alternative~~
620 ~~method whenever approval of same has been made by order of the~~
621 ~~Supreme Court.~~
622 (4) ~~(5)~~ This section does not require ~~Nothing herein shall~~

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623 ~~be construed as requiring~~ uniform equipment or methods
624 throughout the state.
625 Section 12. Subsection (1) of section 57.081, Florida
626 Statutes, is amended to read:
627 57.081 Costs; right to proceed where prepayment of costs
628 and payment of filing fees waived.—
629 (1) Any indigent person, except a prisoner as defined in s.
630 57.085, who is a party or intervenor in any judicial or
631 administrative agency proceeding or who initiates such
632 proceeding shall receive the services of the courts, sheriffs,
633 and clerks, with respect to such proceedings, despite his or her
634 present inability to pay for these services. Such services are
635 limited to filing fees; service of process; certified copies of
636 orders or final judgments; a single photocopy of any court
637 pleading, record, or instrument filed with the clerk; examining
638 fees; mediation services and fees; private court-appointed
639 counsel fees; subpoena fees and services; service charges for
640 collecting and disbursing funds; and any other cost or service
641 arising out of pending litigation. In any appeal from an
642 administrative agency decision, for which the clerk is
643 responsible for preparing the transcript, the clerk shall record
644 the cost of preparing the transcripts and the cost for copies of
645 any exhibits in the record. A party who has obtained a
646 certification of indigence pursuant to s. 27.52 or s. 57.082
647 with respect to a proceeding is not required to prepay costs to
648 a court, clerk, or sheriff and is not required to pay filing
649 fees or charges for issuance of a summons ~~Prepayment of costs to~~
650 ~~any court, clerk, or sheriff is not required and payment of~~
651 ~~filing fees is not required in any action if the party has~~

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652 ~~obtained in each proceeding a certification of indigence in~~
653 ~~accordance with s. 27.52 or s. 57.082~~.
654 Section 13. Subsection (11) is added to section 95.11,
655 Florida Statutes, to read:
656 95.11 Limitations other than for the recovery of real
657 property.—Actions other than for recovery of real property shall
658 be commenced as follows:
659 (11) COURT COSTS AND FINES.—Notwithstanding subsection (1),
660 an action to collect court costs, fees, or fines owed to the
661 state may be commenced at any time.
662 Section 14. Paragraph (a) of subsection (4) of section
663 112.3173, Florida Statutes, is amended to read:
664 112.3173 Felonies involving breach of public trust and
665 other specified offenses by public officers and employees;
666 forfeiture of retirement benefits.—
667 (4) NOTICE.—
668 (a) The clerk of a court in which a proceeding involving a
669 specified offense is being conducted against a public officer or
670 employee shall furnish notice of the proceeding to the
671 Commission on Ethics after the state attorney advises the clerk
672 that the defendant is a public officer or employee and that the
673 defendant is alleged to have committed a specified offense. Such
674 notice is sufficient if it is in the form of a copy of the
675 indictment, information, or other document containing the
676 charges. In addition, if a verdict of guilty is returned by a
677 jury or by the court trying the case without a jury, or a plea
678 of guilty or of nolo contendere is entered in the court by the
679 public officer or employee, the clerk shall furnish a copy
680 thereof to the Commission on Ethics.

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681 Section 15. Paragraph (b) of subsection (8) of section
682 318.18, Florida Statutes, is amended to read:
683 318.18 Amount of penalties.—The penalties required for a
684 noncriminal disposition pursuant to s. 318.14 or a criminal
685 offense listed in s. 318.17 are as follows:
686 (8)
687 (b)1.a. If a person has been ordered to pay a civil penalty
688 for a noncriminal traffic infraction and the person is unable to
689 comply with the court's order due to demonstrable financial
690 hardship, the court shall allow the person to satisfy the civil
691 penalty by participating in community service until the civil
692 penalty is paid.
693 b. If a court orders a person to perform community service,
694 the person shall receive credit for the civil penalty at the
695 specified hourly credit rate per hour of community service
696 performed, and each hour of community service performed shall
697 reduce the civil penalty by that amount.
698 2.a. As used in this paragraph, the term "specified hourly
699 credit rate" means the wage rate that is specified in 29 U.S.C.
700 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
701 that is then in effect, and that an employer subject to such
702 provision must pay per hour to each employee subject to such
703 provision.
704 b. However, if a person ordered to perform community
705 service has a trade or profession for which there is a community
706 service need, the specified hourly credit rate for each hour of
707 community service performed by that person shall be the average
708 prevailing wage rate for the trade or profession that the
709 community service agency needs.

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710 3.a. The community service agency supervising the person
711 shall record the number of hours of community service completed
712 and the date the community service hours were completed. The
713 community service agency shall submit the data to the clerk of
714 court on the letterhead of the community service agency, which
715 must also bear the notarized signature of the person designated
716 to represent the community service agency.
717 b. When the number of community service hours completed by
718 the person equals the amount of the civil penalty, the clerk of
719 court shall certify this fact to the court. Thereafter, the
720 clerk of court shall record in the case file that the civil
721 penalty has been paid in full.
722 4. As used in this paragraph, the term:
723 a. “Community service” means uncompensated labor for a
724 community service agency.
725 b. “Community service agency” means a not-for-profit
726 corporation, community organization, charitable organization,
727 public officer, the state or any political subdivision of the
728 state, or any other body the purpose of which is to improve the
729 quality of life or social welfare of the community and which
730 agrees to accept community service from persons unable to pay
731 civil penalties for noncriminal traffic infractions.
732 Section 16. Subsection (3) of section 668.50, Florida
733 Statutes, is amended to read:
734 668.50 Uniform Electronic Transaction Act.—
735 (3) SCOPE.—
736 (a) Except as otherwise provided in paragraph (b), this
737 section applies to electronic records and electronic signatures
738 relating to a transaction.

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739 (b) This section does not apply to a transaction to the
740 extent the transaction is governed by:
741 1. A provision of law governing the creation and execution
742 of wills, codicils, or testamentary trusts;
743 2. The Uniform Commercial Code other than s. 671.107 and
744 chapters 672 and 680; or
745 3. The Uniform Computer Information Transactions Act.~~; or~~
746 ~~4. Rules relating to judicial procedure.~~
747 (c) Except with respect to subsections (2), (9), and (11),
748 this section does not apply to a transaction to the extent the
749 transaction is governed by rules relating to judicial procedure.
750 (d)~~(c)~~ This section applies to an electronic record or
751 electronic signature otherwise excluded under paragraph (b) to
752 the extent such record or signature is governed by a provision
753 of law other than those specified in paragraph (b).
754 (e)~~(d)~~ A transaction subject to this section is also
755 subject to other applicable provisions of substantive law.
756 Section 17. Paragraph (c) of subsection (1) of section
757 733.707, Florida Statutes, is amended to read:
758 733.707 Order of payment of expenses and obligations.—
759 (1) The personal representative shall pay the expenses of
760 the administration and obligations of the decedent's estate in
761 the following order:
762 (c) *Class 3.*—Debts and taxes with preference under federal
763 law, ~~and~~ claims pursuant to ss. 409.9101 and 414.28, and claims
764 in favor of the state for unpaid court costs, fees, or fines.
765 Section 18. Section 893.11, Florida Statutes, is amended to
766 read:
767 893.11 Suspension, revocation, and reinstatement of

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768 business and professional licenses.—For the purposes of s.
769 120.60(6), any conviction in any court reported to the
770 Comprehensive Case Information System of the Florida Association
771 of Clerks and Comptroller, Inc., for the sale of, or trafficking
772 in, a controlled substance or for conspiracy to sell, or traffic
773 in, a controlled substance constitutes an immediate serious
774 danger to the public health, safety, or welfare, and is grounds
775 for disciplinary action by the licensing state agency. A state
776 agency shall initiate an immediate emergency suspension of an
777 individual professional license issued by the agency, in
778 compliance with the procedures for summary suspensions in s.
779 120.60(6), upon the agency's findings of the licensee's
780 conviction in any court reported to the Comprehensive Case
781 Information System of the Florida Association of Court Clerks
782 and Comptroller, Inc., ~~Upon the conviction in any court of~~
783 ~~competent jurisdiction of any person holding a license, permit,~~
784 ~~or certificate issued by a state agency,~~ for the sale of, or
785 trafficking in, a controlled substance, or for conspiracy to
786 sell, or traffic in, a controlled substance. Before renewing any
787 professional license, a state agency that issues a professional
788 license must use the Comprehensive Case Information System of
789 the Florida Association of Court Clerks and Comptroller, Inc.,
790 to obtain information relating to any conviction for the sale
791 of, or trafficking in, a controlled substance or for conspiracy
792 to sell, or traffic in, a controlled substance. The clerk of
793 court shall provide electronic access to each state agency at no
794 cost and also provide certified copies of the judgment upon
795 request to the agency.~~, if such offense is a felony, the clerk~~
796 ~~of said court shall send a certified copy of the judgment of~~

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797 ~~conviction with the person's license number, permit number, or~~
798 ~~certificate number on the face of such certified copy to the~~
799 ~~agency head by whom the convicted defendant has received a~~
800 ~~license, permit, or certificate to practice his or her~~
801 ~~profession or to carry on his or her business. Such agency head~~
802 ~~shall suspend or revoke the license, permit, or certificate of~~
803 ~~the convicted defendant to practice his or her profession or to~~
804 ~~carry on his or her business.~~ Upon a showing by any such
805 convicted defendant whose professional license~~, permit, or~~
806 ~~certificate~~ has been suspended or revoked pursuant to this
807 section that his or her civil rights have been restored or upon
808 a showing that the convicted defendant meets the following
809 criteria, the agency head may reinstate or reactivate such
810 license~~, permit, or certificate~~ when:
811 (1) The person has complied with the conditions of
812 paragraphs (a) and (b) which shall be monitored by the
813 Department of Corrections while the person is under any
814 supervisory sanction. If the person fails to comply with
815 provisions of these paragraphs by either failing to maintain
816 treatment or by testing positive for drug use, the department
817 shall notify the licensing~~, permitting, or certifying~~ agency,
818 which shall revoke the license~~, permit, or certification~~. The
819 person under supervision may:
820 (a) Seek evaluation and enrollment in, and once enrolled
821 maintain enrollment in until completion, a drug treatment and
822 rehabilitation program which is approved or regulated by the
823 Department of Children and Family Services. The treatment and
824 rehabilitation program shall be specified by:
825 1. The court, in the case of court-ordered supervisory

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826 sanctions;
827 2. The Parole Commission, in the case of parole, control
828 release, or conditional release; or
829 3. The Department of Corrections, in the case of
830 imprisonment or any other supervision required by law.
831 (b) Submit to periodic urine drug testing pursuant to
832 procedures prescribed by the Department of Corrections. If the
833 person is indigent, the costs shall be paid by the Department of
834 Corrections; or
835 (2) The person has successfully completed an appropriate
836 program under the Correctional Education Program.
837 (3) As used in this section, the term "professional
838 license" includes any license, permit, or certificate that
839 authorizes a person to practice his or her profession. However,
840 the term ~~This section~~ does not include ~~apply to~~ any of the
841 taxes, fees, or permits regulated, controlled, or administered
842 by the Department of Revenue in accordance with s. 213.05.
843 Section 19. Paragraphs (a) and (b) of subsection (2) of
844 section 938.27, Florida Statutes, are amended to read:
845 938.27 Judgment for costs on conviction.—
846 (2)(a) The court shall impose the costs of prosecution and
847 investigation notwithstanding the defendant's present ability to
848 pay. The court shall require the defendant to pay the costs
849 within a specified period or pursuant to a payment plan under s.
850 28.246(4) ~~in specified installments~~.
851 (b) The end of such period or the last such installment
852 must ~~shall~~ not be later than:
853 1. The end of the period of probation or community control,
854 if probation or community control is ordered;

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855 2. Five years after the end of the term of imprisonment
856 imposed, if the court does not order probation or community
857 control; or
858 3. Five years after the date of sentencing in any other
859 case.
860
861 However, ~~in no event shall~~ the obligation to pay any unpaid
862 amounts does not expire if not paid in full within the period
863 specified in this paragraph.
864 Section 20. Present subsections (8) through (12) of section
865 938.30, Florida Statutes, are renumbered as subsections (10)
866 through (14), respectively, and new subsections (8) and (9) are
867 added to that section to read:
868 938.30 Financial obligations in criminal cases;
869 supplementary proceedings.—
870 (8) If a criminal or civil judgment has previously been
871 entered on a court-imposed financial obligation, the judgment
872 constitutes a civil lien against the judgment debtor's presently
873 owned or after-acquired real or personal property when recorded
874 pursuant to s. 55.10, except that a judgment on a court-imposed
875 financial obligation is not subject to the 10-year rerecording
876 requirement of s. 55.10. The judgment must secure all unpaid
877 court-imposed financial obligations that are due and may accrue
878 subsequent to the recording of the judgment, as well as interest
879 and reasonable costs for issuing a satisfaction and recording
880 the satisfaction in the official records.
881 (9) The clerk of the court shall enforce, satisfy,
882 compromise, settle, subordinate, release, or otherwise dispose
883 of any debts or liens imposed and collected under this section

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884 in the same manner as prescribed in s. 938.29(3).
885 Section 21. Section 947.181, Florida Statutes, is amended
886 to read:
887 947.181 Fines, fees, restitution, or other costs ordered to
888 be paid ~~Victim restitution~~ as conditions ~~condition~~ of parole.—
889 (1)~~(a)~~ The ~~Parole~~ commission shall require the payment of
890 fines, fees, restitution, or other court-ordered costs as a
891 condition of parole ~~reparation or restitution to the aggrieved~~
892 ~~party for the damage or loss caused by the offense for which the~~
893 ~~parolee was imprisoned~~ unless the commission finds reasons to
894 the contrary. Restitution to the aggrieved party for injury,
895 damage, or loss caused by the offense for which the parolee was
896 imprisoned shall have first priority in the payment of amounts
897 owed under this section. If the commission does not require the
898 payment of fines, fees, restitution, or other court-ordered
899 costs ~~order restitution~~ or requires ~~orders~~ only partial payment
900 of the fines, fees, restitution, or other court-ordered costs
901 ~~restitution~~, the commission shall state on the record the
902 reasons for its decision ~~therefor~~. ~~The amount of such reparation~~
903 ~~or restitution shall be determined by the Parole Commission.~~
904 (2)~~(b)~~ If the parolee fails to make the payments ~~reparation~~
905 ~~or restitution to the aggrieved party~~ as required ~~authorized~~ in
906 subsection (1) ~~paragraph (a)~~, it shall be considered by the
907 commission as a violation of parole as specified in s. 947.21
908 and may be cause for revocation of ~~her or his~~ parole.
909 (3)~~(2)~~ If a defendant is paroled, any restitution ordered
910 under s. 775.089 shall be a condition of such parole. The Parole
911 Commission may revoke parole if the defendant fails to comply
912 with such order.

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913 (4) In determining whether to revoke parole, the ~~Parole~~
914 commission shall consider the defendant's employment status,
915 earning ability, and financial resources; the willfulness of the
916 defendant's failure to pay; and any other special circumstances
917 that may have a bearing on the defendant's ability to pay.
918 Section 22. This act shall take effect July 1, 2012.
919
920 ========== T I T L E A M E N D M E N T ==========
921 And the title is amended as follows:
922 Delete everything before the enacting clause
923 and insert:
924 A bill to be entitled
925 An act relating to clerks of court; amending s. 27.52,
926 F.S.; authorizing the clerk of court to review the
927 property records and motor vehicle records to
928 determine whether an applicant for the appointment of
929 a public defender is indigent; deleting a requirement
930 that the clerk conduct the review; amending s. 28.24,
931 F.S.; deleting a requirement for the clerks of the
932 circuit courts to participate in the Comprehensive
933 Case Information System; creating s. 28.2405, F.S.;
934 requiring clerks of the circuit courts to use the
935 Comprehensive Case Information System and to submit
936 data to the system based on case types designated by
937 the Supreme Court of Florida; amending s. 28.241,
938 F.S.; providing that filing fees and fees to reopen a
939 proceeding are due at the time a party files a
940 pleading to initiate or reopen a proceeding; requiring
941 the clerk of court to pursue the collection of fees

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942 that are not timely paid; revising the circumstances
943 under which a fee to reopen a case applies; exempting
944 a person from paying a reopen fee for filing a motion
945 to enforce a stipulation or a motion for contempt;
946 authorizing the clerk of court to charge a fee to
947 issue an electronic certified copy of a summons;
948 amending s. 28.37, F.S.; providing that certain
949 penalties and fines are not deposited into the clerk's
950 Public Records Modernization Trust Fund; amending s.
951 34.041, F.S.; requiring the party filing a case in
952 county court to pay all filing and reopen fees at the
953 time of filing; requiring the clerk to pursue
954 collection of the fees if the fees are not paid at the
955 time of filing; authorizing the clerk of court to
956 charge a fee for issuing an electronic certified copy
957 of a summons; revising the circumstances under which a
958 fee to reopen a case applies; exempting a party from
959 paying a reopen fee for filing motions to enforce
960 stipulations and motions for contempt; amending s.
961 40.011, F.S.; requiring that a clerk of court generate
962 a set of juror candidate lists; requiring that the
963 clerk of court add names of certain persons to the
964 juror candidate lists; authorizing the clerk of court
965 to generate juror candidate lists to ensure a valid
966 and consistent juror selection process; amending s.
967 40.02, F.S.; revising the process of selecting jury
968 lists; amending s. 40.022, F.S.; revising the process
969 of purging jury selection lists; amending s. 40.221,
970 F.S.; conforming provisions to changes made by the

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971 act; amending s. 40.225, F.S.; requiring that the
972 clerk of court implement an automated electronic
973 system for drawing jury venire; providing
974 administrative responsibilities of the clerks of court
975 with regard to the jury venire; requiring that the
976 clerk of court or the chief judge submit for approval
977 a plan for the selection of juror candidates;
978 requiring that the Chief Justice of the Supreme Court
979 examine the proposed plan for compliance with
980 applicable statutory requirements and technical
981 standards and procedures; requiring that an
982 administrative order be filed if the proposed plan is
983 approved; amending s. 57.081, F.S.; providing that a
984 person who receives a certification of indigence with
985 respect to a proceeding is not required to pay charges
986 to issue a summons; amending s. 95.11, F.S.; providing
987 that an action to collect any court costs, fees, or
988 fines owed to the state may be commenced at any time;
989 amending s. 112.3173, F.S.; providing for the duty of
990 a clerk of court to notify the Commission on Ethics of
991 certain proceedings involving public officers or
992 employees to arise after the clerk is advised by the
993 state attorney that the defendant is a public officer
994 or employee who is alleged to have committed a
995 specified offense; amending s. 318.18, F.S.; requiring
996 that the signature of the person designated to
997 represent a community service agency be notarized on
998 letterhead that indicates the number of hours of
999 community service completed and the date the community

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1000 service hours were completed by a person who is
1001 ordered to perform community service as a penalty for
1002 specified offenses; amending s. 668.50, F.S.; limiting
1003 the exemption from the Uniform Electronic Transaction
1004 Act for transactions governed by rules relating to
1005 judicial procedure; amending s. 733.707, F.S.;
1006 specifying the priority of payment of unpaid court
1007 costs, fees, or fines by a decedent's estate; amending
1008 s. 893.11, F.S.; providing that convictions of certain
1009 types of criminal offenses which are reported to the
1010 Comprehensive Case Information System of the Florida
1011 Association of Clerks and Comptroller, Inc., are an
1012 immediate, serious danger to the public health,
1013 safety, or welfare; providing that such convictions
1014 are grounds for disciplinary action by a licensing
1015 state agency; requiring that a state agency initiate
1016 an emergency suspension of an individual professional
1017 license upon the agency's finding of the licensee's
1018 conviction of a certain type of criminal offense which
1019 is reported to the Comprehensive Case Information
1020 System; requiring that certain state agencies use the
1021 Comprehensive Case Information System to obtain
1022 information relating to a conviction involving certain
1023 types of criminal offenses; requiring that the clerk
1024 of court provide to each state agency electronic
1025 access and provide certified copies of judgments to
1026 licensing agencies upon request; defining the term
1027 "business or professional license"; amending s.
1028 938.27, F.S.; authorizing a court to require a

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1029 defendant to pay the costs of prosecution and
1030 investigation pursuant to a payment plan under a
1031 specified provision; amending s. 938.30, F.S.;
1032 providing that criminal or civil judgment and related
1033 costs are a civil lien against the judgment debtor's
1034 presently owned or after-acquired real or personal
1035 property if the judgment is recorded; providing an
1036 exception to rerecording requirements; requiring that
1037 the clerk of court enforce, satisfy, compromise,
1038 settle, subordinate, release, or otherwise dispose of
1039 any debts or lien imposed and collected in the same
1040 manner as for an indigent defendant-recipient;
1041 amending s. 947.181, F.S.; providing that the Parole
1042 Commission require as a condition of parole the
1043 payment of fines, fees, or other court-ordered costs
1044 under certain circumstances; providing that
1045 restitution ordered as a condition of parole has first
1046 priority over the payment of other costs ordered as a
1047 condition of parole; requiring that the commission
1048 state on record the reasons for not requiring the full
1049 payment of the fines, fees, or other court-ordered
1050 costs; providing an effective date.

