

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Monday, March 18, 2013
TIME: 3:30 —6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 186 Diaz de la Portilla (Identical H 775)	Jurisdiction of the Courts; Providing that a person submits to the jurisdiction of the courts of this state by entering into a contract that specifies that the law of this state governs the contract and that the person agrees to submit to the jurisdiction of the courts of this state; providing that the initiation of arbitration in this state, or the making of a written agreement to arbitrate which provides for arbitration in this state, constitutes a consent to exercise in personam jurisdiction by the courts of this state, etc.	CM 02/05/2013 Favorable JU 03/18/2013 RC
2	SB 558 Detert (Identical H 145)	Letters of Credit Issued by a Federal Home Loan Bank; Revising circumstances under which letters of credit issued by a Federal Home Loan Bank are eligible as collateral, etc.	BI 02/21/2013 Favorable CM 03/04/2013 Favorable JU 03/18/2013
3	SB 604 Bean (Identical H 639)	Practitioners; Reorganizing provisions relating to license fees for certain practitioners; providing that the Department of Financial Services shall defend certain claims, suits, actions, or proceedings for injunctive, affirmative, or declaratory relief involving emergency interventions on behalf of impaired practitioners; allowing impaired practitioner consultants access to certain confidential information in the prescription drug monitoring program's database when necessary to evaluate or monitor a practitioner as part of a treatment program for impaired practitioners, etc.	HP 03/07/2013 Favorable JU 03/18/2013 RC

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 18, 2013, 3:30 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1464 Lee (Similar H 1147)	Office of the Attorney General; Revising the Legal Affairs Revolving Trust Fund with regard to which funds are required to be transferred to the General Revenue Fund unallocated; providing that rewards for reporting Medicaid fraud shall be paid from the Operating Trust Fund; revising duties of the Department of Legal Affairs relating to manufacturer certification of dispute-settlement procedures; authorizing, rather than requiring, the office to bring an action for complaints involving discriminatory housing practices, etc.	
		JU 03/18/2013 ACJ AP	
5	SB 1468 Lee (Similar H 1241)	Appointment of an Attorney for a Dependent Child with Disabilities; Requiring an attorney to be appointed in writing; requiring that the appointment continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is terminated; requiring that the attorney be adequately compensated for his or her service; providing a limitation; providing for a conditional implementation, etc.	
		JU 03/18/2013 CF AP	
6	SB 1494 Thrasher (Identical H 935, Compare H 937, H 1297, Link S 1496)	Florida False Claims Act; Revising conditions under which a person is liable for a specified civil penalty; authorizing the Department of Legal Affairs to issue subpoenas for specified purposes before the institution of civil proceedings; authorizing the department to stipulate to protective orders of submitted documents and information; providing for estoppel as to certain matters following a final judgment or decree rendered in favor of the state or the Federal Government in certain criminal proceedings, etc.	
		JU 03/18/2013 RC	

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, March 18, 2013, 3:30 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1496 Thrasher (Similar H 1297, Identical H 937, Compare H 935, Link S 1494)	Public Records/Complaint and Information Requirements/Department of Legal Affairs; Providing an exemption from public records requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of provisions relating to false claims against the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 03/18/2013 GO RC	
8	Consideration of proposed committee bill:		
9	SPB 7030	Medical Negligence Actions; Expressing legislative intent to revise laws relating to medical negligence actions, etc.	
(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)			
Other Related Meeting Documents			

II. Present Situation:

Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional Due Process Clause of the Fourteenth Amendment.¹ The test for determining whether a court may assert personal jurisdiction over a nonresident is whether the nonresident has “minimum contacts” in the forum so that commencing a proceeding against that individual does “not offend traditional notions of fair play and justice.”² Foreseeability is key; therefore, the principal inquiry is whether the nonresident’s conduct and connection with the forum state would lead him or her to believe that they could “reasonably anticipate being haled into court”³

Florida Long-Arm Statute

The second limit on a court’s ability to assert personal jurisdiction is derived from a state’s long-arm statute. Such statutes can be drafted broadly⁴ to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow a court to assume personal jurisdiction in a particular case. Florida’s statute falls into the latter category. In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the interplay between Florida’s long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.⁵

Therefore, a court must satisfy two inquiries. The first is whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and if so, whether minimum contacts exist.⁶

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other

¹ U.S. Const. amend. XIV, s. 2 (“No state shall . . . deprive any person of life, liberty, or property without due process of law”); See *International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945).