By the Committee on Regulated Industries; and Senator Simmons

580-03067-12 20121166c1

A bill to be entitled

An act relating to clerks of court; amending s. 24.115, F.S.; requiring the Department of the Lottery to use the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptroller, Inc., to determine whether a prize winner owes outstanding fines, fees, or court costs to the state before it may pay certain prizes; amending s. 27.52, F.S.; authorizing the clerk of court to review the property records and motor vehicle records to determine whether an applicant for the appointment of a public defender is indigent; deleting a requirement that the clerk conduct the review; amending s. 28.24, F.S.; deleting a requirement for the clerks of the circuit courts to participate in the Comprehensive Case Information System; creating s. 28.2405, F.S.; requiring clerks of the circuit courts to use the Comprehensive Case Information System and to submit data to the system based on case types designated by the Supreme Court of Florida; amending s. 28.241, F.S.; providing that filing fees and fees to reopen a proceeding are due at the time a party files a pleading to initiate or reopen a proceeding; requiring the clerk of court to pursue the collection of fees that are not timely paid; revising the circumstances under which a fee to reopen a case applies; exempting a person from paying a reopen fee for filing a motion to enforce a stipulation or a motion for contempt; authorizing the clerk of court to charge a fee to

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

580-03067-12 20121166c1

issue an electronic certified copy of a summons; amending s. 28.37, F.S.; providing that certain penalties and fines are not deposited into the clerk's Public Records Modernization Trust Fund; amending s. 34.041, F.S.; requiring the party filing a case in county court to pay all filing and reopen fees at the time of filing; requiring the clerk to pursue collection of the fees if the fees are not paid at the time of filing; authorizing the clerk of court to charge a fee for issuing an electronic certified copy of a summons; revising the circumstances under which a fee to reopen a case applies; exempting a party from paying a reopen fee for filing motions to enforce stipulations and motions for contempt; amending s. 40.011, F.S.; requiring that a clerk of court generate a set of juror candidate lists; requiring that the clerk of court add names of certain persons to the juror candidate lists; authorizing the clerk of court to generate juror candidate lists to ensure a valid and consistent juror selection process; amending s. 40.02, F.S.; revising the process of selecting jury lists; amending s. 40.022, F.S.; revising the process of purging jury selection lists; amending s. 40.221, F.S.; conforming provisions to changes made by the act; amending s. 40.225, F.S.; requiring that the clerk of court implement an automated electronic system for drawing jury venire; providing administrative responsibilities of the clerks of court with regard to the jury venire; requiring that the

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

59 clerk of court or the chief judge submit for approval
60 a plan for the selection of juror candidates;
61 requiring that the Chief Justice of the Supreme Court
62 examine the proposed plan for compliance with
63 applicable statutory requirements and technical
64 standards and procedures; requiring that an
65 administrative order be filed if the proposed plan is
66 approved; amending s. 45.035, F.S.; requiring a
67 plaintiff to pay a rescheduling fee to the clerk on
68 each occasion a sale of real or personal property
69 under an order or judgment is rescheduled; requiring
70 the rescheduling fee to be assessed as costs;
71 requiring the plaintiff to pay the rescheduling fee to
72 the court before the sale; amending s. 57.081, F.S.;
73 providing that a person who receives a certification
74 of indigence with respect to a proceeding is not
75 required to pay charges to issue a summons; amending
76 s. 95.11, F.S.; providing that an action to collect
77 any court costs, fees, or fines owed to the state may
78 be commenced at any time; amending s. 112.3173, F.S.;
79 providing for the duty of a clerk of court to notify
80 the Commission on Ethics of certain proceedings
81 involving public officers or employees to arise after
82 the clerk is advised by the state attorney that the
83 defendant is a public officer or employee who is
84 alleged to have committed a specified offense;
85 amending s. 318.18, F.S.; requiring that the signature
86 of the person designated to represent a community
87 service agency be notarized on letterhead that

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88 indicates the number of hours of community service
89 completed and the date the community service hours
90 were completed by a person who is ordered to perform
91 community service as a penalty for specified offenses;
92 amending s. 668.50, F.S.; limiting the exemption from
93 the Uniform Electronic Transaction Act for
94 transactions governed by rules relating to judicial
95 procedure; amending s. 733.707, F.S.; specifying the
96 priority of payment of unpaid court costs, fees, or
97 fines by a decedent's estate; amending s. 893.11,
98 F.S.; providing that convictions of certain types of
99 criminal offenses which are reported to the
100 Comprehensive Case Information System of the Florida
101 Association of Clerks and Comptroller, Inc., are an
102 immediate, serious danger to the public health,
103 safety, or welfare; providing that such convictions
104 are grounds for disciplinary action by a licensing
105 state agency; requiring that a state agency initiate
106 an emergency suspension of an individual professional
107 license upon the agency's finding of the licensee's
108 conviction of a certain type of criminal offense which
109 is reported to the Comprehensive Case Information
110 System; requiring that certain state agencies use the
111 Comprehensive Case Information System to obtain
112 information relating to a conviction involving certain
113 types of criminal offenses; requiring that the clerk
114 of court provide to each state agency electronic
115 access and provide certified copies of judgments to
116 licensing agencies upon request; defining the term

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117 "business or professional license"; amending s.
118 938.27, F.S.; authorizing a court to require a
119 defendant to pay the costs of prosecution and
120 investigation pursuant to a payment plan under a
121 specified provision; amending s. 938.30, F.S.;
122 providing that criminal or civil judgment and related
123 costs are a civil lien against the judgment debtor's
124 presently owned or after-acquired real or personal
125 property if the judgment is recorded; providing an
126 exception to rerecording requirements; requiring that
127 the clerk of court enforce, satisfy, compromise,
128 settle, subordinate, release, or otherwise dispose of
129 any debts or lien imposed and collected in the same
130 manner as for an indigent defendant-recipient;
131 amending s. 947.181, F.S.; providing that the Parole
132 Commission require as a condition of parole the
133 payment of fines, fees, or other court-ordered costs
134 under certain circumstances; providing that
135 restitution ordered as a condition of parole has first
136 priority over the payment of other costs ordered as a
137 condition of parole; requiring that the commission
138 state on record the reasons for not requiring the full
139 payment of the fines, fees, or other court-ordered
140 costs; providing an effective date.
141
142 Be It Enacted by the Legislature of the State of Florida:
143
144 Section 1. Subsection (4) of section 24.115, Florida
145 Statutes, is amended to read:

146 24.115 Payment of prizes.—
147 (4)(a) It is the responsibility of the appropriate state
148 agency and of the judicial branch to identify to the department,
149 in the form and format prescribed by the department, persons
150 owing an outstanding debt to any state agency or owing child
151 support collected through a court, including spousal support or
152 alimony for the spouse or former spouse of the obligor if the
153 child support obligation is being enforced by the Department of
154 Revenue.
155 (b) Notwithstanding paragraph (a), the department must use
156 the Comprehensive Case Information System of the Florida
157 Association of Court Clerks and Comptroller, Inc., to determine
158 whether a prize winner owes outstanding fines, fees, or court
159 costs to the state before it may pay a prize of $600 or more.
160 (c) Before ~~Prior to~~ the payment of a prize of $600 or more
161 to any claimant having such an outstanding obligation, the
162 department shall transmit the amount of the debt to the agency
163 claiming the debt or owed the debt as shown on the Comprehensive
164 Case Information System and shall authorize payment of the
165 balance to the prize winner after deduction of the debt. If a
166 prize winner owes multiple debts subject to offset under this
167 subsection and the prize is insufficient to cover all such
168 debts, the amount of the prize shall be transmitted first to the
169 agency claiming that past due child support is owed. If a
170 balance of lottery prize remains after payment of past due child
171 support, the remaining lottery prize amount shall be transmitted
172 to other agencies owed ~~claiming~~ debts ~~owed to the state~~, pro
173 rata, based upon the ratio of the individual debt to the
174 remaining debt owed to the state.

175 Section 2. Paragraph (a) of subsection (2) of section
176 27.52, Florida Statutes, is amended to read:
177 27.52 Determination of indigent status.—
178 (2) DETERMINATION BY THE CLERK.—The clerk of the court
179 shall determine whether an applicant seeking appointment of a
180 public defender is indigent based upon the information provided
181 in the application and the criteria prescribed in this
182 subsection.
183 (a)1. An applicant, including an applicant who is a minor
184 or an adult tax-dependent person, is indigent if the applicant's
185 income is equal to or below 200 percent of the then-current
186 federal poverty guidelines prescribed for the size of the
187 household of the applicant by the United States Department of
188 Health and Human Services or if the person is receiving
189 Temporary Assistance for Needy Families-Cash Assistance,
190 poverty-related veterans' benefits, or Supplemental Security
191 Income (SSI).
192 2.a. There is a presumption that the applicant is not
193 indigent if the applicant owns, or has equity in, any intangible
194 or tangible personal property or real property or the expectancy
195 of an interest in any such property having a net equity value of
196 $2,500 or more, excluding the value of the person's homestead
197 and one vehicle having a net value not exceeding $5,000.
198 b. Notwithstanding the information that the applicant
199 provides, the clerk may ~~shall~~ conduct a review of the property
200 records for the county in which the applicant resides and the
201 motor vehicle title records of the state to identify any
202 property interests of the applicant under this subparagraph. The
203 clerk may ~~shall~~ evaluate and consider the results of the review

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204 in making a determination under this subsection. If the review
205 is completed by the clerk, the clerk shall maintain the results
206 of the review in a file with the application and provide the
207 file to the court if the applicant seeks review under subsection
208 (4) of the clerk's determination of indigent status.
209 Section 3. Paragraph (e) of subsection (12) of section
210 28.24, Florida Statutes, is amended to read:
211 28.24 Service charges by clerk of the circuit court.—The
212 clerk of the circuit court shall charge for services rendered by
213 the clerk's office in recording documents and instruments and in
214 performing the duties enumerated in amounts not to exceed those
215 specified in this section. Notwithstanding any other provision
216 of this section, the clerk of the circuit court shall provide
217 without charge to the state attorney, public defender, guardian
218 ad litem, public guardian, attorney ad litem, criminal conflict
219 and civil regional counsel, and private court-appointed counsel
220 paid by the state, and to the authorized staff acting on behalf
221 of each, access to and a copy of any public record, if the
222 requesting party is entitled by law to view the exempt or
223 confidential record, as maintained by and in the custody of the
224 clerk of the circuit court as provided in general law and the
225 Florida Rules of Judicial Administration. The clerk of the
226 circuit court may provide the requested public record in an
227 electronic format in lieu of a paper format when capable of
228 being accessed by the requesting entity.
229
230 Charges
231
232 (12) For recording, indexing, and filing any instrument not

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233 more than 14 inches by 8 1/2 inches, including required notice
234 to property appraiser where applicable:
235 (e) An additional service charge of $4 per page shall be
236 paid to the clerk of the circuit court for each instrument
237 listed in s. 28.222, except judgments received from the courts
238 and notices of lis pendens, recorded in the official records.
239 From the additional $4 service charge collected:
240 1. If the counties maintain legal responsibility for the
241 costs of the court-related technology needs as defined in s.
242 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
243 Florida Association of Court Clerks and Comptroller, Inc., for
244 the cost of development, implementation, operation, and
245 maintenance of the clerks' Comprehensive Case Information
246 System~~, in which system all clerks shall participate on or~~
247 ~~before January 1, 2006~~; $1.90 shall be retained by the clerk to
248 be deposited in the Public Records Modernization Trust Fund and
249 used exclusively for funding court-related technology needs of
250 the clerk as defined in s. 29.008(1)(f)2. and (h); and $2 shall
251 be distributed to the board of county commissioners to be used
252 exclusively to fund court-related technology, and court
253 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
254 state trial courts, state attorney, public defender, and
255 criminal conflict and civil regional counsel in that county. If
256 the counties maintain legal responsibility for the costs of the
257 court-related technology needs as defined in s. 29.008(1)(f)2.
258 and (h), notwithstanding any other provision of law, the county
259 is not required to provide additional funding beyond that
260 provided herein for the court-related technology needs of the
261 clerk as defined in s. 29.008(1)(f)2. and (h). All court records

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262 and official records are the property of the State of Florida,
263 including any records generated as part of the Comprehensive
264 Case Information System funded pursuant to this paragraph and
265 the clerk of court is designated as the custodian of such
266 records, except in a county where the duty of maintaining
267 official records exists in a county office other than the clerk
268 of court or comptroller, such county office is designated the
269 custodian of all official records, and the clerk of court is
270 designated the custodian of all court records. The clerk of
271 court or any entity acting on behalf of the clerk of court,
272 including an association, shall not charge a fee to any agency
273 as defined in s. 119.011, the Legislature, or the State Court
274 System for copies of records generated by the Comprehensive Case
275 Information System or held by the clerk of court or any entity
276 acting on behalf of the clerk of court, including an
277 association.
278 2. If the state becomes legally responsible for the costs
279 of court-related technology needs as defined in s.
280 29.008(1)(f)2. and (h), whether by operation of general law or
281 by court order, $4 shall be remitted to the Department of
282 Revenue for deposit into the General Revenue Fund.
283 Section 4. Section 28.2405, Florida Statutes, is created to
284 read:
285 28.2405 Comprehensive Case Information System.—All clerks
286 of the circuit court shall participate in the Comprehensive Case
287 Information System of the Florida Association of Clerks and
288 Comptroller, Inc., and shall submit electronic case data to the
289 system based on the case types designated by the Supreme Court.
290 Section 5. Subsection (1) of section 28.241, Florida

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291 Statutes, is amended to read:
292 28.241 Filing fees for trial and appellate proceedings.—
293 (1) Filing fees are due at the time a party files a
294 pleading to initiate a proceeding or files a pleading for
295 relief. Reopen fees are due at the time a party files a pleading
296 to reopen a proceeding if at least 90 days have elapsed since
297 the filing of a final order or final judgment with the clerk. If
298 a fee is not paid upon the filing of the pleading as required
299 under this section, the clerk shall pursue collection of the fee
300 pursuant to s. 28.246.
301 (a)1.a. Except as provided in sub-subparagraph b. and
302 subparagraph 2., the party instituting any civil action, suit,
303 or proceeding in the circuit court shall pay to the clerk of
304 that court a filing fee of up to $395 in all cases in which
305 there are not more than five defendants and an additional filing
306 fee of up to $2.50 for each defendant in excess of five. Of the
307 first $280 in filing fees, $80 must be remitted by the clerk to
308 the Department of Revenue for deposit into the General Revenue
309 Fund, $195 must be remitted to the Department of Revenue for
310 deposit into the State Courts Revenue Trust Fund, $3.50 must be
311 remitted to the Department of Revenue for deposit into the
312 Clerks of the Court Trust Fund within the Justice Administrative
313 Commission and used to fund the Florida Clerks of Court
314 Operations Corporation created in s. 28.35, and $1.50 shall be
315 remitted to the Department of Revenue for deposit into the
316 Administrative Trust Fund within the Department of Financial
317 Services to fund clerk budget reviews conducted by the
318 Department of Financial Services. One third of any filing fees
319 collected by the clerk of the circuit court in excess of $100

320 shall be remitted to the Department of Revenue for deposit into
321 the Clerks of the Court Trust Fund within the Justice
322 Administrative Commission.
323 b. The party instituting any civil action, suit, or
324 proceeding in the circuit court under chapter 39, chapter 61,
325 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
326 753 shall pay to the clerk of that court a filing fee of up to
327 $295 in all cases in which there are not more than five
328 defendants and an additional filing fee of up to $2.50 for each
329 defendant in excess of five. Of the first $180 in filing fees,
330 $80 must be remitted by the clerk to the Department of Revenue
331 for deposit into the General Revenue Fund, $95 must be remitted
332 to the Department of Revenue for deposit into the State Courts
333 Revenue Trust Fund, $3.50 must be remitted to the Department of
334 Revenue for deposit into the Clerks of the Court Trust Fund
335 within the Justice Administrative Commission and used to fund
336 the Florida Clerks of Court Operations Corporation created in s.
337 28.35, and $1.50 shall be remitted to the Department of Revenue
338 for deposit into the Administrative Trust Fund within the
339 Department of Financial Services to fund clerk budget reviews
340 conducted by the Department of Financial Services.
341 c. An additional filing fee of $4 shall be paid to the
342 clerk. The clerk shall remit $3.50 to the Department of Revenue
343 for deposit into the Court Education Trust Fund and shall remit
344 50 cents to the Department of Revenue for deposit into the
345 Clerks of the Court Trust Fund within the Justice Administrative
346 Commission to fund clerk education. An additional filing fee of
347 up to $18 shall be paid by the party seeking each severance that
348 is granted. The clerk may impose an additional filing fee of up

349 to $85 for all proceedings of garnishment, attachment, replevin,
350 and distress. Postal charges incurred by the clerk of the
351 circuit court in making service by certified or registered mail
352 on defendants or other parties shall be paid by the party at
353 whose instance service is made. ~~No~~ Additional fees, charges, or
354 costs may not ~~shall~~ be added to the filing fees imposed under
355 this section, except as authorized in this section or by general
356 law.
357 2.a. Notwithstanding the fees prescribed in subparagraph
358 1., a party instituting a civil action in circuit court relating
359 to real property or mortgage foreclosure shall pay a graduated
360 filing fee based on the value of the claim.
361 b. A party shall estimate in writing the amount in
362 controversy of the claim upon filing the action. For purposes of
363 this subparagraph, the value of a mortgage foreclosure action is
364 based upon the principal due on the note secured by the
365 mortgage, plus interest owed on the note and any moneys advanced
366 by the lender for property taxes, insurance, and other advances
367 secured by the mortgage, at the time of filing the foreclosure.
368 The value shall also include the value of any tax certificates
369 related to the property. In stating the value of a mortgage
370 foreclosure claim, a party shall declare in writing the total
371 value of the claim, as well as the individual elements of the
372 value as prescribed in this sub-subparagraph.
373 c. In its order providing for the final disposition of the
374 matter, the court shall identify the actual value of the claim.
375 The clerk shall adjust the filing fee if there is a difference
376 between the estimated amount in controversy and the actual value
377 of the claim and collect any additional filing fee owed or

378 provide a refund of excess filing fee paid.
379 d. The party shall pay a filing fee of:
380 (I) Three hundred and ninety-five dollars in all cases in
381 which the value of the claim is $50,000 or less and in which
382 there are not more than five defendants. The party shall pay an
383 additional filing fee of up to $2.50 for each defendant in
384 excess of five. Of the first $280 in filing fees, $80 must be
385 remitted by the clerk to the Department of Revenue for deposit
386 into the General Revenue Fund, $195 must be remitted to the
387 Department of Revenue for deposit into the State Courts Revenue
388 Trust Fund, $3.50 must be remitted to the Department of Revenue
389 for deposit into the Clerks of the Court Trust Fund within the
390 Justice Administrative Commission and used to fund the Florida
391 Clerks of Court Operations Corporation created in s. 28.35, and
392 $1.50 shall be remitted to the Department of Revenue for deposit
393 into the Administrative Trust Fund within the Department of
394 Financial Services to fund clerk budget reviews conducted by the
395 Department of Financial Services;
396 (II) Nine hundred dollars in all cases in which the value
397 of the claim is more than $50,000 but less than $250,000 and in
398 which there are not more than five defendants. The party shall
399 pay an additional filing fee of up to $2.50 for each defendant
400 in excess of five. Of the first $785 in filing fees, $80 must be
401 remitted by the clerk to the Department of Revenue for deposit
402 into the General Revenue Fund, $700 must be remitted to the
403 Department of Revenue for deposit into the State Courts Revenue
404 Trust Fund, $3.50 must be remitted to the Department of Revenue
405 for deposit into the Clerks of the Court Trust Fund within the
406 Justice Administrative Commission and used to fund the Florida

407 Clerks of Court Operations Corporation described in s. 28.35,
408 and $1.50 shall be remitted to the Department of Revenue for
409 deposit into the Administrative Trust Fund within the Department
410 of Financial Services to fund clerk budget reviews conducted by
411 the Department of Financial Services; or
412 (III) One thousand nine hundred dollars in all cases in
413 which the value of the claim is $250,000 or more and in which
414 there are not more than five defendants. The party shall pay an
415 additional filing fee of up to $2.50 for each defendant in
416 excess of five. Of the first $1,785 in filing fees, $80 must be
417 remitted by the clerk to the Department of Revenue for deposit
418 into the General Revenue Fund, $1,700 must be remitted to the
419 Department of Revenue for deposit into the State Courts Revenue
420 Trust Fund, $3.50 must be remitted to the Department of Revenue
421 for deposit into the Clerks of the Court Trust Fund within the
422 Justice Administrative Commission to fund the Florida Clerks of
423 Court Operations Corporation created in s. 28.35, and $1.50
424 shall be remitted to the Department of Revenue for deposit into
425 the Administrative Trust Fund within the Department of Financial
426 Services to fund clerk budget reviews conducted by the
427 Department of Financial Services.
428 e. An additional filing fee of $4 shall be paid to the
429 clerk. The clerk shall remit $3.50 to the Department of Revenue
430 for deposit into the Court Education Trust Fund and shall remit
431 50 cents to the Department of Revenue for deposit into the
432 Clerks of the Court Trust Fund within the Justice Administrative
433 Commission to fund clerk education. An additional filing fee of
434 up to $18 shall be paid by the party seeking each severance that
435 is granted. The clerk may impose an additional filing fee of up

436 to $85 for all proceedings of garnishment, attachment, replevin,
437 and distress. Postal charges incurred by the clerk of the
438 circuit court in making service by certified or registered mail
439 on defendants or other parties shall be paid by the party at
440 whose instance service is made. ~~No~~ Additional fees, charges, or
441 costs may not ~~shall~~ be added to the filing fees imposed under
442 this section, except as authorized in this section or by general
443 law.
444 (b) A party reopening any civil action, suit, or proceeding
445 in the circuit court shall pay to the clerk of court a filing
446 fee set by the clerk in an amount not to exceed $50. For
447 purposes of this section, a case is reopened after all appeals
448 have been exhausted or time to file an appeal from a final order
449 or final judgment has expired. A reopen fee may be assessed by
450 the clerk for any motion filed by any party at least 90 days
451 after a final order or final judgment has been filed with the
452 clerk in the initial case. A reservation of jurisdiction by a
453 court does not cause a case to remain open for purposes of this
454 section or exempt a party from paying a reopen fee ~~when a case~~
455 ~~previously reported as disposed of is resubmitted to a court and~~
456 ~~includes petitions for modification of a final judgment of~~
457 ~~dissolution~~. A party is exempt from paying the fee for any of
458 the following:
459 1. A writ of garnishment;
460 2. A writ of replevin;
461 3. A distress writ;
462 4. A writ of attachment;
463 5. A motion for rehearing filed within 10 days;
464 6. A motion for attorney's fees filed within 30 days after

465 entry of a judgment or final order;
466 7. A motion for dismissal filed after a mediation agreement
467 has been filed;
468 8. A disposition of personal property without
469 administration;
470 9. Any probate case prior to the discharge of a personal
471 representative;
472 10. Any guardianship pleading prior to discharge;
473 11. Any mental health pleading;
474 12. Motions to withdraw by attorneys;
475 13. Motions exclusively for the enforcement of child
476 support orders;
477 14. A petition for credit of child support;
478 15. A Notice of Intent to Relocate and any order issuing as
479 a result of an uncontested relocation;
480 16. Stipulations and motions to enforce stipulations;
481 17. Responsive pleadings; ~~or~~
482 18. Cases in which there is no initial filing fee; or
483 19. Motions for contempt.
484 (c)1. A party in addition to a party described in sub-
485 subparagraph (a)1.a. who files a pleading in an original civil
486 action in circuit court for affirmative relief by cross-claim,
487 counterclaim, counterpetition, or third-party complaint shall
488 pay the clerk of court a fee of $395. A party in addition to a
489 party described in sub-subparagraph (a)1.b. who files a pleading
490 in an original civil action in circuit court for affirmative
491 relief by cross-claim, counterclaim, counterpetition, or third-
492 party complaint shall pay the clerk of court a fee of $295. The
493 clerk shall remit the fee to the Department of Revenue for

494 deposit into the General Revenue Fund.
495 2. A party in addition to a party described in subparagraph
496 (a)2. who files a pleading in an original civil action in
497 circuit court for affirmative relief by cross-claim,
498 counterclaim, counterpetition, or third-party complaint shall
499 pay the clerk of court a graduated fee of:
500 a. Three hundred and ninety-five dollars in all cases in
501 which the value of the pleading is $50,000 or less;
502 b. Nine hundred dollars in all cases in which the value of
503 the pleading is more than $50,000 but less than $250,000; or
504 c. One thousand nine hundred dollars in all cases in which
505 the value of the pleading is $250,000 or more.
506
507 The clerk shall remit the fees collected under this subparagraph
508 to the Department of Revenue for deposit into the General
509 Revenue Fund, except that the clerk shall remit $100 of the fee
510 collected under sub-subparagraph a., $605 of the fee collected
511 under sub-subparagraph b., and $1,605 of the fee collected under
512 sub-subparagraph c. to the Department of Revenue for deposit
513 into the State Courts Revenue Trust Fund.
514 (d) The clerk of court shall collect a service charge of
515 $10 for issuing an original, a certified copy, or an electronic
516 certified copy of a summons. The clerk shall assess the fee
517 against the party seeking to have the summons issued.
518 Section 6. Subsection (2) of section 28.37, Florida
519 Statutes, is amended to read:
520 28.37 Fines, fees, service charges, and costs remitted to
521 the state.—
522 (2) Except as otherwise provided in ss. 28.241 and 34.041,

523 all court-related fines, fees, service charges, and costs are
524 considered state funds and shall be remitted by the clerk to the
525 Department of Revenue for deposit into the Clerks of the Court
526 Trust Fund within the Justice Administrative Commission.
527 However, 10 percent of all court-related fines collected by the
528 clerk, except for penalties or fines distributed to counties or
529 municipalities under s. 316.0083(1)(b)3. or s. 318.18(15)(a),
530 shall be deposited into the clerk's Public Records Modernization
531 Trust Fund to be used exclusively for additional clerk court-
532 related operational needs and program enhancements.
533 Section 7. Paragraphs (a) and (d) of subsection (1) and
534 subsection (2) of section 34.041, Florida Statutes, are amended
535 to read:
536 34.041 Filing fees.—
537 (1)(a) Filing fees are due at the time a party files a
538 pleading to initiate a proceeding or files a pleading for
539 relief. Reopen fees are due at the time a party files a pleading
540 to reopen a proceeding if at least 90 days have elapsed since
541 the filing of a final order or final judgment with the clerk. If
542 a fee is not paid upon the filing of the pleading as required
543 under this section, the clerk shall pursue collection of the fee
544 pursuant to s. 28.246. Upon the institution of any civil action,
545 suit, or proceeding in county court, the party shall pay the
546 following filing fee, not to exceed:
547 1. For all claims less than $100 $50.
548 2. For all claims of $100 or more but not more than $500
549 $75.
550 3. For all claims of more than $500 but not more than
551 $2,500 $170.

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552 4. For all claims of more than $2,500 $295.
553 5. In addition, for all proceedings of garnishment,
554 attachment, replevin, and distress $85.
555 6. Notwithstanding subparagraphs 3. and 5., for all claims
556 of not more than $1,000 filed simultaneously with an action for
557 replevin of property that is the subject of the claim $125.
558 7. For removal of tenant action $180.
559
560 The filing fee in subparagraph 6. is the total fee due under
561 this paragraph for that type of filing, and no other filing fee
562 under this paragraph may be assessed against such a filing.
563 (d) The clerk of court shall collect a service charge of
564 $10 for issuing a summons or an electronic certified copy of a
565 summons. The clerk shall assess the fee against the party
566 seeking to have the summons issued.
567 (2) A party reopening any civil action, suit, or proceeding
568 in the county court shall pay to the clerk of court a filing fee
569 set by the clerk in an amount not to exceed $25 for all claims
570 of not more than $500 and an amount not to exceed $50 for all
571 claims of more than $500. For purposes of this section, a case
572 is reopened after all appeals have been exhausted, or time to
573 file an appeal from a final order or final judgment has expired.
574 A reopen fee may be assessed by the clerk for any motion filed
575 by any party at least 90 days after a final order or final
576 judgment has been filed with the clerk in the initial case. A
577 reservation of jurisdiction by a court does not cause a case to
578 remain open for purposes of this section or exempt a party from
579 paying a reopen fee ~~when a case previously reported as disposed~~
580 ~~of is resubmitted to a court~~. A party is exempt from paying the

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581 fee for any of the following:
582 (a) A writ of garnishment;
583 (b) A writ of replevin;
584 (c) A distress writ;
585 (d) A writ of attachment;
586 (e) A motion for rehearing filed within 10 days;
587 (f) A motion for attorney's fees filed within 30 days of
588 the entry of the judgment or final order;
589 (g) A motion for dismissal filed after a mediation
590 agreement has been filed;
591 (h) A motion to withdraw by attorneys;
592 (i) Stipulations and motions to enforce stipulations; ~~or~~
593 (j) Responsive pleadings; or
594 (k) Motions for contempt.
595 Section 8. Section 40.011, Florida Statutes, is amended to
596 read:
597 40.011 Jury lists.—
598 (1) A clerk of the court shall generate a set of juror
599 candidate lists derived from the source lists described in s.
600 40.01. The source name lists and the juror candidate lists shall
601 be maintained as specified in this chapter and in accordance
602 with the juror selection plan approved in s. 40.225.
603 (2) ~~(1)~~ Pursuant to s. 40.01, the Department of Highway
604 Safety and Motor Vehicles shall deliver quarterly to the clerk
605 of the circuit court in each county a list of names of persons
606 who reside in that county, who are citizens of the United
607 States, who are legal residents of Florida, who are 18 years of
608 age or older, and for whom the department has a driver's license
609 or identification card record.

610 (3) The clerk of the circuit court shall add to the list of
611 licensed drivers and identification cardholders the name of any
612 person who is 18 years of age or older and who is a citizen of
613 the United States and a legal resident of this state ~~Florida~~ and
614 who indicates a desire to serve as a juror, but whose name does
615 not appear on the department list, by requiring such person to
616 execute an affidavit at the office of the clerk.
617 (4) ~~(2)~~ The affidavit executed pursuant to subsection (3)
618 ~~(1)~~ must be in substantially the following form:
619
620 State of Florida
621
622 I, ..., do solemnly swear (or affirm) that I am ....
623 years of age; that I am a citizen of the United States and a
624 legal resident of Florida and .... County; that I personally
625 make application for jury duty; that I am eligible to serve as a
626 juror under the Constitution and laws of Florida; and that I
627 reside at ...(Address)...
628
629 ...(Signature)...
630
631 Sworn to and subscribed before me this .... day of ....,
632 ...(year)..., at .... County, Florida.
633
634 .....
635 (Signature and title of officer
636 administering oath)
637 (5) Using the source name lists described in subsection
638 (1), a clerk of court may generate juror candidate lists as

639 necessary to ensure a valid and consistent juror selection
640 process.
641 (a) The initial juror candidate list is derived from the
642 name sources, described in subsections (1) and (2), and shall be
643 the master list from which prospective jurors are drawn for
644 summons.
645 (b) The final juror candidate list shall contain a list of
646 those persons, drawn from the initial candidate list as
647 prescribed in this chapter, who are to be summoned as a pool for
648 possible juror service.
649 Section 9. Section 40.02, Florida Statutes, is amended to
650 read:
651 40.02 Selection of jury lists.—
652 (1) ~~The chief judge of each circuit, or a circuit judge in~~
653 ~~each county within the circuit who is designated by the chief~~
654 ~~judge, shall request the selection of a jury list in each county~~
655 ~~within the circuit during the first week of January of each~~
656 ~~year, or as soon thereafter as practicable.~~ The chief judge or
657 the chief judge's designee shall direct the clerk of the court
658 to select, by lot and at random, a sufficient number of names,
659 with their addresses, from the initial juror candidate list of
660 persons who are qualified to serve as jurors under the
661 provisions of s. 40.01 and to generate a final juror candidate
662 list of not fewer than 250 persons to serve as jurors as
663 provided for in s. 40.221. The final juror candidate~~, which~~ list
664 must ~~shall~~ be signed and verified by the clerk of the court as
665 having been selected as aforesaid. The final juror candidate
666 list may be created, updated, or supplemented as often as
667 necessary to prevent the selection list from becoming exhausted,

668 but in no case less than annually during the first week of
669 January of each year, or as soon thereafter as practicable. A
670 circuit judge in a county to which he or she has been assigned
671 may also request that the final juror candidate list be updated
672 or supplemented, or that a new list be created ~~additional jury~~
673 ~~lists~~ as necessary ~~to prevent the jury list from becoming~~
674 ~~exhausted~~.
675 (2) When the final juror candidate ~~annual jury~~ list is
676 prepared pursuant to the request of a chief judge or the chief
677 judge's designee, the previously prepared final juror candidate
678 lists ~~prepared the previous year~~ shall be withdrawn from further
679 use. If, notwithstanding this provision, some names are not
680 withdrawn, such error or irregularity shall not invalidate any
681 subsequent proceeding or jury. The fact that any person so
682 selected had been on a former jury list or had served as a juror
683 in any court at any time shall not be grounds for challenge of
684 such person as a juror. If any person so selected shall be
685 ascertained to be disqualified or incompetent to serve as a
686 juror, such disqualification shall not affect the legality of
687 such list or be cause of challenge to the array of any jury
688 chosen from such list, but any person ascertained to be
689 disqualified to serve as a juror shall be subject to challenge
690 for cause, as defined by law. The set of juror candidate lists,
691 although they may be defective or irregular in form or other
692 formal requirement, or in the number or qualification of the
693 persons so named, shall be the lists from which the names of
694 persons for jury service are to be drawn as prescribed by law.
695 (3) ~~(2)~~ The clerk of the court shall be responsible for
696 preserving the security of the source and juror candidate ~~jury~~

697 lists.
698 (4) ~~(3)~~ The clerk of the court shall perform the duties set
699 forth in this section and in ss. 40.221, 40.23, and 40.231 in
700 counties having an approved, computerized jury selection system,
701 the provisions of any special law or general law of local
702 application to the contrary notwithstanding. However, the chief
703 judge may designate the court administrator to perform these
704 duties if the county provides funding to the court administrator
705 to provide the personnel and other costs associated with jury
706 services.
707 Section 10. Subsection (1) of section 40.022, Florida
708 Statutes, is amended to read:
709 40.022 Clerk to purge jury selection lists; restoration.—
710 (1) To ensure that the juror candidates summoned satisfy
711 the requirements of ss. 40.01 and 40.013, each clerk of the
712 circuit court shall, upon receipt of the list of persons in the
713 department database from the Department of Highway Safety and
714 Motor Vehicles and at least once each month thereafter, purge
715 the final juror candidate ~~jury selection~~ lists of, at a minimum,
716 the names of those persons:
717 (a) Adjudicated mentally incompetent;
718 (b) Convicted of a felony; or
719 (c) Deceased.
720 Section 11. Section 40.221, Florida Statutes, is amended to
721 read:
722 40.221 Drawing jury venire.—A clerk of the court, under
723 supervision of a judge of any court of record, shall, in a
724 manner deemed to produce a result by lot and at random, ~~randomly~~
725 select from the final juror candidate ~~jury~~ list such number of