² *Id.* at 316.

³ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Co. v. Woodson*, 444 U.S. 286, 297 (1980)).

⁴ As an example of a broad long-arm statute, California’s long-arm statute states: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” Cal. Civ. Proc. s. 410.10 (2012).

⁵ *Venetian Salami Co. v. J.S. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989).

⁶ *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So. 3d 159, 161 (Fla. 3rd DCA 2009).

State.”⁷ Accordingly, under the Florida Enforcement of Foreign Judgments Act (Act), ss. 55.501-55.509, F.S., foreign judgments from sister jurisdictions may be enforced in Florida upon being recorded **in the office of the clerk of the circuit court of any county.**⁸

Foreign judgments enforceable under the Act include “any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.”⁹ The Act is silent regarding whether territories or possessions are also entitled to full faith and credit under federal law.¹⁰

In *Rodriguez v. Nasrallah*,¹¹ a Florida court clarified that “[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister States.” As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida. However, taken literally, a judgment from a Puerto Rican court would not qualify as a judgment from a state court under s. 55.502(1), F.S.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed the then current law relating to international commercial arbitration and adopted instead the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (UNCITRAL Model Law) as amended in 2006 by the General Assembly.

Chapter 684, F.S., in accordance with the UNCITRAL Model Law, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. The law provides definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, as well as arbitral tribunal powers and immunity.

Presently, two of the statutes in the Florida International Commercial Arbitration Act contain inadvertent clerical errors as they relate to cross-references. As such, in its current form, the statute does not conform exactly to the UNCITRAL Model Law.

III. Effect of Proposed Changes:

Arbitration as a Basis for Jurisdiction

Section 684.009, F.S., provides that initiating arbitration in Florida or the making of a written contract agreeing to arbitrate in this state constitutes consent for the courts of this state to assert personal jurisdiction over the parties. Personal jurisdiction applies to any action arising out of or

⁷ U.S. CONST. art. IV, cl 1.

⁸ Section 55.503, F.S.

⁹ Section 55.502(1), F.S.

¹⁰ See 28 U.S.C. s. 1738 (“The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.”).

¹¹ *Rodriguez v. Nasrallah*, 659 So. 2d 437, 439 (Fla. 1st DCA 1995).

in connection with the arbitration and any resulting order or award. This provision previously existed in statute and was removed upon the enactment of the UNCITRAL Model law.¹²

Florida Enforcement of Foreign Judgments Act

The bill clarifies that foreign judgments issued by United States territories are entitled to full faith and credit in this state, under the Florida Enforcement of Foreign Judgments Act. This provision ensures that Florida courts will equally recognize judgments from territories, as well as states.

The bill takes effect July 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:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator's 2013 Judicial Impact Statement, SB 186 as filed could increase the number of contract actions filed in circuit court. It is unknown whether an impact will result from the bill as revised.¹³

VI. Technical Deficiencies:

None.

¹² See s. 684.30, F.S. (2009).

¹³ Office of the State Courts Administrator, *2013 Judicial Impact Statement* (Jan. 11, 2013) (on file with the Senate Commerce and Tourism Committee and the Judiciary Committee).

VII. Related Issues:

The 2012 Legislature passed the substance of this bill in HB 917 (Senate Bill 486 contained the Senate version.) Governor Scott subsequently vetoed the bill on the basis that the bill would permit individuals and businesses with no ties to Florida to litigate in our court system. “Establishing Florida as a destination for lawsuits by entities outside of the state of Florida is unattractive for the business climate.”¹⁴ The Governor also noted that increasing litigation in the state may add to a backlog of cases and increased judicial workload. CS/SB 186 adds as a basis for personal jurisdiction the initiation of arbitration in this state, but deletes other language providing for more flexible standards for jurisdiction by the state.

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 March 18, 2013:**

The committee substitute:

- Removes provisions of the bill which would have amended ss. 685.101, and 685.102, F.S., to extend the jurisdiction of the courts of this state to hear cases that do not:
 - Bear a substantial or reasonable relation to this state; or
 - Include a party that is a resident of this state or the United States.
- Clarifies that foreign judgments issued by United States territories are entitled to full faith and credit in this state under the Florida Enforcement of Foreign Judgments Act.

B. Amendments:

None.