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726 persons as he or she deems necessary or expedient for a jury
727 venire, to be returnable at such time as the judge shall
728 specify, from which such venire or venires any jury may be
729 organized, including a grand jury when drawn by or upon order of
730 a judge of the circuit court. The clerk of the court shall keep
731 the list in a secure place.
732 Section 12. Section 40.225, Florida Statutes, is amended to
733 read:
734 40.225 Drawing jury venire~~; alternative method~~.—
735 (1) Pursuant to s. 40.001, the chief judge of each circuit
736 shall review and consent to the process for selecting juror
737 candidates within his or her circuit. The clerk of court shall
738 implement an automated electronic system in which ~~Whenever a~~
739 ~~majority of the judges authorized to conduct jury trials in a~~
740 ~~county consents,~~ the names of prospective jurors and other data
741 pertinent thereto shall be maintained for the purpose of the
742 drawing of juror candidates. This system shall be used as the
743 exclusive method ~~may be fed into a mechanical, electronic, or~~
744 ~~electrical device and drawn therefrom as an alternative to other~~
745 ~~methods~~ authorized by law for obtaining jury venires, if such
746 drawing is by lot and at random and is approved by the Supreme
747 Court as hereinafter provided. Subject to the provisions of ss.
748 40.001 and 40.02, the clerk of the circuit court in each county
749 shall have the administrative responsibility for developing the
750 automated system of jury venire selection, obtaining approval
751 for the juror candidate selection process, and operating and
752 updating the system in accordance with this chapter and
753 technical standards and procedures adopted by the Chief Justice.
754 (2) The clerk of the court, or the chief judge of the

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755 circuit if performing the duties of juror candidate selection as
756 provided in s. 40.02, shall submit for approval a plan for the
757 selection of juror candidates as required in this section to the
758 Chief Justice. The plan must be reapproved whenever required by
759 a change in the law, a change in the technical standards and
760 procedures, or a change in the approved clerk-maintained
761 hardware or software used in the automated system of jury venire
762 selection. The proposed plan, if submitted by the clerk, must be
763 approved by the chief judge of the judicial circuit in which the
764 county is located, and must include a description of the
765 equipment, methods, and mode of operation to be used, in a
766 manner consistent with the technical standards and procedures
767 established by the Chief Justice. ~~When a majority of the trial~~
768 ~~judges authorizes the alternative method of drawing a jury~~
769 ~~venire as provided in subsection (1), the chief judge of the~~
770 ~~judicial circuit in which the county is located shall make a~~
771 ~~certificate to that effect and transmit the same to the Chief~~
772 ~~Justice of the Supreme Court, together with a description of the~~
773 ~~equipment, methods, and mode of operation to be used.~~
774 (3) The Chief Justice shall examine the proposed plan for
775 compliance with applicable statutory requirements and with
776 established technical standards and procedures ~~cause the~~
777 ~~certificate and data accompanying it to be presented to the~~
778 ~~justices of the Supreme Court~~. If the Chief Justice ~~court~~ finds
779 that the proposed plan ~~method will produce venires selected by~~
780 ~~lot and at random,~~ is in compliance with applicable statutory
781 requirements and established technical standards and procedures,
782 will produce venires selected by lot and at random ~~all~~
783 ~~constitutional requirements of jury selection~~, and is otherwise

784 feasible and practicable, an administrative order of approval of
785 same shall be made and filed. Thereafter, the ~~alternative method~~
786 ~~so~~ approved system for automated selection of jury venires shall
787 ~~may~~ be used in the county so authorized.
788 ~~(4) The chief judge of the judicial circuit in which the~~
789 ~~county is located shall supervise the use of such alternative~~
790 ~~method whenever approval of same has been made by order of the~~
791 ~~Supreme Court.~~
792 (4)~~(5)~~ This section does not require ~~Nothing herein shall~~
793 ~~be construed as requiring~~ uniform equipment or methods
794 throughout the state.
795 Section 13. Subsection (4) is added to section 45.035,
796 Florida Statutes, to read:
797 45.035 Clerk's fees.—In addition to other fees or service
798 charges authorized by law, the clerk shall receive service
799 charges related to the judicial sales procedure set forth in ss.
800 45.031-45.034 and this section:
801 (4) If the sale is rescheduled for any reason, the
802 plaintiff shall pay a rescheduling fee of $70 to the clerk on
803 each occasion the sale is rescheduled. The rescheduling fee must
804 be assessed as costs, and the plaintiff shall pay the fee to the
805 clerk before the sale.
806 Section 14. Subsection (1) of section 57.081, Florida
807 Statutes, is amended to read:
808 57.081 Costs; right to proceed where prepayment of costs
809 and payment of filing fees waived.—
810 (1) Any indigent person, except a prisoner as defined in s.
811 57.085, who is a party or intervenor in any judicial or
812 administrative agency proceeding or who initiates such

813 proceeding shall receive the services of the courts, sheriffs,
814 and clerks, with respect to such proceedings, despite his or her
815 present inability to pay for these services. Such services are
816 limited to filing fees; service of process; certified copies of
817 orders or final judgments; a single photocopy of any court
818 pleading, record, or instrument filed with the clerk; examining
819 fees; mediation services and fees; private court-appointed
820 counsel fees; subpoena fees and services; service charges for
821 collecting and disbursing funds; and any other cost or service
822 arising out of pending litigation. In any appeal from an
823 administrative agency decision, for which the clerk is
824 responsible for preparing the transcript, the clerk shall record
825 the cost of preparing the transcripts and the cost for copies of
826 any exhibits in the record. A party who has obtained a
827 certification of indigence pursuant to s. 27.52 or s. 57.082
828 with respect to a proceeding is not required to prepay costs to
829 a court, clerk, or sheriff and is not required to pay filing
830 fees or charges for issuance of a summons ~~Prepayment of costs to~~
831 ~~any court, clerk, or sheriff is not required and payment of~~
832 ~~filing fees is not required in any action if the party has~~
833 ~~obtained in each proceeding a certification of indigence in~~
834 ~~accordance with s. 27.52 or s. 57.082~~.
835 Section 15. Subsection (11) is added to section 95.11,
836 Florida Statutes, to read:
837 95.11 Limitations other than for the recovery of real
838 property.—Actions other than for recovery of real property shall
839 be commenced as follows:
840 (11) COURT COSTS AND FINES.—Notwithstanding subsection (1),
841 an action to collect court costs, fees, or fines owed to the

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842 state may be commenced at any time.
843 Section 16. Paragraph (a) of subsection (4) of section
844 112.3173, Florida Statutes, is amended to read:
845 112.3173 Felonies involving breach of public trust and
846 other specified offenses by public officers and employees;
847 forfeiture of retirement benefits.—
848 (4) NOTICE.—
849 (a) The clerk of a court in which a proceeding involving a
850 specified offense is being conducted against a public officer or
851 employee shall furnish notice of the proceeding to the
852 Commission on Ethics after the state attorney advises the clerk
853 that the defendant is a public officer or employee and that the
854 defendant is alleged to have committed a specified offense. Such
855 notice is sufficient if it is in the form of a copy of the
856 indictment, information, or other document containing the
857 charges. In addition, if a verdict of guilty is returned by a
858 jury or by the court trying the case without a jury, or a plea
859 of guilty or of nolo contendere is entered in the court by the
860 public officer or employee, the clerk shall furnish a copy
861 thereof to the Commission on Ethics.
862 Section 17. Paragraph (b) of subsection (8) of section
863 318.18, Florida Statutes, is amended to read:
864 318.18 Amount of penalties.—The penalties required for a
865 noncriminal disposition pursuant to s. 318.14 or a criminal
866 offense listed in s. 318.17 are as follows:
867 (8)
868 (b)1.a. If a person has been ordered to pay a civil penalty
869 for a noncriminal traffic infraction and the person is unable to
870 comply with the court's order due to demonstrable financial

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871 hardship, the court shall allow the person to satisfy the civil
872 penalty by participating in community service until the civil
873 penalty is paid.
874 b. If a court orders a person to perform community service,
875 the person shall receive credit for the civil penalty at the
876 specified hourly credit rate per hour of community service
877 performed, and each hour of community service performed shall
878 reduce the civil penalty by that amount.
879 2.a. As used in this paragraph, the term "specified hourly
880 credit rate" means the wage rate that is specified in 29 U.S.C.
881 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
882 that is then in effect, and that an employer subject to such
883 provision must pay per hour to each employee subject to such
884 provision.
885 b. However, if a person ordered to perform community
886 service has a trade or profession for which there is a community
887 service need, the specified hourly credit rate for each hour of
888 community service performed by that person shall be the average
889 prevailing wage rate for the trade or profession that the
890 community service agency needs.
891 3.a. The community service agency supervising the person
892 shall record the number of hours of community service completed
893 and the date the community service hours were completed. The
894 community service agency shall submit the data to the clerk of
895 court on the letterhead of the community service agency, which
896 must also bear the notarized signature of the person designated
897 to represent the community service agency.
898 b. When the number of community service hours completed by
899 the person equals the amount of the civil penalty, the clerk of

900 court shall certify this fact to the court. Thereafter, the
901 clerk of court shall record in the case file that the civil
902 penalty has been paid in full.
903 4. As used in this paragraph, the term:
904 a. "Community service" means uncompensated labor for a
905 community service agency.
906 b. "Community service agency" means a not-for-profit
907 corporation, community organization, charitable organization,
908 public officer, the state or any political subdivision of the
909 state, or any other body the purpose of which is to improve the
910 quality of life or social welfare of the community and which
911 agrees to accept community service from persons unable to pay
912 civil penalties for noncriminal traffic infractions.
913 Section 18. Subsection (3) of section 668.50, Florida
914 Statutes, is amended to read:
915 668.50 Uniform Electronic Transaction Act.—
916 (3) SCOPE.—
917 (a) Except as otherwise provided in paragraph (b), this
918 section applies to electronic records and electronic signatures
919 relating to a transaction.
920 (b) This section does not apply to a transaction to the
921 extent the transaction is governed by:
922 1. A provision of law governing the creation and execution
923 of wills, codicils, or testamentary trusts;
924 2. The Uniform Commercial Code other than s. 671.107 and
925 chapters 672 and 680; or
926 3. The Uniform Computer Information Transactions Act.~~; or~~
927 ~~4. Rules relating to judicial procedure.~~
928 (c) Except with respect to subsections (2), (9), and (11),

929 this section does not apply to a transaction to the extent the
930 transaction is governed by rules relating to judicial procedure.
931 (d) ~~(c)~~ This section applies to an electronic record or
932 electronic signature otherwise excluded under paragraph (b) to
933 the extent such record or signature is governed by a provision
934 of law other than those specified in paragraph (b).
935 (e) ~~(d)~~ A transaction subject to this section is also
936 subject to other applicable provisions of substantive law.
937 Section 19. Paragraph (c) of subsection (1) of section
938 733.707, Florida Statutes, is amended to read:
939 733.707 Order of payment of expenses and obligations.—
940 (1) The personal representative shall pay the expenses of
941 the administration and obligations of the decedent's estate in
942 the following order:
943 (c) *Class 3.*—Debts and taxes with preference under federal
944 law, ~~and~~ claims pursuant to ss. 409.9101 and 414.28, and claims
945 in favor of the state for unpaid court costs, fees, or fines.
946 Section 20. Section 893.11, Florida Statutes, is amended to
947 read:
948 893.11 Suspension, revocation, and reinstatement of
949 business and professional licenses.—For the purposes of s.
950 120.60(6), any conviction in any court reported to the
951 Comprehensive Case Information System of the Florida Association
952 of Clerks and Comptroller, Inc., for the sale of, or trafficking
953 in, a controlled substance or for conspiracy to sell, or traffic
954 in, a controlled substance constitutes an immediate serious
955 danger to the public health, safety, or welfare, and is grounds
956 for disciplinary action by the licensing state agency. A state
957 agency shall initiate an immediate emergency suspension of an

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958 individual professional license issued by the agency, in
959 compliance with the procedures for summary suspensions in s.
960 120.60(6), upon the agency's findings of the licensee's
961 conviction in any court reported to the Comprehensive Case
962 Information System of the Florida Association of Court Clerks
963 and Comptroller, Inc., ~~Upon the conviction in any court of~~
964 ~~competent jurisdiction of any person holding a license, permit,~~
965 ~~or certificate issued by a state agency,~~ for the sale of, or
966 trafficking in, a controlled substance, or for conspiracy to
967 sell, or traffic in, a controlled substance. Before renewing any
968 professional license, a state agency that issues a professional
969 license must use the Comprehensive Case Information System of
970 the Florida Association of Court Clerks and Comptroller, Inc.,
971 to obtain information relating to any conviction for the sale
972 of, or trafficking in, a controlled substance or for conspiracy
973 to sell, or traffic in, a controlled substance. The clerk of
974 court shall provide electronic access to each state agency at no
975 cost and also provide certified copies of the judgment upon
976 request to the agency.~~, if such offense is a felony, the clerk~~
977 ~~of said court shall send a certified copy of the judgment of~~
978 ~~conviction with the person's license number, permit number, or~~
979 ~~certificate number on the face of such certified copy to the~~
980 ~~agency head by whom the convicted defendant has received a~~
981 ~~license, permit, or certificate to practice his or her~~
982 ~~profession or to carry on his or her business. Such agency head~~
983 ~~shall suspend or revoke the license, permit, or certificate of~~
984 ~~the convicted defendant to practice his or her profession or to~~
985 ~~carry on his or her business.~~ Upon a showing by any such
986 convicted defendant whose professional license~~, permit, or~~

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987 ~~certificate~~ has been suspended or revoked pursuant to this
988 section that his or her civil rights have been restored or upon
989 a showing that the convicted defendant meets the following
990 criteria, the agency head may reinstate or reactivate such
991 license~~, permit, or certificate~~ when:
992 (1) The person has complied with the conditions of
993 paragraphs (a) and (b) which shall be monitored by the
994 Department of Corrections while the person is under any
995 supervisory sanction. If the person fails to comply with
996 provisions of these paragraphs by either failing to maintain
997 treatment or by testing positive for drug use, the department
998 shall notify the licensing~~, permitting, or certifying~~ agency,
999 which shall revoke the license~~, permit, or certification~~. The
1000 person under supervision may:
1001 (a) Seek evaluation and enrollment in, and once enrolled
1002 maintain enrollment in until completion, a drug treatment and
1003 rehabilitation program which is approved or regulated by the
1004 Department of Children and Family Services. The treatment and
1005 rehabilitation program shall be specified by:
1006 1. The court, in the case of court-ordered supervisory
1007 sanctions;
1008 2. The Parole Commission, in the case of parole, control
1009 release, or conditional release; or
1010 3. The Department of Corrections, in the case of
1011 imprisonment or any other supervision required by law.
1012 (b) Submit to periodic urine drug testing pursuant to
1013 procedures prescribed by the Department of Corrections. If the
1014 person is indigent, the costs shall be paid by the Department of
1015 Corrections; or

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1016 (2) The person has successfully completed an appropriate
1017 program under the Correctional Education Program.
1018 (3) As used in this section, the term "business or
1019 professional license" includes any license, permit, or
1020 certificate that authorizes a person to practice his or her
1021 profession or to carry on his or her business. However, the term
1022 ~~This section~~ does not include ~~apply to~~ any of the taxes, fees,
1023 or permits regulated, controlled, or administered by the
1024 Department of Revenue in accordance with s. 213.05.
1025 Section 21. Paragraphs (a) and (b) of subsection (2) of
1026 section 938.27, Florida Statutes, are amended to read:
1027 938.27 Judgment for costs on conviction.—
1028 (2)(a) The court shall impose the costs of prosecution and
1029 investigation notwithstanding the defendant's present ability to
1030 pay. The court shall require the defendant to pay the costs
1031 within a specified period or pursuant to a payment plan under s.
1032 28.246(4) ~~in specified installments~~.
1033 (b) The end of such period or the last such installment
1034 must ~~shall~~ not be later than:
1035 1. The end of the period of probation or community control,
1036 if probation or community control is ordered;
1037 2. Five years after the end of the term of imprisonment
1038 imposed, if the court does not order probation or community
1039 control; or
1040 3. Five years after the date of sentencing in any other
1041 case.
1042
1043 However, ~~in no event shall~~ the obligation to pay any unpaid
1044 amounts does not expire if not paid in full within the period

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1045 specified in this paragraph.
1046 Section 22. Present subsections (8) through (12) of section
1047 938.30, Florida Statutes, are renumbered as subsections (10)
1048 through (14), respectively, and new subsections (8) and (9) are
1049 added to that section to read:
1050 938.30 Financial obligations in criminal cases;
1051 supplementary proceedings.—
1052 (8) If a criminal or civil judgment has previously been
1053 entered on a court-imposed financial obligation, the judgment
1054 constitutes a civil lien against the judgment debtor's presently
1055 owned or after-acquired real or personal property when recorded
1056 pursuant to s. 55.10, except that a judgment on a court-imposed
1057 financial obligation is not subject to the 10-year rerecording
1058 requirement of s. 55.10. The judgment must secure all unpaid
1059 court-imposed financial obligations that are due and may accrue
1060 subsequent to the recording of the judgment, as well as interest
1061 and reasonable costs for issuing a satisfaction and recording
1062 the satisfaction in the official records.
1063 (9) The clerk of the court shall enforce, satisfy,
1064 compromise, settle, subordinate, release, or otherwise dispose
1065 of any debts or liens imposed and collected under this section
1066 in the same manner as prescribed in s. 938.29(3).
1067 Section 23. Section 947.181, Florida Statutes, is amended
1068 to read:
1069 947.181 Fines, fees, restitution, or other costs ordered to
1070 be paid ~~Victim restitution~~ as conditions ~~condition~~ of parole.—
1071 (1)~~(a)~~ The ~~Parole~~ commission shall require the payment of
1072 fines, fees, restitution, or other court-ordered costs as a
1073 condition of parole ~~reparation or restitution to the aggrieved~~

1074 ~~party for the damage or loss caused by the offense for which the~~
1075 ~~parolee was imprisoned~~ unless the commission finds reasons to
1076 the contrary. Restitution to the aggrieved party for injury,
1077 damage, or loss caused by the offense for which the parolee was
1078 imprisoned shall have first priority in the payment of amounts
1079 owed under this section. If the commission does not require the
1080 payment of fines, fees, restitution, or other court-ordered
1081 costs ~~order restitution~~ or requires ~~orders~~ only partial payment
1082 of the fines, fees, restitution, or other court-ordered costs
1083 ~~restitution~~, the commission shall state on the record the
1084 reasons for its decision ~~therefor~~. ~~The amount of such reparation~~
1085 ~~or restitution shall be determined by the Parole Commission.~~
1086 (2)~~(b)~~ If the parolee fails to make the payments ~~reparation~~
1087 ~~or restitution to the aggrieved party~~ as required ~~authorized~~ in
1088 subsection (1) ~~paragraph (a)~~, it shall be considered by the
1089 commission as a violation of parole as specified in s. 947.21
1090 and may be cause for revocation of ~~her or his~~ parole.
1091 (3)~~(2)~~ If a defendant is paroled, any restitution ordered
1092 under s. 775.089 shall be a condition of such parole. The Parole
1093 Commission may revoke parole if the defendant fails to comply
1094 with such order.
1095 (4) In determining whether to revoke parole, the ~~Parole~~
1096 commission shall consider the defendant's employment status,
1097 earning ability, and financial resources; the willfulness of the
1098 defendant's failure to pay; and any other special circumstances
1099 that may have a bearing on the defendant's ability to pay.
1100 Section 24. This act shall take effect July 1, 2012.

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 Judiciary Committee

BILL: CS/SB 1830

INTRODUCER: Judiciary Committee and Senator Flores

SUBJECT: Landlords and Tenants

DATE: February 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill makes numerous changes to the Florida Residential Landlord and Tenant Act. Specifically, the bill makes the following changes:

- Authorizes the eviction procedures under the Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant which describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the presumption to 1-months rent.

- Relieves landlords of single-family homes and duplexes of the obligation to provide and maintain screens on windows.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Provides that upon the re-occurrence within 12 months after the initial notice of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to nonrenew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that weekends and holidays do not stay the applicable notice period.
- Specifies additional grounds for which a landlord may not retaliate against a tenant.

The bill conforms statutory cross-references and makes other editorial changes.

This bill creates one undesignated section of Florida law.

This bill amends the following sections of the Florida Statutes: 83.42, 83.48, 83.49, 83.50, 83.51, 83.56, 83.575, 83.58, 83.59, 83.60, 83.62, 83.63, 83.64, and 723.063.

II. Present Situation:

Applicability of the Florida Residential Landlord and Tenant Act

Part II, ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.[1]

The Act does not apply to:

- residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.[2]
- occupancy under a contract of sale of a dwelling unit or property of which it is a part.[3]
- transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.[4]
- occupancy by a holder of a proprietary lease in a cooperative apartment.[5]
- occupancy by an owner of a condominium unit.[6]

[1] Section 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.
[2] Section 83.42(1), F.S.
[3] Section 83.42(2), F.S.
[4] Section 83.42(3), F.S.
[5] Section 83.42(4), F.S.
[6] Section 83.42(5), F.S.

Attorney Fees

Under s. 83.48, F.S., in any civil action brought to enforce the provisions of a rental agreement or the Florida Residential Landlord and Tenant Act, the party in whose favor a judgment or decree has been rendered may recover reasonable costs, including attorney fees from the prevailing party. In an interpretation of s. 83.48, F.S., by the Third District Court of Appeal, the court held that the statute did not allow for the award of attorney fees in an action for damages for personal injuries resulting from a landlord's failure to maintain the rental premises.[7]

Advance Rent Payments

Section 83.49, F.S., specifies requirements for the landlord's duty to a tenant for deposit money or advance rent. "[T]he purpose of [s. 83.49(3)(a), F.S.,] is to assure tenants that their security deposits will be returned expeditiously or they will be promptly notified otherwise."[8] Section 83.49(3)(a), F.S., states:

> [u]pon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:
>
> This is a notice of my intention to impose a claim for damages in the amount of ___ upon your security deposit, due to ___ . It is sent to you as required by s. 83.49 (3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to _(landlord's address)_ .
>
> If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

Section 83.49(3)(b), F.S., provides that:

> [u]nless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

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[7] *Gilbert v. Jabour*, 527 So. 2d 951 (Fla. 3d DCA 1988).
[8] *See Durene v. Alcime*, 448 So. 2d 1208, 1210 (Fla. 3d DCA 1984).

Disclosure of Fire Protection

The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, must disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.[9]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes.[10] Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[11]

> Unless otherwise agreed in writing, in addition to the requirements [described above], the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:
> 1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
> 2. Locks and keys.
> 3. The clean and safe condition of common areas.
> 4. Garbage removal and outside receptacles therefor.
> 5. Functioning facilities for heat during winter, running water, and hot water.[12]
>
> Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.[13]

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., establishes the circumstances under which the tenant or landlord may terminate a rental agreement. A tenant may be subject to eviction for monetary default or non-monetary default. Section 83.56, F.S., recognizes two different categories of non-monetary default:

[9] Section 83.50(2), F.S.
[10] Section 83.51(1)(a), F.S.
[11] Section 83.51(1)(b), F.S.
[12] Section 83.51(2)(a), F.S.
[13] Section 83.51(2)(b), F.S.

Noncurable Default

(2)(a) If such noncompliance is of a nature that the **tenant should not be given an opportunity to cure** it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises.[14]

Curable Default

(2)(b) If such noncompliance is of a nature that the **tenant should be given an opportunity to cure** it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.[15]

Termination of Rental Agreement - Waiver of Rent

If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of rent or possession of the premises, the landlord may terminate the rental agreement.[16]

If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, the landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance.[17] The landlord does not waive his or her right to terminate the rental agreement or to bring a civil action for any subsequent or continuing noncompliance. If a landlord accepts a partial payment of rent from a tenant with full knowledge that the payment is not for the full amount, the landlord waives the right to terminate the rental agreement or to bring a civil action.[18]

[14] Section 83.56(2)(a), F.S.
[15] Section 83.56(2)(b), F.S.
[16] Section 83.56(3), F.S.
[17] Section 83.56(5), F.S.
[18] *See In re Sorrento's I, Inc.*, 195 B.R. 502, 504 (Bankruptcy. M.D. Fla. 1996).

Termination of a Tenancy with a Specific Duration

A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement.[19] Such a provision may not require more than 60 days' notice before vacating the premises.[20] A rental agreement having a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. To do so, the landlord must provide written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide the written notice within 15 days before the start of the notification period contained in the lease and the written notice must list all fees, penalties, and other charges applicable to the tenant.

Restoration of Possession to Landlord Upon Eviction

In an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises.[21]

Retaliatory Conduct

Section 83.64, F.S., prohibits a landlord from discriminatorily increasing a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. The tenant may raise the defense of retaliatory conduct if the tenant acts in good faith.

Rental Units or Parcels in Condominiums, Cooperatives, and Homeowners' Associations

If a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association.[22] The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues the tenancy in the unit or parcel.

III. Effect of Proposed Changes:

Applicability of the Florida Residential Landlord and Tenant Act

The bill makes the Florida Residential Landlord Tenant Act applicable to lease purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the value of the property or at least 12 month's rent.

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[19] Section 83.575(1), F.S.
[20] *Id.*
[21] Section 83.62, F.S.
[22] Sections 718.116(11)(a) and (b), 719.108(10)(a) and (b), and 720.3085(8)(a) and (b), F.S.

Attorney Fees

The bill provides that a right to attorney fees may not be waived in a lease agreement. In addition, the bill provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of the landlord's duty to maintain the premises. The limitation on the award of attorney fees in a personal injury action based on the failure of a landlord to maintain the leased premises appears codify the interpretation of s. 83.56, F.S., by the Third District Court of Appeal in *Gilbert v. Jabour*.

Advance Rent Payments/Nonrefundable Deposits

The bill eliminates a requirement under s. 83.49(2), F.S., for a landlord to give to a tenant a copy of the law relating to security deposits and replaces it with another disclosure which states:

> YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

The bill allows the landlord to withdraw advance rents from the deposit account without notice and as the rents become due to the landlord. The changes to the required disclosure regarding security deposits in this bill are conditional for leases entered into between July 1, 2012, and December 31, 2012. During the period between July 1, 2012, and December 31, 2012, the landlord may elect to give notice required under the current disclosure or the disclosure required under the bill. On or after January 1, 2013, the disclosure regarding security deposits as required by this bill will be required for all leases.

Transfer of Deposits to New Owner or Manager

The bill creates a rebuttable presumption that the previous owner or manager of the property of the property has transferred any deposit to the new owner. However, this presumption is limited to one month's rent.[23]

[23] The amount could be at variance with the amount actually received from the previous owner or agent.

Disclosure of Fire Protection

The bill eliminates a disclosure requirement for landlords regarding the availability or lack of availability of fire protection in certain new construction. Current law requires the landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, to disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.[24]

Maintenance of Screens on Windows

The bill relieves landlords of single-family homes and duplexes of the obligation to provide and maintain screens on windows.

Termination of Rental Agreement- Noncompliance

In the event a notice of noncompliance has been previously delivered to a tenant giving the tenant an opportunity to cure a curable lease violation, the bill provides that upon re-occurrence within 12 months after the initial notice of the noncompliance, the landlord is not required to provide an additional notice before instituting an eviction action.

Termination of Rental Agreement- Rent Waiver

The bill requires that after a landlord serves a tenant with a 3-day notice for failure to pay rent, the landlord may require payment of the rent to be in cash, money order, or certified funds. The bill also allows the landlord to demand "all moneys due," including late fees, to the landlord.

The bill provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease. The bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent if the landlord notifies the tenant that the landlord may seek payment of the remainder. The bill revises the calculation of the time period within which a landlord with a tenant who receives rent subsidies waives the right to enforce a rental agreement if action is not timely instituted within 45 days of a noncompliance. Under the bill, a landlord must enforce the rental agreement within 45 days after obtaining actual knowledge of a noncompliance.

Termination of a Tenancy with a Specific Duration

The bill provides that if a rental agreement has a requirement for a tenant to provide notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal requirement for the landlord to provide the same notice of an intent not to renew. However, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

Landlord or Mobile Home Park Owner's Action for Rent or Possession

[24] Section 83.50(2), F.S.

The bill provides that, before an action for possession based on nonpayment of rent or seeking recovery of unpaid rent may be dismissed by a court, the landlord or mobile home park owner[25] must be given an opportunity to cure a deficiency in a notice or in the pleadings. The bill requires a tenant in any action for possession of a dwelling unit by the landlord, if the tenant interposes any defense other than payment, including the defense of a defective 3-day notice, to pay the accrued rent under dispute into a court registry during the pendency of the proceeding.

Restoration of Possession to Landlord

Existing law requires an eviction notice to be posted on a rental property at least 24 hours before a sheriff may restore possession of the property to the landlord. The bill provides that weekends and holidays do not stay the 24-hour notice period. The bill revises procedures for the restoration of possession of a rental unit to a landlord to provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

The bill specifies two additional grounds for which a landlord may not retaliate against a tenant:

- The tenant has paid the rent to a condominium, cooperative, or homeowners' association after demand from the association.
- The tenant has exercised his or her rights under local, state, or federal fair housing laws.

The bill provides an effective date of July 1, 2012.

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.

[25] Under ss. 83.60 and 723.063, F.S., a tenant or mobile home owner may raise various defenses in opposition to a landlord or mobile home park owner's action for possession or nonpayment of rent.

B. Private Sector Impact:

The bill may make evictions or actions for possession of a residential dwelling unit faster and less costly in some circumstances.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 16, 2012:
The committee substitute no longer:

- Specifies that the eviction procedures in the Florida Residential Landlord Tenant Act (Act) apply to eviction from a dwelling after a final judgment in foreclosure, ejectment, quiet title, partition, or other cause action in which a court awards possession of a dwelling unit.
- Provides that the eviction procedures in the Act apply to an eviction based on the nonpayment of fees due to a condominium, cooperative, or homeowners' association.
- Contains references to "nonrefundable deposits."
- Requires landlords to pay condominium, cooperative, or homeowners' association assessments.
- Provides that a pending foreclosure action is not grounds for a tenant to terminate a lease.
- Requires a landlord to notify a tenant of a mortgage default.

Additionally, the committee substitute:

- Revises notice and eviction requirements for tenant actions constituting noncompliance under a lease;
- Provides that, before an action for possession based on nonpayment of rent or seeking recovery of unpaid rent may be dismissed by a court, the landlord or mobile home park owner must be given an opportunity to cure a deficiency in a notice or in the pleadings.
- Requires a tenant in any action for possession of a dwelling unit by the landlord, if the tenant interposes any defense other than payment, including the defense of a

defective 3-day notice, to pay the accrued rent under dispute into a court registry during the pendency of the proceeding.

- Revises the period to institute an action for possession of a rental unit for noncompliance before an exemption involving rent subsidies is waived to 45 days after the landlord obtains actual knowledge of the noncompliance.
- Provides a transition period that allows landlords to exhaust existing forms before they are required to use the new form notices specified by the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2012	.	
	.	
	.	
	.	

The Committee on Judiciary (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 83.42, Florida Statutes, is amended to read:

83.42 Exclusions from application of part.—This part does not apply to:

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part in which at least one month's rent has been paid and the buyer has paid a deposit of at least 5 percent of the value of the property, or in which the buyer has paid at least 12 months' rent.

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14 Section 2. Section 83.48, Florida Statutes, is amended to
15 read:
16 83.48 Attorney ~~Attorney's~~ fees.—In any civil action brought
17 to enforce the provisions of the rental agreement or this part,
18 the party in whose favor a judgment or decree has been rendered
19 may recover reasonable court costs, including, but not limited
20 to, attorney ~~attorney's~~ fees, from the nonprevailing party. The
21 right to attorney fees in this section may not be waived in a
22 lease agreement. However, attorney fees may not be awarded under
23 this section in a claim for personal injury damages based on a
24 breach of duty under s. 83.51.
25 Section 3. Subsections (2), (3), and (7) of section 83.49,
26 Florida Statutes, are amended to read:
27 83.49 Deposit money or advance rent; duty of landlord and
28 tenant.—
29 (2) The landlord shall, in the lease agreement or within 30
30 days after ~~of~~ receipt of advance rent or a security deposit,
31 furnish written notice to ~~notify~~ the tenant which includes
32 disclosure of ~~in writing of the manner in which the landlord is~~
33 ~~holding~~ the advance rent or security deposit ~~and the rate of~~
34 ~~interest, if any, which the tenant is to receive and the time of~~
35 ~~interest payments to the tenant~~. ~~Such written notice shall:~~
36 ~~(a) Be given in person or by mail to the tenant.~~
37 ~~(b) State the name and address of the depository where the~~
38 ~~advance rent or security deposit is being held, whether the~~
39 ~~advance rent or security deposit is being held in a separate~~
40 ~~account for the benefit of the tenant or is commingled with~~
41 ~~other funds of the landlord, and, if commingled, whether such~~
42 ~~funds are deposited in an interest-bearing account in a Florida~~

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43 ~~banking institution.~~
44 ~~(c) Include a copy of the provisions of subsection (3).~~
45
46 Subsequent to providing such notice, if the landlord changes the
47 manner or location in which he or she is holding the advance
48 rent or security deposit, he or she shall notify the tenant
49 within 30 days after ~~of~~ the change according to the provisions
50 of paragraphs (a)-(d) ~~herein set forth~~. The landlord is not
51 required to give a new notice or an additional notice solely
52 because the depository has merged with another financial
53 institution, changed its name, or transferred ownership to a
54 different financial institution. This subsection does not apply
55 to any landlord who rents fewer than five individual dwelling
56 units. Failure to provide this notice is ~~shall~~ not ~~be~~ a defense
57 to the payment of rent when due. Such written notice must:
58 (a) Be given in person or by mail to the tenant;
59 (b) State the name and address of the depository where the
60 advance rent or security deposit is being held, or state that
61 the landlord has posted a surety bond as provided by law;
62 (c) State whether the tenant is entitled to interest on the
63 deposit; and
64 (d) Include the following disclosure:
65
66 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
67 LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S
68 ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU
69 MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS
70 SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING
71 YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE,

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72 WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S
73 INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU
74 DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO
75 THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE
76 LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM
77 AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF
78 YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT
79 AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A
80 LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.
81
82 IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE
83 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
84 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
85 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
86 DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
87 REFUND.
88
89 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
90 BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE
91 FAVOR A JUDGMENT HAS BEEN RENDERED WILL BE AWARDED
92 COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.
93
94 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
95 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
96 RIGHTS AND OBLIGATIONS.
97
98 (3) The landlord may disburse advance rents from the
99 deposit account to the landlord's benefit when the advance
100 rental period commences and without notice to the tenant. For

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101 all other deposits:
102 (a) Upon the vacating of the premises for termination of
103 the lease, if the landlord does not intend to impose a claim on
104 the security deposit, the landlord shall have 15 days to return
105 the security deposit together with interest if otherwise
106 required, or the landlord shall have 30 days to give the tenant
107 written notice by certified mail to the tenant's last known
108 mailing address of his or her intention to impose a claim on the
109 deposit and the reason for imposing the claim. The notice shall
110 contain a statement in substantially the following form:
111
112 This is a notice of my intention to impose a claim for
113 damages in the amount of .... upon your security deposit, due to
114 ..... It is sent to you as required by s. 83.49(3), Florida
115 Statutes. You are hereby notified that you must object in
116 writing to this deduction from your security deposit within 15
117 days from the time you receive this notice or I will be
118 authorized to deduct my claim from your security deposit. Your
119 objection must be sent to ...(landlord's address)....
120
121 If the landlord fails to give the required notice within the 30-
122 day period, he or she forfeits the right to impose a claim upon
123 the security deposit and may not seek a setoff against the
124 deposit but may file an action for damages after return of the
125 deposit.
126 (b) Unless the tenant objects to the imposition of the
127 landlord's claim or the amount thereof within 15 days after
128 receipt of the landlord's notice of intention to impose a claim,
129 the landlord may then deduct the amount of his or her claim and

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130 shall remit the balance of the deposit to the tenant within 30
131 days after the date of the notice of intention to impose a claim
132 for damages. The failure of the tenant to make a timely
133 objection does not waive any rights of the tenant to seek
134 damages in a separate action.
135 (c) If either party institutes an action in a court of
136 competent jurisdiction to adjudicate the party's right to the
137 security deposit, the prevailing party is entitled to receive
138 his or her court costs plus a reasonable fee for his or her
139 attorney. The court shall advance the cause on the calendar.
140 (d) Compliance with this section by an individual or
141 business entity authorized to conduct business in this state,
142 including Florida-licensed real estate brokers and sales
143 associates, constitutes ~~shall constitute~~ compliance with all
144 other relevant Florida Statutes pertaining to security deposits
145 held pursuant to a rental agreement or other landlord-tenant
146 relationship. Enforcement personnel shall look solely to this
147 section to determine compliance. This section prevails over any
148 conflicting provisions in chapter 475 and in other sections of
149 the Florida Statutes, and shall operate to permit licensed real
150 estate brokers to disburse security deposits and deposit money
151 without having to comply with the notice and settlement
152 procedures contained in s. 475.25(1)(d).
153 (7) Upon the sale or transfer of title of the rental
154 property from one owner to another, or upon a change in the
155 designated rental agent, any and all security deposits or
156 advance rents being held for the benefit of the tenants shall be
157 transferred to the new owner or agent, together with any earned
158 interest and with an accurate accounting showing the amounts to

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159 be credited to each tenant account. Upon the transfer of such
160 funds and records to the new owner or agent ~~as stated herein~~,
161 and upon transmittal of a written receipt therefor, the
162 transferor is ~~shall be~~ free from the obligation imposed in
163 subsection (1) to hold such moneys on behalf of the tenant.
164 There is a rebuttable presumption that any new owner or agent
165 received the security deposits from the previous owner or agent;
166 however, the limit of this presumption is one month's rent. This
167 subsection does not ~~However, nothing herein shall~~ excuse the
168 landlord or agent for a violation of other ~~the~~ provisions of
169 this section while in possession of such deposits.
170 Section 4. The Legislature recognizes that landlords may
171 have stocks of preprinted lease forms that contain disclosures
172 compliant with current law. Accordingly, changes to the
173 disclosure required of a landlord and made by amendments to s.
174 83.49, Florida Statutes, in this act, are conditional for leases
175 entered into between July 1, 2012, and December 31, 2012. During
176 that period, the landlord may elect to give notice required by
177 former s. 83.49, Florida Statutes, or the disclosure required
178 under this act. The disclosure required by this act is required
179 for all leases entered into on or after January 1, 2013.
180 Section 5. Section 83.50, Florida Statutes, is amended to
181 read:
182 83.50 Disclosure of landlord's address.—
183 ~~(1)~~ In addition to other disclosures required by law, the
184 landlord, or a person authorized to enter into a rental
185 agreement on the landlord's behalf, shall disclose in writing to
186 the tenant, at or before the commencement of the tenancy, the
187 name and address of the landlord or a person authorized to

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188 receive notices and demands in the landlord's behalf. The person
189 so authorized to receive notices and demands retains authority
190 until the tenant is notified otherwise. All notices of such
191 names and addresses or changes thereto shall be delivered to the
192 tenant's residence or, if specified in writing by the tenant, to
193 any other address.
194 ~~(2) The landlord or the landlord's authorized~~
195 ~~representative, upon completion of construction of a building~~
196 ~~exceeding three stories in height and containing dwelling units,~~
197 ~~shall disclose to the tenants initially moving into the building~~
198 ~~the availability or lack of availability of fire protection.~~
199 Section 6. Subsection (1) and paragraph (a) of subsection
200 (2) of section 83.51, Florida Statutes, are amended to read:
201 83.51 Landlord's obligation to maintain premises.—
202 (1) The landlord at all times during the tenancy shall:
203 (a) Comply with the requirements of applicable building,
204 housing, and health codes; or
205 (b) Where there are no applicable building, housing, or
206 health codes, maintain the roofs, windows, ~~screens,~~ doors,
207 floors, steps, porches, exterior walls, foundations, and all
208 other structural components in good repair and capable of
209 resisting normal forces and loads and the plumbing in reasonable
210 working condition. ~~However,~~ The landlord is ~~shall~~ not ~~be~~
211 required to maintain a mobile home or other structure owned by
212 the tenant.
213
214 The landlord's obligations under this subsection may be altered
215 or modified in writing with respect to a single-family home or
216 duplex.