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

¹⁴ Executive Office of the Governor, *House Bill 917 Veto Message* (April 13, 2012).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 48.193, Florida
Statutes, is amended to read:

48.193 Acts subjecting person to jurisdiction of courts of
state.-

(1) A ~~Any~~ person, whether or not a citizen or resident of
this state, who personally or through an agent does any of the
acts enumerated in this subsection thereby submits himself or
herself and, if he or she is a natural person, his or her
personal representative to the jurisdiction of the courts of



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14 this state for any cause of action arising from ~~the doing of~~ any
15 of the following acts:

16 (a) Operating, conducting, engaging in, or carrying on a
17 business or business venture in this state or having an office
18 or agency in this state.

19 (b) Committing a tortious act within this state.

20 (c) Owning, using, possessing, or holding a mortgage or
21 other lien on any real property within this state.

22 (d) Contracting to insure a ~~any~~ person, property, or risk
23 located within this state at the time of contracting.

24 (e) With respect to a proceeding for alimony, child
25 support, or division of property in connection with an action to
26 dissolve a marriage or with respect to an independent action for
27 support of dependents, maintaining a matrimonial domicile in
28 this state at the time of the commencement of this action or, if
29 the defendant resided in this state preceding the commencement
30 of the action, whether cohabiting during that time or not. This
31 paragraph does not change the residency requirement for filing
32 an action for dissolution of marriage.

33 (f) Causing injury to persons or property within this state
34 arising out of an act or omission by the defendant outside this
35 state, if, at or about the time of the injury, either:

36 1. The defendant was engaged in solicitation or service
37 activities within this state; or

38 2. Products, materials, or things processed, serviced, or
39 manufactured by the defendant anywhere were used or consumed
40 within this state in the ordinary course of commerce, trade, or
41 use.

42 (g) Breaching a contract in this state by failing to



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43 perform acts required by the contract to be performed in this
44 state.

45 (h) With respect to a proceeding for paternity, engaging in
46 the act of sexual intercourse within this state with respect to
47 which a child may have been conceived.

48 (i) Entering into a contract that complies with s. 685.102.

49 Section 2. Subsection (1) of section 55.502, Florida
50 Statutes, is amended to read:

51 55.502 Construction of act.—

52 (1) As used in ss. 55.501-55.509, the term "foreign
53 judgment" means a any judgment, decree, or order of a court of
54 any other state, territory or commonwealth of the United States,
55 or of the United States if such judgment, decree, or order is
56 entitled to full faith and credit in this state.

57 Section 3. Subsection (3) of section 684.0002, Florida
58 Statutes, is amended to read:

59 684.0002 Scope of application.—

60 (3) An arbitration is international if:

61 (a) The parties to an arbitration agreement have, at the
62 time of the conclusion of that agreement, their places of
63 business in different countries; or

64 (b) One of the following places is situated outside the
65 country in which the parties have their places of business:

66 1. The place of arbitration if determined in, or pursuant
67 to, the arbitration agreement; or

68 2. Any place where a substantial part of the obligations of
69 the commercial relationship are to be performed or the place
70 with which the subject matter of the dispute is most closely
71 connected; or



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72 (c) The parties have expressly agreed that the subject
73 matter of the arbitration agreement relates to more than one
74 country.

75 Section 4. Subsection (2) of section 684.0003, Florida
76 Statutes, is amended to read:

77 684.0003 Definitions and rules of interpretation.—

78 (2) A provision of this chapter, except s. 684.0039 ~~s.~~
79 ~~684.0038~~, which leaves the parties free to determine a certain
80 issue, includes the right of the parties to authorize a third
81 party, including an institution, to make that determination.

82 Section 5. Section 684.0019, Florida Statutes, is amended
83 to read:

84 684.0019 Conditions for granting interim measures.—

85 (1) The party requesting an interim measure under s.
86 684.0018 shall ~~must~~ satisfy the arbitral tribunal that:

87 (a) Harm not adequately reparable by an award of damages is
88 likely to result if the measure is not ordered, and such harm
89 substantially outweighs the harm that is likely to result to the
90 party against whom the measure is directed if the measure is
91 granted; and

92 (b) A reasonable possibility exists that the requesting
93 party will succeed on the merits of the claim. The determination
94 on this possibility does not affect the discretion of the
95 arbitral tribunal in making any subsequent determination.

96 (2) With regard to a request for an interim measure under
97 s. 684.0018(4) ~~s. 684.0018~~, the requirements in subsection (1)
98 apply only to the extent the arbitral tribunal considers
99 appropriate.

100 Section 6. Section 684.0026, Florida Statutes, is amended



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101 to read:

102 684.0026 Recognition and enforcement.—

103 (1) An interim measure issued by an arbitral tribunal must
104 ~~shall~~ be recognized as binding and, unless otherwise provided by
105 the arbitral tribunal, enforced upon application to the
106 competent court, irrespective of the country in which it was
107 issued, subject to s. 684.0027 ~~s. 684.0019(1)~~.

108 (2) The party who is seeking or has obtained recognition or
109 enforcement of an interim measure shall promptly inform the
110 court of the termination, suspension, or modification of the
111 interim measure.

112 (3) The court where recognition or enforcement is sought
113 may, if it considers it proper, order the requesting party to
114 provide appropriate security if the arbitral tribunal has not
115 already made a determination with respect to security or if such
116 a decision is necessary to protect the rights of third parties.

117 Section 7. Section 684.0049, Florida Statutes, is created
118 to read:

119 684.0049 Consent to jurisdiction.—The initiation of
120 arbitration in this state, or the making of a written contract,
121 agreement, or undertaking to arbitrate which provides for
122 arbitration in this state, constitutes a consent to exercise in
123 personam jurisdiction by the courts of this state in any action
124 arising out of or in connection with the arbitration and any
125 resulting order or award.

126 Section 8. This act shall take effect July 1, 2013.

127
128 ===== T I T L E A M E N D M E N T =====

129 And the title is amended as follows:



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130 Delete everything before the enacting clause
131 and insert:

132 A bill to be entitled
133 An act relating to the jurisdiction of the courts;
134 amending s. 48.193, F.S.; providing that a person
135 submits to the jurisdiction of the courts of this
136 state by entering into a contract that specifies that
137 the law of this state governs the contract and that
138 the person agrees to submit to the jurisdiction of the
139 courts of this state; amending s. 55.502, F.S.;
140 revising the definition of the term "foreign judgment"
141 for purposes of the Florida Enforcement of Foreign
142 Judgments Act; amending s. 684.0002, F.S.; clarifying
143 the circumstances under which an arbitration is
144 international; amending s. 684.0003, F.S.; correcting
145 a cross-reference; amending s. 684.0019, F.S.;
146 limiting the application of certain provisions to
147 instances in which an arbitral tribunal orders a party
148 to preserve evidence that may be relevant and material
149 to the resolution of a dispute; amending s. 684.0026,
150 F.S.; correcting a cross-reference in the Florida
151 International Commercial Arbitration Act; creating s.
152 684.0049, F.S.; providing that the initiation of
153 arbitration in this state, or the making of a written
154 agreement to arbitrate which provides for arbitration
155 in this state, constitutes a consent to exercise in
156 personam jurisdiction by the courts of this state;
157 providing an effective date.

By Senator Diaz de la Portilla

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1 A bill to be entitled
 2 An act relating to the jurisdiction of the courts;
 3 amending s. 48.193, F.S.; providing that a person
 4 submits to the jurisdiction of the courts of this
 5 state by entering into a contract that specifies that
 6 the law of this state governs the contract and that
 7 the person agrees to submit to the jurisdiction of the
 8 courts of this state; amending s. 55.502, F.S.;

9 revising the definition of the term "foreign judgment"
 10 for purposes of the Florida Enforcement of Foreign
 11 Judgments Act; amending s. 684.0002, F.S.; clarifying
 12 the circumstances under which an arbitration is
 13 international; amending s. 684.0003, F.S.; correcting
 14 a cross-reference; amending s. 684.0019, F.S.;

15 limiting the application of certain provisions to
 16 instances in which an arbitral tribunal orders a party
 17 to preserve evidence that may be relevant and material
 18 to the resolution of a dispute; amending s. 684.0026,
 19 F.S.; correcting a cross-reference in the Florida
 20 International Commercial Arbitration Act; creating s.
 21 684.0049, F.S.; providing that the initiation of
 22 arbitration in this state, or the making of a written
 23 agreement to arbitrate which provides for arbitration
 24 in this state, constitutes a consent to exercise in
 25 personam jurisdiction by the courts of this state;
 26 amending s. 685.101, F.S.; revising the circumstances
 27 under which the parties to a contract, agreement, or
 28 undertaking may agree that the law of this state
 29 governs the contract, agreement, or undertaking;