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217 (2)(a) Unless otherwise agreed in writing, in addition to
218 the requirements of subsection (1), the landlord of a dwelling
219 unit other than a single-family home or duplex shall, at all
220 times during the tenancy, make reasonable provisions for:
221 1. The extermination of rats, mice, roaches, ants, wood-
222 destroying organisms, and bedbugs. When vacation of the premises
223 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
224 liable for damages but shall abate the rent. The tenant must
225 ~~shall be required to~~ temporarily vacate the premises for a
226 period of time not to exceed 4 days, on 7 days' written notice,
227 if necessary, for extermination pursuant to this subparagraph.
228 2. Locks and keys.
229 3. The clean and safe condition of common areas.
230 4. Garbage removal and outside receptacles therefor.
231 5. Functioning facilities for heat during winter, running
232 water, and hot water.
233 Section 7. Subsections (2) through (5) of section 83.56,
234 Florida Statutes, are amended to read:
235 83.56 Termination of rental agreement.—
236 (2) If the tenant materially fails to comply with s. 83.52
237 or material provisions of the rental agreement, other than a
238 failure to pay rent, or reasonable rules or regulations, the
239 landlord may:
240 (a) If such noncompliance is of a nature that the tenant
241 should not be given an opportunity to cure it or if the
242 noncompliance constitutes a subsequent or continuing
243 noncompliance within 12 months of a written warning by the
244 landlord of a similar violation, deliver a written notice to the
245 tenant specifying the noncompliance and the landlord's intent to

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246 terminate the rental agreement by reason thereof. Examples of
247 noncompliance which are of a nature that the tenant should not
248 be given an opportunity to cure include, but are not limited to,
249 destruction, damage, or misuse of the landlord's or other
250 tenants' property by intentional act or a subsequent or
251 continued unreasonable disturbance. In such event, the landlord
252 may terminate the rental agreement, and the tenant shall have 7
253 days from the date that the notice is delivered to vacate the
254 premises. The notice shall be ~~adequate if it is~~ in substantially
255 the following form:
256
257 You are advised that your lease is terminated effective
258 immediately. You shall have 7 days from the delivery of this
259 letter to vacate the premises. This action is taken because
260 ...(cite the noncompliance)....
261
262 (b) If such noncompliance is of a nature that the tenant
263 should be given an opportunity to cure it, deliver a written
264 notice to the tenant specifying the noncompliance, including a
265 notice that, if the noncompliance is not corrected within 7 days
266 from the date the written notice is delivered, the landlord
267 shall terminate the rental agreement by reason thereof. Examples
268 of such noncompliance include, but are not limited to,
269 activities in contravention of the lease or this <u>part</u> ~~act~~ such
270 as having or permitting unauthorized pets, guests, or vehicles;
271 parking in an unauthorized manner or permitting such parking; or
272 failing to keep the premises clean and sanitary. <u>If there is a</u>
273 <u>noncompliance within 12 months after notice, an eviction action</u>
274 <u>may commence without the necessity of delivering a subsequent</u>

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275 notice pursuant to paragraph (a) or this paragraph. The notice
276 shall be ~~adequate if it is~~ in substantially the following form:
277
278 You are hereby notified that ...(cite the
279 noncompliance).... Demand is hereby made that you remedy the
280 noncompliance within 7 days of receipt of this notice or your
281 lease shall be deemed terminated and you shall vacate the
282 premises upon such termination. If this same conduct or conduct
283 of a similar nature is repeated within 12 months, your tenancy
284 is subject to termination without further warning and without
285 your being given an opportunity to cure the noncompliance.
286
287 (3) If the tenant fails to pay rent when due and the
288 default continues for 3 days, excluding Saturday, Sunday, and
289 legal holidays, after delivery of written demand by the landlord
290 for payment of the rent or possession of the premises, the
291 landlord may terminate the rental agreement. Legal holidays for
292 the purpose of this section shall be court-observed holidays
293 only. The total amount claimed may include all moneys owed to
294 the landlord through the date of the notice, including, but not
295 limited to, late fees. The 3-day notice shall contain a
296 statement in substantially the following form:
297
298 You are hereby notified that you are indebted to me in the
299 sum of .... dollars for the rent and use of the premises
300 ...(address of leased premises, including county)..., Florida,
301 now occupied by you and that I demand payment of the rent or
302 possession of the premises within 3 days (excluding Saturday,
303 Sunday, and legal holidays) from the date of delivery of this

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304 notice, to wit: on or before the .... day of ...., ...(year)....
305 ...(landlord's name, address and phone number)...
306
307 (4) The delivery of the written notices required by
308 subsections (1), (2), and (3) shall be by mailing or delivery of
309 a true copy thereof or, if the tenant is absent from the
310 premises, by leaving a copy thereof at the residence. The notice
311 requirements of subsections (1), (2), and (3) may not be waived
312 in the lease.
313 (5)(a) If the landlord accepts rent with actual knowledge
314 of a noncompliance by the tenant or accepts performance by the
315 tenant of any other provision of the rental agreement that is at
316 variance with its provisions, or if the tenant pays rent with
317 actual knowledge of a noncompliance by the landlord or accepts
318 performance by the landlord of any other provision of the rental
319 agreement that is at variance with its provisions, the landlord
320 or tenant waives his or her right to terminate the rental
321 agreement or to bring a civil action for that noncompliance, but
322 not for any subsequent or continuing noncompliance. However, a
323 landlord does not waive the right to terminate the rental
324 agreement or to bring a civil action for that noncompliance by
325 accepting partial rent for the period if the landlord notifies
326 the tenant that the landlord is reserving the right to enforce
327 the rental agreement.
328 (b) Any tenant who wishes to defend against an action by
329 the landlord for possession of the unit for noncompliance of the
330 rental agreement or of relevant statutes must ~~shall~~ comply with
331 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
332 mediation or trial unless the provisions of s. 83.60(2) have

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333 been met, but must ~~shall~~ enter a default judgment for removal of
334 the tenant with a writ of possession to issue immediately if the
335 tenant fails to comply with s. 83.60(2).
336 (c) This subsection does not apply to that portion of rent
337 subsidies received from a local, state, or national government
338 or an agency of local, state, or national government; however,
339 waiver will occur if an action has not been instituted within 45
340 days after the landlord obtains actual knowledge of the
341 noncompliance.
342 Section 8. Section 83.575, Florida Statutes, is amended to
343 read:
344 83.575 Termination of tenancy with specific duration.—
345 (1) A rental agreement with a specific duration may contain
346 a provision requiring the tenant to notify the landlord before
347 vacating the premises at the end of the rental agreement if the
348 provision also requires that the landlord notify the tenant if
349 the rental agreement will not be renewed on the same terms;
350 however, a rental agreement may not require more than 60 days'
351 notice from either the tenant or the landlord ~~before vacating~~
352 ~~the premises~~.
353 (2) A rental agreement with a specific duration may provide
354 that if a tenant fails to give the required notice before
355 vacating the premises at the end of the rental agreement, the
356 tenant may be liable for liquidated damages as specified in the
357 rental agreement if the landlord provides written notice to the
358 tenant specifying the tenant's obligations under the
359 notification provision contained in the lease and the date the
360 rental agreement is terminated. The landlord must provide such
361 written notice to the tenant within 15 days before the start of

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362 the notification period contained in the lease. The written
363 notice shall list all fees, penalties, and other charges
364 applicable to the tenant under this subsection.
365 (3) If the tenant remains on the premises with the
366 permission of the landlord after the rental agreement has
367 terminated and fails to give notice required under s. 83.57(3),
368 the tenant is liable to the landlord for an additional 1 month's
369 rent.
370 Section 9. Section 83.58, Florida Statutes, is amended to
371 read:
372 83.58 Remedies; tenant holding over.—If the tenant holds
373 over and continues in possession of the dwelling unit or any
374 part thereof after the expiration of the rental agreement
375 without the permission of the landlord, the landlord may recover
376 possession of the dwelling unit in the manner provided for in s.
377 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
378 amount of rent due on the dwelling unit, or any part thereof,
379 for the period during which the tenant refuses to surrender
380 possession.
381 Section 10. Subsection (2) of section 83.59, Florida
382 Statutes, is amended to read:
383 83.59 Right of action for possession.—
384 (2) A landlord, the landlord's attorney, or the landlord's
385 agent, applying for the removal of a tenant, shall file in the
386 county court of the county where the premises are situated a
387 complaint describing the dwelling unit and stating the facts
388 that authorize its recovery. A landlord's agent is not permitted
389 to take any action other than the initial filing of the
390 complaint, unless the landlord's agent is an attorney. The

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391 landlord is entitled to the summary procedure provided in s.
392 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the
393 calendar.
394 Section 11. Section 83.60, Florida Statutes, is amended to
395 read:
396 83.60 Defenses to action for rent or possession;
397 procedure.—
398 (1)(a) In an action by the landlord for possession of a
399 dwelling unit based upon nonpayment of rent or in an action by
400 the landlord under s. 83.55 seeking to recover unpaid rent, the
401 tenant may defend upon the ground of a material noncompliance
402 with s. 83.51(1) ~~[F.S. 1973]~~, or may raise any other defense,
403 whether legal or equitable, that he or she may have, including
404 the defense of retaliatory conduct in accordance with s. 83.64.
405 The landlord must be given an opportunity to cure a deficiency
406 in a notice or in the pleadings prior to dismissal of the
407 action.
408 (b) The defense of a material noncompliance with s.
409 83.51(1) ~~[F.S. 1973]~~ may be raised by the tenant if 7 days have
410 elapsed after the delivery of written notice by the tenant to
411 the landlord, specifying the noncompliance and indicating the
412 intention of the tenant not to pay rent by reason thereof. Such
413 notice by the tenant may be given to the landlord, the
414 landlord's representative as designated pursuant to s. 83.50~~(1)~~,
415 a resident manager, or the person or entity who collects the
416 rent on behalf of the landlord. A material noncompliance with s.
417 83.51(1) ~~[F.S. 1973]~~ by the landlord is a complete defense to an
418 action for possession based upon nonpayment of rent, and, upon
419 hearing, the court or the jury, as the case may be, shall

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420 determine the amount, if any, by which the rent is to be reduced
421 to reflect the diminution in value of the dwelling unit during
422 the period of noncompliance with s. 83.51(1) ~~[F.S. 1973]~~. After
423 consideration of all other relevant issues, the court shall
424 enter appropriate judgment.
425 (2) In an action by the landlord for possession of a
426 dwelling unit, if the tenant interposes any defense other than
427 payment, including, but not limited to, the defense of a
428 defective 3-day notice, the tenant shall pay into the registry
429 of the court the accrued rent as alleged in the complaint or as
430 determined by the court and the rent that ~~which~~ accrues during
431 the pendency of the proceeding, when due. The clerk shall notify
432 the tenant of such requirement in the summons. Failure of the
433 tenant to pay the rent into the registry of the court or to file
434 a motion to determine the amount of rent to be paid into the
435 registry within 5 days, excluding Saturdays, Sundays, and legal
436 holidays, after the date of service of process constitutes an
437 absolute waiver of the tenant's defenses other than payment, and
438 the landlord is entitled to an immediate default judgment for
439 removal of the tenant with a writ of possession to issue without
440 further notice or hearing thereon. If ~~In the event~~ a motion to
441 determine rent is filed, documentation in support of the
442 allegation that the rent as alleged in the complaint is in error
443 is required. Public housing tenants or tenants receiving rent
444 subsidies are ~~shall be~~ required to deposit only that portion of
445 the full rent for which they are ~~the tenant is~~ responsible
446 pursuant to the federal, state, or local program in which they
447 are participating.
448 Section 12. Subsection (1) of section 83.62, Florida

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449 Statutes, is amended to read:
450 83.62 Restoration of possession to landlord.—
451 (1) In an action for possession, after entry of judgment in
452 favor of the landlord, the clerk shall issue a writ to the
453 sheriff describing the premises and commanding the sheriff to
454 put the landlord in possession after 24 hours' notice
455 conspicuously posted on the premises. Weekends and legal
456 holidays do not stay the 24-hour notice period.
457 Section 13. Section 83.63, Florida Statutes, is amended to
458 read:
459 83.63 Casualty damage.—If the premises are damaged or
460 destroyed other than by the wrongful or negligent acts of the
461 tenant so that the enjoyment of the premises is substantially
462 impaired, the tenant may terminate the rental agreement and
463 immediately vacate the premises. The tenant may vacate the part
464 of the premises rendered unusable by the casualty, in which case
465 the tenant's liability for rent shall be reduced by the fair
466 rental value of that part of the premises damaged or destroyed.
467 If the rental agreement is terminated, the landlord shall comply
468 with s. 83.49(3) ~~[F.S. 1973]~~.
469 Section 14. Subsection (1) of section 83.64, Florida
470 Statutes, is amended to read:
471 83.64 Retaliatory conduct.—
472 (1) It is unlawful for a landlord to discriminatorily
473 increase a tenant's rent or decrease services to a tenant, or to
474 bring or threaten to bring an action for possession or other
475 civil action, primarily because the landlord is retaliating
476 against the tenant. In order for the tenant to raise the defense
477 of retaliatory conduct, the tenant must have acted in good

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478 faith. Examples of conduct for which the landlord may not
479 retaliate include, but are not limited to, situations where:
480 (a) The tenant has complained to a governmental agency
481 charged with responsibility for enforcement of a building,
482 housing, or health code of a suspected violation applicable to
483 the premises;
484 (b) The tenant has organized, encouraged, or participated
485 in a tenants' organization;
486 (c) The tenant has complained to the landlord pursuant to
487 s. 83.56(1); ~~or~~
488 (d) The tenant is a servicemember who has terminated a
489 rental agreement pursuant to s. 83.682;
490 (e) The tenant has paid rents to a condominium,
491 cooperative, or homeowners' association after demand from the
492 association in order to pay the landlord's obligation to the
493 association; or
494 (f) The tenant has exercised his or her rights under local,
495 state, or federal fair housing laws.
496 Section 15. Subsection (1) of section 723.063, Florida
497 Statutes, is amended to read:
498 723.063 Defenses to action for rent or possession;
499 procedure.—
500 (1)(a) In any action based upon nonpayment of rent or
501 seeking to recover unpaid rent, or a portion thereof, the mobile
502 home owner may defend upon the ground of a material
503 noncompliance with any portion of this chapter or may raise any
504 other defense, whether legal or equitable, which he or she may
505 have. The mobile home park owner must be given an opportunity to
506 cure a deficiency in a notice or in the pleadings prior to

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507 dismissal of the action.
508 (b) The defense of material noncompliance may be raised by
509 the mobile home owner only if 7 days have elapsed after he or
510 she has notified the park owner in writing of his or her
511 intention not to pay rent, or a portion thereof, based upon the
512 park owner's noncompliance with portions of this chapter,
513 specifying in reasonable detail the provisions in default. A
514 material noncompliance with this chapter by the park owner is a
515 complete defense to an action for possession based upon
516 nonpayment of rent, or a portion thereof, and, upon hearing, the
517 court or the jury, as the case may be, shall determine the
518 amount, if any, by which the rent is to be reduced to reflect
519 the diminution in value of the lot during the period of
520 noncompliance with any portion of this chapter. After
521 consideration of all other relevant issues, the court shall
522 enter appropriate judgment.
523 Section 16. This act shall take effect July 1, 2012.
524
525 ========== T I T L E A M E N D M E N T ==========
526 And the title is amended as follows:
527 Delete everything before the enacting clause
528 and insert:
529 A bill to be entitled
530 An act relating to landlords and tenants; amending s.
531 83.42, F.S.; revising exclusions from application of
532 part II of ch. 83, F.S., relating to residential
533 tenancies; amending s. 83.48, F.S.; providing that the
534 right to attorney fees may not be waived in a lease
535 agreement; providing that attorney fees may not be

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536 awarded in a claim for personal injury damages based
537 on a breach of duty of premises maintenance; amending
538 s. 83.49, F.S.; revising and providing landlord
539 disclosure requirements with respect to deposit money
540 and advance rent; providing requirements for the
541 disbursement of advance rents; providing a limited
542 rebuttable presumption of receipt of security
543 deposits; providing for certain changes to disclosure
544 requirements to be phased in; amending s. 83.50, F.S.;
545 removing certain landlord disclosure requirements
546 relating to fire protection; amending s. 83.51, F.S.;
547 revising a landlord’s obligation to maintain a
548 premises with respect to screens; amending s. 83.56,
549 F.S.; revising procedures for the termination of a
550 rental agreement by a landlord; revising notice and
551 payment procedures; providing that a landlord does not
552 waive the right to terminate the rental agreement or
553 to bring a civil action for noncompliance by accepting
554 partial rent, subject to certain notice; providing
555 that the period to institute an action before an
556 exemption involving rent subsidies is waived begins
557 upon actual knowledge; amending s. 83.575, F.S.;
558 revising requirements for the termination of a tenancy
559 having a specific duration to provide for reciprocal
560 notice provisions in rental agreements; amending ss.
561 83.58 and 83.59, F.S.; conforming cross-references;
562 amending s. 83.60, F.S.; providing that a landlord
563 must be given an opportunity to cure a deficiency in
564 any notice or pleadings prior to dismissal of an

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565 eviction action; making technical changes; amending s.
566 83.62, F.S.; revising procedures for the restoration
567 of possession to a landlord to provide that weekends
568 and holidays do not stay the applicable notice period;
569 amending s. 83.63, F.S.; conforming a cross-reference;
570 amending s. 83.64, F.S.; providing examples of conduct
571 for which the landlord may not retaliate; amending s.
572 723.063, F.S.; providing that a mobile home park owner
573 must be given an opportunity to cure a deficiency in
574 any notice or pleadings prior to dismissal of an
575 eviction action; providing an effective date.

964276

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Flores) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 52 - 67.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 3 - 5.

By Senator Flores

38-01304-12 20121830__

A bill to be entitled

An act relating to landlords and tenants; amending s. 83.41, F.S.; providing application of certain eviction procedures under part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act"; amending s. 83.42, F.S.; revising exclusions from application of the part; amending s. 83.48, F.S.; providing that the right to attorney fees may not be waived in a lease agreement; providing that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty of premises maintenance; amending s. 83.49, F.S.; revising and providing landlord disclosure requirements with respect to deposit money and advance rent; providing requirements for the disbursement of advance rents; providing a rebuttable presumption of receipt of security deposits and a limitation on liability with respect to such deposits; amending s. 83.50, F.S.; removing certain landlord disclosure requirements relating to fire protection; amending s. 83.51, F.S.; revising a landlord's obligation to maintain premises with respect to screens; requiring a landlord to pay assessments due to a condominium, cooperative, or homeowners' association; amending s. 83.56, F.S.; revising procedures for the termination of a rental agreement by a landlord; revising notice and payment procedures; providing that a landlord does not waive the right to terminate the rental agreement or to bring a civil action for noncompliance by accepting partial rent,

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38-01304-12 20121830__

subject to certain notice; increasing the period to institute an action before an exemption involving rent subsidies is waived; amending s. 83.575, F.S.; revising requirements for the termination of tenancy with specific duration to provide for reciprocal notice provisions in rental agreements; amending ss. 83.58, 83.59, 83.60, and 83.63, F.S.; updating and conforming cross-references; making editorial changes; amending s. 83.62, F.S.; revising procedures for the restoration of possession to a landlord to provide that weekends and holidays do not stay the applicable notice period; amending s. 83.64, F.S.; providing examples of conduct for which the landlord may not retaliate; creating s. 83.683, F.S.; providing that a landlord is not required to notify a tenant of a mortgage default; providing that a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease; providing an effective date.

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

Section 1. Section 83.41, Florida Statutes, is amended to read:

83.41 Application.—

(1) This part applies to the rental of a dwelling unit.

(2) The eviction procedures in s. 83.62 apply to eviction from a dwelling subsequent to a final judgment in foreclosure, ejectment, quiet title, partition, or other cause of action in

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which the court awards possession of a dwelling unit. The eviction procedures in ss. 83.59, 83.60, 83.61, 83.62, 83.625, and 83.681 apply to eviction from a dwelling based on nonpayment of association fees required to be paid to a condominium, cooperative, or homeowners' association after demand. In such cases, the prevailing party in the litigation shall be considered a landlord for purposes of those sections. A prevailing party awarded possession of a dwelling unit shall be governed by s. 83.67(1), (5), (6), and (7).

Section 2. Subsection (2) of section 83.42, Florida Statutes, is amended to read:

83.42 Exclusions from application of part.—This part does not apply to:

(2) Occupancy under a bona fide contract of sale of a dwelling unit or the property of which it is a part. A bona fide contract of sale is one in which at least one month's rent has been paid and the buyer has paid a deposit of at least 5 percent of the value of the property, or in which the buyer has paid at least 12 months' rent.

Section 3. Section 83.48, Florida Statutes, is amended to read:

83.48 Attorney ~~Attorney's~~ fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney ~~attorney's~~ fees, from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach

of duty under s. 83.51.

Section 4. Subsections (2), (3), and (7) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after ~~of~~ receipt of advance rent or a security deposit, furnish ~~notify~~ the tenant in writing with a disclosure regarding ~~of the manner in which the landlord is holding~~ the advance rent or security deposit ~~and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant~~. ~~Such written notice shall:~~

~~(a) Be given in person or by mail to the tenant.~~

~~(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.~~

~~(c) Include a copy of the provisions of subsection (3).~~

Subsequent to providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant within 30 days after ~~of~~ the change according to the provisions of paragraphs (a)-(d) ~~herein set forth~~. The landlord is not required to give a new notice solely because the depository has merged with another financial institution, changed its name, or

117 transferred ownership to a different financial institution. This
118 subsection does not apply to any landlord who rents fewer than
119 five individual dwelling units. Failure to provide this notice
120 is ~~shall~~ not ~~be~~ a defense to the payment of rent when due. Such
121 written notice shall:
122 (a) Be given in person or by mail to the tenant;
123 (b) State the name and address of the depository where the
124 advance rent or security deposit is being held, or state that
125 the landlord has posted a surety bond as provided by law;
126 (c) State whether the tenant is entitled to interest on the
127 deposit; and
128 (d) Include the following disclosure:
129
130 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
131 LANDLORD MAY TRANSFER ADVANCE RENTS AND NONREFUNDABLE
132 DEPOSITS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND
133 WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE
134 LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN
135 SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD
136 MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE
137 OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM
138 AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE
139 LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15
140 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE
141 LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE
142 REMAINING DEPOSIT, IF ANY. IF YOU TIMELY OBJECT, THE
143 LANDLORD MUST HOLD THE DEPOSIT AND EITHER YOU OR THE
144 LANDLORD WILL HAVE TO FILE A LAWSUIT SO THAT THE COURT
145 CAN RESOLVE THE DISPUTE.

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146
147 IF THE LANDLORD FAILS TO TIMELY SEND YOU NOTICE, THE
148 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
149 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
150 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
151 DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
152 REFUND.
153
154 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
155 BEFORE FILING A LAWSUIT. GENERALLY, THE WINNING PARTY
156 IN ANY LAWSUIT BETWEEN YOU AND YOUR LANDLORD WILL BE
157 AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING
158 PARTY.
159
160 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
161 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
162 RIGHTS AND OBLIGATIONS.
163
164 (3) The landlord may disburse advance rents from the
165 deposit account to the landlord's benefit when the advance
166 rental period commences and without notice to the tenant. The
167 landlord may disburse a deposit designated as nonrefundable at
168 the conclusion of the lease and without notice to the tenant.
169 For all other deposits:
170 (a) Upon the vacating of the premises for termination of
171 the lease, if the landlord does not intend to impose a claim on
172 the security deposit, the landlord shall have 15 days to return
173 the security deposit together with interest if otherwise
174 required, or the landlord shall have 30 days to give the tenant

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175 written notice by certified mail to the tenant's last known
176 mailing address of his or her intention to impose a claim on the
177 deposit and the reason for imposing the claim. The notice shall
178 contain a statement in substantially the following form:
179
180 This is a notice of my intention to impose a claim for
181 damages in the amount of .... upon your security deposit, due to
182 ..... It is sent to you as required by s. 83.49(3), Florida
183 Statutes. You are hereby notified that you must object in
184 writing to this deduction from your security deposit within 15
185 days from the time you receive this notice or I will be
186 authorized to deduct my claim from your security deposit. Your
187 objection must be sent to ...(landlord's address)....
188
189 If the landlord fails to give the required notice within the 30-
190 day period, he or she forfeits the right to impose a claim upon
191 the security deposit and may not seek setoff against the deposit
192 but may file an action for damages after return of the deposit.
193 (b) Unless the tenant objects to the imposition of the
194 landlord's claim or the amount thereof within 15 days after
195 receipt of the landlord's notice of intention to impose a claim,
196 the landlord may then deduct the amount of his or her claim and
197 shall remit the balance of the deposit to the tenant within 30
198 days after the date of the notice of intention to impose a claim
199 for damages. The failure of the tenant to make a timely
200 objection does not waive any rights of the tenant to seek
201 damages in a separate action.
202 (c) If either party institutes an action in a court of
203 competent jurisdiction to adjudicate the party's right to the

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204 security deposit, the prevailing party is entitled to receive
205 his or her court costs plus a reasonable fee for his or her
206 attorney. The court shall advance the cause on the calendar.
207 (d) Compliance with this section by an individual or
208 business entity authorized to conduct business in this state,
209 including Florida-licensed real estate brokers and sales
210 associates, constitutes ~~shall constitute~~ compliance with all
211 other relevant Florida Statutes pertaining to security deposits
212 held pursuant to a rental agreement or other landlord-tenant
213 relationship. Enforcement personnel shall look solely to this
214 section to determine compliance. This section prevails over any
215 conflicting provisions in chapter 475 and in other sections of
216 the Florida Statutes, and shall operate to permit licensed real
217 estate brokers to disburse security deposits and deposit money
218 without having to comply with the notice and settlement
219 procedures contained in s. 475.25(1)(d).
220 (7) Upon the sale or transfer of title of the rental
221 property from one owner to another, or upon a change in the
222 designated rental agent, any and all security deposits or
223 advance rents being held for the benefit of the tenants shall be
224 transferred to the new owner or agent, together with any earned
225 interest and with an accurate accounting showing the amounts to
226 be credited to each tenant account. Upon the transfer of such
227 funds and records to the new owner or agent ~~as stated herein~~,
228 and upon transmittal of a written receipt therefor, the
229 transferor is ~~shall be~~ free from the obligation imposed in
230 subsection (1) to hold such moneys on behalf of the tenant.
231 There is a rebuttable presumption that any new owner or agent
232 received the security deposits from the previous owner or agent;

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233 however, the new owner or agent is not liable to a tenant for
234 deposits in excess of 1 month's rent. This subsection does not
235 ~~However, nothing herein shall~~ excuse the landlord or agent for a
236 violation of other ~~the~~ provisions of this section while in
237 possession of such deposits.
238 Section 5. Section 83.50, Florida Statutes, is amended to
239 read:
240 83.50 Disclosure.—
241 ~~(1)~~ The landlord, or a person authorized to enter into a
242 rental agreement on the landlord's behalf, shall disclose in
243 writing to the tenant, at or before the commencement of the
244 tenancy, the name and address of the landlord or a person
245 authorized to receive notices and demands in the landlord's
246 behalf. The person so authorized to receive notices and demands
247 retains authority until the tenant is notified otherwise. All
248 notices of such names and addresses or changes thereto shall be
249 delivered to the tenant's residence or, if specified in writing
250 by the tenant, to any other address.
251 ~~(2) The landlord or the landlord's authorized~~
252 ~~representative, upon completion of construction of a building~~
253 ~~exceeding three stories in height and containing dwelling units,~~
254 ~~shall disclose to the tenants initially moving into the building~~
255 ~~the availability or lack of availability of fire protection.~~
256 Section 6. Subsection (1) and paragraph (a) of subsection
257 (2) of section 83.51, Florida Statutes, are amended, and
258 subsection (5) is added to that section, to read:
259 83.51 Landlord's obligation to maintain premises and pay
260 assessments.—
261 (1) The landlord at all times during the tenancy shall:

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

262 (a) Comply with the requirements of applicable building,
263 housing, and health codes; or
264 (b) Where there are no applicable building, housing, or
265 health codes, maintain the roofs, windows, ~~screens,~~ doors,
266 floors, steps, porches, exterior walls, foundations, and all
267 other structural components in good repair and capable of
268 resisting normal forces and loads and the plumbing in reasonable
269 working condition. ~~However,~~
270
271 The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home
272 or other structure owned by the tenant. The landlord's
273 obligations under this subsection may be altered or modified in
274 writing with respect to a single-family home or duplex.
275 (2)(a) Unless otherwise agreed in writing, in addition to
276 the requirements of subsection (1), the landlord of a dwelling
277 unit other than a single-family home or duplex shall, at all
278 times during the tenancy, make reasonable provisions for:
279 1. The extermination of rats, mice, roaches, ants, wood-
280 destroying organisms, and bedbugs. When vacation of the premises
281 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
282 liable for damages but shall abate the rent. The tenant must
283 ~~shall be required to~~ temporarily vacate the premises for a
284 period of time not to exceed 4 days, on 7 days' written notice,
285 if necessary, for extermination pursuant to this subparagraph.
286 2. Locks and keys.
287 3. The clean and safe condition of common areas.
288 4. Garbage removal and outside receptacles therefor.
289 5. Functioning facilities for heat during winter, running
290 water, and hot water.

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291 6. Screens.
292 (5) The landlord shall pay assessments due to a
293 condominium, cooperative, or homeowners' association.
294 Section 7. Subsections (2) through (5) of section 83.56,
295 Florida Statutes, are amended to read:
296 83.56 Termination of rental agreement.—
297 (2) If the tenant materially fails to comply with s. 83.52
298 or material provisions of the rental agreement, other than a
299 failure to pay rent, or reasonable rules or regulations, the
300 landlord may:
301 (a) If such noncompliance is of a nature that the tenant
302 should not be given an opportunity to cure it ~~or if the~~
303 ~~noncompliance constitutes a subsequent or continuing~~
304 ~~noncompliance within 12 months of a written warning by the~~
305 ~~landlord of a similar violation~~, deliver a written notice to the
306 tenant specifying the noncompliance and the landlord's intent to
307 terminate the rental agreement by reason thereof. Examples of
308 noncompliance which are of a nature that the tenant should not
309 be given an opportunity to cure include, but are not limited to,
310 destruction, damage, or misuse of the landlord's or other
311 tenants' property by intentional act or a subsequent or
312 continued unreasonable disturbance. In such event, the landlord
313 may terminate the rental agreement, and the tenant shall have 7
314 days from the date that the notice is delivered to vacate the
315 premises. The notice shall be ~~adequate if it is~~ in substantially
316 the following form:
317
318 You are advised that your lease is terminated effective
319 immediately. You shall have 7 days from the delivery of this

320 letter to vacate the premises. This action is taken because
321 ...(cite the noncompliance)....
322
323 (b) If such noncompliance is of a nature that the tenant
324 should be given an opportunity to cure it, deliver a written
325 notice to the tenant specifying the noncompliance, including a
326 notice that, if the noncompliance is not corrected within 7 days
327 from the date the written notice is delivered, the landlord
328 shall terminate the rental agreement by reason thereof. Examples
329 of such noncompliance include, but are not limited to,
330 activities in contravention of the lease or this part ~~act~~ such
331 as having or permitting unauthorized pets, guests, or vehicles;
332 parking in an unauthorized manner or permitting such parking; or
333 failing to keep the premises clean and sanitary. An eviction
334 action filed pursuant to this paragraph does not require a
335 subsequent notice pursuant to paragraph (a). The notice shall be
336 ~~adequate if it is~~ in substantially the following form:
337
338 You are hereby notified that ...(cite the
339 noncompliance).... Demand is hereby made that you remedy the
340 noncompliance within 7 days of receipt of this notice or your
341 lease shall be deemed terminated and you shall vacate the
342 premises upon such termination. If this same conduct or conduct
343 of a similar nature is repeated within 12 months, your tenancy
344 is subject to termination without further warning and without
345 your being given an opportunity to cure the noncompliance.
346
347 (3) If the tenant fails to pay rent when due and the
348 default continues for 3 days, excluding Saturday, Sunday, and

349 legal holidays, after delivery of written demand by the landlord
350 for payment of the rent or possession of the premises, the
351 landlord may terminate the rental agreement. Legal holidays for
352 the purpose of this section shall be court-observed holidays
353 only. After service of the 3-day notice, the landlord may
354 require payment of the rent to be by cash, money order, or
355 certified funds. The total amount claimed may include all moneys
356 owed to the landlord through the date of the notice, including
357 late fees. The 3-day notice shall contain a statement in
358 substantially the following form:
359
360 You are hereby notified that you are indebted to me in the
361 sum of .... dollars for the rent and use of the premises
362 ...(address of leased premises, including county)..., Florida,
363 now occupied by you and that I demand payment of the rent or
364 possession of the premises within 3 days (excluding Saturday,
365 Sunday, and legal holidays) from the date of delivery of this
366 notice, to wit: on or before the .... day of ...., ...(year)....
367 ...(landlord's name, address and phone number)...
368
369 (4) The delivery of the written notices required by
370 subsections (1), (2), and (3) shall be by mailing or delivery of
371 a true copy thereof or, if the tenant is absent from the
372 premises, by leaving a copy thereof at the residence. The notice
373 requirements of subsections (1), (2), and (3) may not be waived
374 in the lease.
375 (5)(a) If the landlord accepts rent with actual knowledge
376 of a noncompliance by the tenant or accepts performance by the
377 tenant of any other provision of the rental agreement that is at

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378 variance with its provisions, or if the tenant pays rent with
379 actual knowledge of a noncompliance by the landlord or accepts
380 performance by the landlord of any other provision of the rental
381 agreement that is at variance with its provisions, the landlord
382 or tenant waives his or her right to terminate the rental
383 agreement or to bring a civil action for that noncompliance, but
384 not for any subsequent or continuing noncompliance. However, a
385 landlord does not waive the right to terminate the rental
386 agreement or to bring a civil action for that noncompliance
387 simply by accepting partial rent for the period if the landlord
388 notifies the tenant that the landlord is reserving the right to
389 enforce the rental agreement.
390 (b) Any tenant who wishes to defend against an action by
391 the landlord for possession of the unit for noncompliance of the
392 rental agreement or of relevant statutes must ~~shall~~ comply with
393 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
394 mediation or trial unless the provisions of s. 83.60(2) have
395 been met, but shall enter a default judgment for removal of the
396 tenant with a writ of possession to issue immediately if the
397 tenant fails to comply with s. 83.60(2). This subsection does
398 not apply to that portion of rent subsidies received from a
399 local, state, or national government or an agency of local,
400 state, or national government; however, waiver will occur if an
401 action has not been instituted within 90 ~~45~~ days after ~~of~~ the
402 noncompliance.
403 Section 8. Section 83.575, Florida Statutes, is amended to
404 read:
405 83.575 Termination of tenancy with specific duration.—
406 (1) A rental agreement with a specific duration may contain

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a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement if the provision also requires that the landlord notify the tenant if the rental agreement will not be renewed on the same terms; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord ~~before vacating the premises~~.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection. The rental agreement must provide a reciprocal agreement that if the landlord fails to give the tenant the required timely notice of nonrenewal, the tenant may elect to continue the tenancy for up to 60 days after the tenant's receipt of notice of nonrenewal.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

Section 9. Section 83.58, Florida Statutes, is amended to

read:

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

Section 10. Subsection (2) of section 83.59, Florida Statutes, is amended to read:

83.59 Right of action for possession.—

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the calendar.