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30 revising application dates of provisions relating to
 31 the jurisdiction of the courts; amending s. 685.102,
 32 F.S.; revising application dates of provisions
 33 relating to the jurisdiction of the courts; providing
 34 an effective date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Subsection (1) of section 48.193, Florida
 39 Statutes, is amended to read:
 40 48.193 Acts subjecting person to jurisdiction of courts of
 41 state.-
 42 (1) A ~~Any~~ person, whether or not a citizen or resident of
 43 this state, who personally or through an agent does any of the
 44 acts enumerated in this subsection thereby submits himself or
 45 herself and, if he or she is a natural person, his or her
 46 personal representative to the jurisdiction of the courts of
 47 this state for any cause of action arising from ~~the doing of~~ any
 48 of the following acts:
 49 (a) Operating, conducting, engaging in, or carrying on a
 50 business or business venture in this state or having an office
 51 or agency in this state.
 52 (b) Committing a tortious act within this state.
 53 (c) Owning, using, possessing, or holding a mortgage or
 54 other lien on any real property within this state.
 55 (d) Contracting to insure a ~~any~~ person, property, or risk
 56 located within this state at the time of contracting.
 57 (e) With respect to a proceeding for alimony, child
 58 support, or division of property in connection with an action to

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59 dissolve a marriage or with respect to an independent action for
60 support of dependents, maintaining a matrimonial domicile in
61 this state at the time of the commencement of this action or, if
62 the defendant resided in this state preceding the commencement
63 of the action, whether cohabiting during that time or not. This
64 paragraph does not change the residency requirement for filing
65 an action for dissolution of marriage.

66 (f) Causing injury to persons or property within this state
67 arising out of an act or omission by the defendant outside this
68 state, if, at or about the time of the injury, either:

69 1. The defendant was engaged in solicitation or service
70 activities within this state; or

71 2. Products, materials, or things processed, serviced, or
72 manufactured by the defendant anywhere were used or consumed
73 within this state in the ordinary course of commerce, trade, or
74 use.

75 (g) Breaching a contract in this state by failing to
76 perform acts required by the contract to be performed in this
77 state.

78 (h) With respect to a proceeding for paternity, engaging in
79 the act of sexual intercourse within this state with respect to
80 which a child may have been conceived.

81 (i) Entering into a contract that complies with s. 685.102.

82 Section 2. Subsection (1) of section 55.502, Florida
83 Statutes, is amended to read:

84 55.502 Construction of act.—

85 (1) As used in ss. 55.501-55.509, the term "foreign
86 judgment" means a any judgment, decree, or order of a court that
87 of any other state or of the United States if such judgment,

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88 ~~decree, or order~~ is entitled to full faith and credit in this
89 state.

90 Section 3. Subsection (3) of section 684.0002, Florida
91 Statutes, is amended to read:

92 684.0002 Scope of application.—

93 (3) An arbitration is international if:

94 (a) The parties to an arbitration agreement have, at the
95 time of the conclusion of that agreement, their places of
96 business in different countries; or

97 (b) One of the following places is situated outside the
98 country in which the parties have their places of business:

99 1. The place of arbitration if determined in, or pursuant
100 to, the arbitration agreement; or

101 2. Any place where a substantial part of the obligations of
102 the commercial relationship are to be performed or the place
103 with which the subject matter of the dispute is most closely
104 connected; or

105 (c) The parties have expressly agreed that the subject
106 matter of the arbitration agreement relates to more than one
107 country.

108 Section 4. Subsection (2) of section 684.0003, Florida
109 Statutes, is amended to read:

110 684.0003 Definitions and rules of interpretation.—

111 (2) A provision of this chapter, except s. 684.0039 ~~or~~
112 ~~684.0038~~, which leaves the parties free to determine a certain
113 issue, includes the right of the parties to authorize a third
114 party, including an institution, to make that determination.

115 Section 5. Section 684.0019, Florida Statutes, is amended
116 to read:

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117 684.0019 Conditions for granting interim measures.—

118 (1) The party requesting an interim measure under s.

119 684.0018 shall ~~must~~ satisfy the arbitral tribunal that:

120 (a) Harm not adequately reparable by an award of damages is
121 likely to result if the measure is not ordered, and such harm
122 substantially outweighs the harm that is likely to result to the
123 party against whom the measure is directed if the measure is
124 granted; and

125 (b) A reasonable possibility exists that the requesting
126 party will succeed on the merits of the claim. The determination
127 on this possibility does not affect the discretion of the
128 arbitral tribunal in making any subsequent determination.