Section 11. Section 83.60, Florida Statutes, is amended to read:

83.60 Defenses to action for rent or possession; procedure.—

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by

465 the landlord under s. 83.55 seeking to recover unpaid rent, the
466 tenant may defend upon the ground of a material noncompliance
467 with s. 83.51(1) ~~[F.S. 1973]~~, or may raise any other defense,
468 whether legal or equitable, that he or she may have, including
469 the defense of retaliatory conduct in accordance with s. 83.64.
470 The defense of a material noncompliance with s. 83.51(1) ~~[F.S.~~
471 ~~1973]~~ may be raised by the tenant if 7 days have elapsed after
472 the delivery of written notice by the tenant to the landlord,
473 specifying the noncompliance and indicating the intention of the
474 tenant not to pay rent by reason thereof. Such notice by the
475 tenant may be given to the landlord, the landlord's
476 representative as designated pursuant to s. 83.50~~(1)~~, a resident
477 manager, or the person or entity who collects the rent on behalf
478 of the landlord. A material noncompliance with s. 83.51(1) ~~[F.S.~~
479 ~~1973]~~ by the landlord is a complete defense to an action for
480 possession based upon nonpayment of rent, and, upon hearing, the
481 court or the jury, as the case may be, shall determine the
482 amount, if any, by which the rent is to be reduced to reflect
483 the diminution in value of the dwelling unit during the period
484 of noncompliance with s. 83.51(1) ~~[F.S. 1973]~~. After
485 consideration of all other relevant issues, the court shall
486 enter appropriate judgment.
487 (2) In an action by the landlord for possession of a
488 dwelling unit, if the tenant interposes any defense other than
489 payment, the tenant shall pay into the registry of the court the
490 accrued rent as alleged in the complaint or as determined by the
491 court and the rent that ~~which~~ accrues during the pendency of the
492 proceeding, when due. The clerk shall notify the tenant of such
493 requirement in the summons. Failure of the tenant to pay the

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494 rent into the registry of the court or to file a motion to
495 determine the amount of rent to be paid into the registry within
496 5 days, excluding Saturdays, Sundays, and legal holidays, after
497 the date of service of process constitutes an absolute waiver of
498 the tenant's defenses other than payment, and the landlord is
499 entitled to an immediate default judgment for removal of the
500 tenant with a writ of possession to issue without further notice
501 or hearing thereon. If ~~In the event~~ a motion to determine rent
502 is filed, documentation in support of the allegation that the
503 rent as alleged in the complaint is in error is required. Public
504 housing tenants or tenants receiving rent subsidies are ~~shall be~~
505 required to deposit only that portion of the full rent for which
506 they are ~~the tenant is~~ responsible pursuant to the federal,
507 state, or local program in which they are participating.
508 Section 12. Subsection (1) of section 83.62, Florida
509 Statutes, is amended to read:
510 83.62 Restoration of possession to landlord.—
511 (1) In an action for possession, after entry of judgment in
512 favor of the landlord, the clerk shall issue a writ to the
513 sheriff describing the premises and commanding the sheriff to
514 put the landlord in possession after 24 hours' notice
515 conspicuously posted on the premises. Weekends and legal
516 holidays do not stay the 24-hour notice period.
517 Section 13. Section 83.63, Florida Statutes, is amended to
518 read:
519 83.63 Casualty damage.—If the premises are damaged or
520 destroyed other than by the wrongful or negligent acts of the
521 tenant so that the enjoyment of the premises is substantially
522 impaired, the tenant may terminate the rental agreement and

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523 immediately vacate the premises. The tenant may vacate the part
524 of the premises rendered unusable by the casualty, in which case
525 the tenant's liability for rent shall be reduced by the fair
526 rental value of that part of the premises damaged or destroyed.
527 If the rental agreement is terminated, the landlord shall comply
528 with s. 83.49(3) ~~[F.S. 1973]~~.
529 Section 14. Subsection (1) of section 83.64, Florida
530 Statutes, is amended to read:
531 83.64 Retaliatory conduct.—
532 (1) It is unlawful for a landlord to discriminatorily
533 increase a tenant's rent or decrease services to a tenant, or to
534 bring or threaten to bring an action for possession or other
535 civil action, primarily because the landlord is retaliating
536 against the tenant. In order for the tenant to raise the defense
537 of retaliatory conduct, the tenant must have acted in good
538 faith. Examples of conduct for which the landlord may not
539 retaliate include, but are not limited to, situations where:
540 (a) The tenant has complained to a governmental agency
541 charged with responsibility for enforcement of a building,
542 housing, or health code of a suspected violation applicable to
543 the premises;
544 (b) The tenant has organized, encouraged, or participated
545 in a tenants' organization;
546 (c) The tenant has complained to the landlord pursuant to
547 s. 83.56(1); ~~or~~
548 (d) The tenant is a servicemember who has terminated a
549 rental agreement pursuant to s. 83.682;
550 (e) The tenant has paid the rent to a condominium,
551 cooperative, or homeowners' association after demand from the

552 association in order to pay the landlord's obligation to the
553 association; or
554 (f) The tenant has exercised his or her rights under local,
555 state, or federal fair housing laws.
556 Section 15. Section 83.683, Florida Statutes, is created to
557 read:
558 83.683 Foreclosure of leased property.—
559 (1) A landlord is not required to notify a tenant of a
560 mortgage default.
561 (2) A pending foreclosure action involving the leased
562 premises is not grounds for a tenant to terminate a lease.
563 Section 16. This act shall take effect July 1, 2012.

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 Judiciary Committee

BILL: SB 106

INTRODUCER: Senators Siplin and Sobel

SUBJECT: Postsecondary Student Fees

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	**Unfavorable**
2.			HE	
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

This bill provides that beginning with the 2012 fall term, a student, other than a nonimmigrant alien, qualifies for in-state tuition rates at a state university or Florida College System institution if the student:

- Attended high school in Florida for 3 or more years;
- Graduated from a Florida high school or attained high school equivalency;
- Registered as an entering student or is currently enrolled at a state university or Florida College System institution; and
- In the case of a student without lawful immigration status, files an affidavit stating that the student has filed an application to legalize his or her immigration status or will do so as soon as he or she is eligible.

The bill also directs the Board of Governors if the State University System to adopt regulations and the State Board of Education to adopt rules to administer the nonresident tuition exemption.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Resident Status for Tuition Purposes

Section 1009.21, F.S., specifies criteria that an institution of higher education must use in determining whether a student qualifies for the in-state tuition rate. The following definitions are provided in statute:

- Dependent child: any person, whether living with a parent or not, who is eligible to be claimed by a parent as a dependent pursuant to the federal income tax code;[1]
- Resident for tuition purposes: a person who qualifies for the in-state tuition rate;[2]
- Parent: the natural or adoptive parent or legal guardian of a dependent child;[3]
- Legal resident or resident: a person who has maintained his or her residence in this state for the preceding year, has bought and occupied a home as his or her residence, or has established a domicile.[4]

A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.[5] Additionally, the applicant is required to make a statement regarding length of residency in-state, and establish a bona fide domicile, for him or herself, or for a parent if the applicant is a dependent child.[6] The purpose of the statement is to demonstrate that the in-state residency is not intended to be temporary and for the sole purpose of qualifying for in-state tuition. The law also recognizes residency where a dependent child lives with an adult relative other than a parent in certain circumstances.[7]

Additionally, specific classes of military persons and their spouses and dependent children who qualify as residents for tuition purposes include:

- Active duty members of the Armed Services or the Florida National Guard residing or stationed in-state who qualify for the tuition assistance program;[8]
- Active duty members of the Armed Services attending a public state college or university within 50 miles of the military establishment where they are stationed, if the military establishment is within a county contiguous to Florida;[9]

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[1] Section 1009.21(1)(a), F.S.
[2] Section 1009.21(1)(g), F.S.
[3] Section 1009.21(1)(f), F.S.
[4] Section 1009.21(1)(d); Section 222.17(1), F.S., provides a method for manifesting and evidencing domicile by filing with the circuit court clerk of the county of residence a sworn statement showing an intent to maintain a permanent home in that county.
[5] Section 1009.21(2)(a)1., F.S.
[6] Section 1009.21(2)(a)2., F.S.
[7] Section 1009.21(2)(b), F.S.
[8] Section 1009.21(10)(a); *see also* ss. 250.10(7) and (8), F.S., authorizing the Adjutant General to establish education assistance and tuition exemption programs for members in good standing of the active Florida National Guard, provided that certain conditions are met.
[9] Section 1009.21(10)(b), F.S.

- Active duty members of the Canadian military residing or stationed in-state under the North American Air Defense agreement attending a state college or university within 50 miles of the military establishment where stationed; and[10]
- Active duty members of a foreign nation's military who are serving as liaison officers residing or stationed in this state, attending a state college or university within 50 miles of the military establishment where stationed.[11]

Undocumented Alien Students

Undocumented aliens, with certain exceptions as provided in federal law, may not establish legal residence in the state for tuition purposes because their residency in the state is in violation of federal law, as they have not been properly admitted into the United States. Undocumented aliens are accordingly classified as nonresidents for tuition purposes. However, the state may not bar undocumented aliens from attending elementary, middle, or secondary schools.[12]

Due to the undocumented status of these individuals, the state is unable to reliably estimate their numbers. Moreover, Florida school districts are precluded from collecting data on undocumented aliens who are attending public schools pursuant to a consent decree.[13]

Although the United States Supreme Court has held that states must provide public education to all students equally regardless of immigration status at the elementary, middle, and secondary levels,[14] the Court has not directly addressed the issue of undocumented immigrant access to higher education.[15] The Court has struck down a Maryland state policy on Supremacy Clause grounds which denied in-state tuition to non-immigrant aliens holding G-4 visas even if such aliens were state residents who would have otherwise qualified for in-state tuition.[16] The Maryland law was by federal law allowing G-4 aliens to establish residency in the United States.[17] However, it is important to note that this case involved aliens who were lawfully present in the United States, and thus, may not extend to unauthorized student aliens.[18]

Nonimmigrant aliens, as defined in 8 U.S.C. s. 1101(a)(15), are aliens lawfully admitted into the United States but whose duration of stay is set forth in the applicable visa under which admittance is granted. Most nonimmigrant visas, but not all, require the holder of the visa to intend to return to the nonimmigrant's country of residence upon expiration of the visa. Students under an F visa or an M visa are required to intend to return to their country of residence. If a

[10] Section 1009.21(10)(j), F.S.
[11] Section 1009.21(10)(k), F.S.
[12] *See Plyler v. Doe*, 457 U.S. 202 (1982), in which the U.S. Supreme Court held unconstitutional on equal protection grounds a Texas statute that withheld school funding for children who were not legally admitted into the United States and permitted local school districts to deny their enrollment.
[13] *See League of United Latin American Citizens v. Florida Board of Education*, Case No. 90-1913 (S.D. Fla. 1990).
[14] *Plyler*, 457 U.S. 202 (1982).
[15] Congressional Research Service, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*, 1 (2010).
[16] *Toll v. Moreno*, 458 U.S. 1 (1982).
[17] *Id.*
[18] Congressional Research Service, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*, 2 (2010).

nonimmigrant stays beyond the limitation of the visa, the nonimmigrant is no longer lawfully within the United States and is subject to deportation.

Postsecondary Benefits

Federal law says that a state may enact laws to make undocumented aliens eligible for any state or local public benefit for which they would not otherwise be eligible only if the law affirmatively provides for such eligibility.[19] However, federal law also prohibits any alien who is unlawfully present in the United States from receiving any postsecondary education benefit on the basis of residence in a state unless a U.S. citizen or national is eligible for such benefit in the same amount, duration, and scope.[20] Over the years, a number of states have enacted laws providing postsecondary educational benefits to undocumented students. The U.S. Congress has also considered legislation promoting higher education for unauthorized aliens.

The DREAM Act

The Development, Relief, and Education for Alien Minors Act, also commonly referred to as the DREAM Act, was first introduced in Congress in 2001 and has been subsequently introduced in various forms.[21] The DREAM Act restores the state option to determine residency for purposes of higher education benefits. It also provides conditional legal status to an undocumented alien who meets certain criteria. Under the act, there is a path to permanent citizenship for those going to college or serving in the military.[22] Versions of this legislation have been introduced for a number of years, but it has not become law.

State Laws Providing In-State Tuition for Undocumented Students

A number of states have passed legislation to authorize in-state tuition for undocumented students, including Texas, California, Utah, New York, Washington, Oklahoma, Illinois, New Mexico, Kansas, Nebraska, and Wisconsin.[23] The laws in Kansas and California have been challenged based on the argument that they violate the federal law prohibiting educational benefits based on residency for undocumented students.[24]

In 2005, a federal court in Kansas considered whether a state law making undocumented students eligible for in-state tuition violated federal law and discriminated against U.S. citizens paying out- of-state tuition.[25] The Kansas law created an opportunity for undocumented aliens to be eligible for in-state tuition if they attended a Kansas high school for three years, received a diploma or equivalent, were not residents of another state, and signed an agreement to seek legal

[19] 8 U.S.C. s. 1621(d).
[20] 8 U.S.C. s. 1623.
[21] National Immigration Law Center, *DREAM Act: Summary* (2011), *available at* http://www.nilc.org/dreamsummary.html (last visited Feb. 2, 2012).
[22] National Conference of State Legislatures, *In-State Tuition and Unauthorized Immigrant Students* (2011), *available at* http://www.ncsl.org/default.aspx?tabid=13100 (last visited Feb. 2, 2012).
[23] *Id.*
[24] 8 U.S.C. s. 1623.
[25] *Day v. Sebelius*, 376 F. Supp. 2d. 1022 (D. Kan. 2005) (Plaintiffs argued that the state law was preempted by 8 U.S.C. s. 1623).

immigration status.[26] The Kansas law specified that it applied to "any individual" meeting the designated criteria "regardless of whether the person is or is not a citizen of the United States of America."[27] The plaintiffs in the case were students at Kansas universities who were U.S. citizens but were classified as nonresidents of Kansas for tuition purposes.[28] The court dismissed the case on the basis that the individuals bringing the suit did not have standing because the federal law in question did not provide for a private right of action[29] and because the Kansas law was not discriminatory.[30] The dismissal was subsequently affirmed by the 10th Circuit,[31] and the U.S. Supreme Court denied certiorari.

In 2010, the California Supreme Court decided a case challenging a similar state law.[32] Much like the Kansas case, the challenge to the California law was filed on the basis that it violated 8 U.S.C. s. 1623. The California law provided any student meeting the following criteria would be exempt from paying nonresident tuition: 1) attending three years of high school in the state; 2) graduating from state high school or equivalent; 3) enrolling at a state institution; and 4) providing an affidavit of intent to legalize immigration status if the student is undocumented.[33] The court held that the law was not preempted because it was not based on residency, but instead on other criteria that U.S. citizens who were not California residents could also meet.[34] The U.S. Supreme Court has also denied certiorari for this case.[35]

III. Effect of Proposed Changes:

This bill authorizes a student to qualify for in-state tuition who currently does not qualify as a resident for tuition purposes if he or she:

- Attends high school in Florida for 3 or more years;
- Graduates from a Florida high school or attained high school equivalency;
- Registers as an entering student or is currently enrolled at a state university or Florida College System institution; and
- In the case of a student without lawful immigration status, files an affidavit stating that the student has filed an application to legalize his or her immigration status or will do so as soon as he or she is eligible.

Under the bill, any student is eligible for the exemption if he or she meets the specified criteria, including undocumented students.

The bill also directs the Board of Governors of the State University System to adopt regulations and the State Board of Education to adopt rules to implement the nonresident tuition exemption.

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[26] K.S.A. s. 76-731a.
[27] K.S.A. s. 76-731a(b)(2).
[28] *Day*, 376 F. Supp. 2d. at 1025.
[29] *Id.* at 1036-37.
[30] *Id.* at 1039.
[31] *Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007), *cert. denied*, 554 U.S. 918 (2008).
[32] *Martinez v. Regents of the University of California*, 241 P.3d 855 (Cal. 2010), *cert. denied*, 131 S. Ct. 2961 (2011).
[33] CAL. EDUC. CODE ch. 814, s. 2.
[34] *Martinez*, 241 P.3d at 863.
[35] *Martinez*, 131 S. Ct. 2961.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Supremacy Clause of the U.S. Constitution preempts state laws that impermissibly interfere with federal law.[36] Field preemption and conflict preemption are subcategories of implied preemption.[37] Field preemption applies if the scheme of federal law is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it."[38] Conflict preemption occurs if "compliance with both federal and state regulations is a physical impossibility."[39]

The U.S. Supreme Court has held that the power to regulate immigration is unquestionably an exclusive federal power, but also noted that "the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted."[40] This bill does not appear to present a field preemption issue because, although it deals with aliens, it does not regulate immigration.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students who currently do not qualify as residents for tuition purposes, including undocumented students, will be eligible for the reduced in-state tuition rate if they meet the criteria specified in the bill. Because of their undocumented status and the fact that Florida public schools are precluded from asking about immigration status, data is not available to estimate how many undocumented students may potentially benefit from the

[36] U.S. CONST. art. 5, cl. 2.
[37] Erwin Chemerinsky, CONSTITUTIONAL LAW, 367 (2d ed. 2005).
[38] *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).
[39] *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963).
[40] *DeCanas v. Bica*, 424 U.S. 351, 355 (1976).

exemption. Additionally, there is also no data indicating how many students who are U.S. citizens from states other than Florida would qualify for the exemption. In most cases, students who are U.S. citizens and meet the criteria specified in the bill are already residents of Florida for tuition purposes, as the bill requires living in Florida longer than existing requirements for residency. The current average tuition rate for undergraduate students attending state universities is $184 per credit hour for residents and $681 for nonresidents.[41] Additionally, affected students may incur certain costs in order to meet the bill's affidavit requirements.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate, as the state does not have reliable figures indicating the number of undocumented students who will qualify for the exemption. It is also unclear how many students who are U.S. citizens, if any, would use the exemption.

Given the indeterminate number of eligible students, the fiscal impact and additional regulatory burden on community colleges and state universities in collecting and processing affidavits and confirming other eligibility requirements is not readily ascertainable. The bill would result in the state foregoing the difference between resident and nonresident tuition for students who qualify for this exemption and would not have otherwise been eligible for the resident tuition rate.

According to the Board of Governors of the State University System, an undocumented student enrolled in as a non-resident student will generate an estimated $25,233 annually, while the same student, if classified as resident, will only generate an estimated $5,363 annually. Thus, the effect of the reclassification from non-resident to resident will be a loss of about $20,000 per year. Additionally, in-state credit hours would be reclassified as state fundable, requiring more state support by the Legislature.[42]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

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[41] State University System of Florida Board of Governors, *Tuition & Fees 2011-12, available at* http://www.flbog.edu/about/budget/current.php (last visited Jan. 31, 2012).

[42] Board of Governors, *Senate Bill 106 Legislative Bill Analysis* (Sept. 20, 2011) (on file with the Senate Committee on Judiciary).

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 Siplin

19-00019-12 2012106__

A bill to be entitled

An act relating to postsecondary student fees; providing an exemption from payment of nonresident tuition at a state university or a Florida College System institution for a student who meets specified requirements; requiring that the Board of Governors of the State University System adopt regulations and the State Board of Education adopt rules; providing an effective date.

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

Section 1. Nonresident tuition exemption.—

(1) Beginning with the 2012 fall term, a student, other than a nonimmigrant alien within the meaning of 8 U.S.C. s. 1101(a)(15), is exempt from paying nonresident tuition at a state university or a Florida College System institution if the student:

(a) Attended high school in the state for 3 or more consecutive or nonconsecutive years;

(b) Graduated from a high school in the state or attained a high school equivalency diploma pursuant to s. 1003.435, Florida Statutes;

(c) Registered as an entering student or is currently enrolled at a state university or a Florida College System institution; and

(d) In the case of a student without lawful immigration status, files an affidavit with the state university or the Florida College System institution stating that the student has

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filed an application to legalize his or her immigration status or will file an application as soon as he or she is eligible to do so.

(2) The Board of Governors shall adopt regulations and the State Board of Education shall adopt rules to administer this section.

Section 2. This act shall take effect July 1, 2012.

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