129 (2) With regard to a request for an interim measure under
130 s. 684.0018(4) ~~s. 684.0018~~, the requirements in subsection (1)
131 apply only to the extent the arbitral tribunal considers
132 appropriate.

133 Section 6. Section 684.0026, Florida Statutes, is amended
134 to read:

135 684.0026 Recognition and enforcement.—

136 (1) An interim measure issued by an arbitral tribunal must
137 ~~shall~~ be recognized as binding and, unless otherwise provided by
138 the arbitral tribunal, enforced upon application to the
139 competent court, irrespective of the country in which it was
140 issued, subject to s. 684.0027 ~~s. 684.0019(1)~~.

141 (2) The party who is seeking or has obtained recognition or
142 enforcement of an interim measure shall promptly inform the
143 court of the termination, suspension, or modification of the
144 interim measure.

145 (3) The court where recognition or enforcement is sought

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146 may, if it considers it proper, order the requesting party to
147 provide appropriate security if the arbitral tribunal has not
148 already made a determination with respect to security or if such
149 a decision is necessary to protect the rights of third parties.

150 Section 7. Section 684.0049, Florida Statutes, is created
151 to read:

152 684.0049 Consent to jurisdiction.—The initiation of
153 arbitration in this state, or the making of a written contract,
154 agreement, or undertaking to arbitrate which provides for
155 arbitration in this state, constitutes a consent to exercise in
156 personam jurisdiction by the courts of this state in any action
157 arising out of or in connection with the arbitration and any
158 resulting order or award.

159 Section 8. Section 685.101, Florida Statutes, is amended to
160 read:

161 685.101 Choice of law.—

162 (1) The parties to any contract, agreement, or undertaking,
163 contingent or otherwise, in consideration of or relating to any
164 obligation arising out of a transaction involving in the
165 aggregate at least ~~not less than~~ \$250,000, the equivalent
166 thereof in any foreign currency, or services or tangible or
167 intangible property, or both, of equivalent value, including a
168 transaction otherwise covered by s. 671.105(1), may, to the
169 extent permitted under the United States Constitution, agree
170 that the law of this state will govern such contract, agreement,
171 or undertaking, the effect thereof and their rights and duties
172 thereunder, in whole or in part, whether or not such contract,
173 agreement, or undertaking bears any relation to this state.

174 (2) This section does not apply to any contract, agreement,

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175 or undertaking:

176 ~~(a) Regarding any transaction which does not bear a~~
 177 ~~substantial or reasonable relation to this state in which every~~
 178 ~~party is either or a combination of:~~

179 ~~1. A resident and citizen of the United States, but not of~~
 180 ~~this state; or~~

181 ~~2. Incorporated or organized under the laws of another~~
 182 ~~state and does not maintain a place of business in this state;~~

183 (a) ~~(b)~~ For labor or employment;

184 (b) ~~(c)~~ Relating to any transaction for personal, family, or
 185 household purposes, unless such contract, agreement, or
 186 undertaking concerns a trust at least one trustee of which
 187 resides or transacts business as a trustee in this state, in
 188 which case this section applies;

189 (c) ~~(d)~~ To the extent provided to the contrary in s.
 190 671.105(2); or

191 (d) ~~(e)~~ To the extent such contract, agreement, or
 192 undertaking is otherwise covered or affected by s. 655.55.

193 (3) This section does not limit or deny the enforcement of
 194 any provision respecting choice of law in any other contract,
 195 agreement, or undertaking.

196 (4) This section applies to+

197 ~~(a)~~ contracts entered into on or after July 1, 2013 ~~June~~
 198 ~~27, 1989;~~ and

199 ~~(b) Contracts entered into prior to June 27, 1989, if an~~
 200 ~~action or proceeding relating to such contract is commenced on~~
 201 ~~or after June 27, 1989.~~

202 Section 9. Section 685.102, Florida Statutes, is amended to
 203 read:

40-00461A-13

2013186__

204 685.102 Jurisdiction.-

205 (1) Notwithstanding any law that limits the right of a
 206 person to maintain an action or proceeding, a ~~any~~ person may, to
 207 the extent permitted under the United States Constitution,
 208 maintain in this state an action or proceeding against any
 209 person or other entity residing or located outside this state,
 210 if the action or proceeding arises out of or relates to any
 211 contract, agreement, or undertaking for which a choice of the
 212 law of this state, in whole or in part, has been made consistent
 213 with ~~pursuant to~~ s. 685.101 and which contains a provision by
 214 which such person or other entity residing or located outside
 215 this state agrees to submit to the jurisdiction of the courts of
 216 this state.

217 (2) This section does not affect the jurisdiction of the
 218 courts of this state over any action or proceeding arising out
 219 of or relating to any other contract, agreement, or undertaking.

220 (3) This section applies to+

221 ~~(a)~~ contracts entered into on or after July 1, 2013 ~~June~~
 222 ~~27, 1989;~~ and

223 ~~(b) Contracts entered into prior to June 27, 1989, if an~~
 224 ~~action or proceeding relating to such contract is commenced on~~
 225 ~~or after June 27, 1989.~~

226 Section 10. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic Jurisdiction of the Courts Bill Number SB 186
(if applicable)

Name Carolyn Johnson Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address 136 S Bronough St Phone 850-521-1235
Street

Tallahassee FL 32301
City State Zip

E-mail cjohnson@flchamber.com

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16

Meeting Date

Topic Jurisdiction of the Courts Bill Number 186
(if applicable)

Name Todd Kocourek Amendment Barcode _____
(if applicable)

Job Title Attorney/Civil-Law Notary

Address 1351 N. Gadsden St. Phone 954-222-5194
Street

Tallahassee FL 32303 E-mail todd@attglobal.net
City State Zip

Speaking: For Against Information

Representing FL Bar, International Law Section

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

Signature of the public record for this meeting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 558

INTRODUCER: Senator Detert

SUBJECT: Letters of Credit Issued by a Federal Home Loan Bank

DATE: March 15, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
3.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 558 amends the Florida Security for Public Deposits Act (the act)¹ which authorizes local and state governments to place public deposits in qualified public depositories (QPD). The state Chief Financial Officer (CFO) is responsible for establishing criteria for financial institutions to be designated QPDs. A QPD is required to secure or collateralize public deposits in accordance with the act. Various types of securities are eligible to be pledged as collateral, including letters of credit issued by a Federal Home Loan Bank (FHLBank) that are triple A-rated (AAA), which is the highest rating, by a national source.

Due to uncertainties regarding the fiscal condition of the United States (U.S.), consumer confidence, high unemployment, and the global economy, one of the nationally recognized credit rating agencies, Standard and Poor's Ratings Services (Standard & Poor's), downgraded the U.S. long-term sovereign credit rating one level from "AAA" to "AA+."² While Moody's Investor Service, Inc., (Moody's) and Fitch, Inc., (Fitch) have not downgraded the U.S. sovereign rating, they have both issued short-term negative outlooks for the U.S. and have indicated that they may downgrade the U.S. from its top credit rating if Congress fails to address those fiscal issues. Although obligations of the FHLBank, a government-sponsored entity, are not guaranteed by the U.S. government, credit rating agencies state that there is financial dependence between the U.S. government and the FHLBank. Thus, a lower U.S. sovereign rating would likely impact the rating of the FHLBank. In the event the two other rating agencies also downgrade their credit

¹ Chapter 280, F.S.

² Press Release, Standard & Poor's, *United States of America Long-Term Rating Lowered to 'AA+' Due to Political Risks, Rising Debt Burden,; Outlook Negative* (Aug. 5, 2011). Available at <http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245316529563>.

ratings for FHLBank obligations, QPDs could no longer use FHLBank letters of credit as eligible collateral under current law. This would require QPDs to use other assets as replacement collateral, which in turn could affect their liquidity and lending ability.

The bill would allow QPDs to continue using letters of credit of a FHLBank as eligible collateral in the event the other major credit agencies downgrade their ratings of FHLBank obligations below AAA. The bill would permit QPDs to use letters of credit of an FHLBank, if obligations of the FHLBank are rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the U.S.

This bill substantially amends s. 280.13, F.S.

II. Present Situation:

The Security for Public Deposits Act provides the framework for the protection of public deposits.³ Under the act, the Chief Financial Officer (CFO) of the State of Florida is responsible for designating financial institutions as qualified public depositories (QPD).⁴ To secure the public deposits, a QPD must pledge collateral in accordance with the statute and the CFO's collateral requirements and collateral pledging levels, as established by rule.⁵ Eligible collateral that may be pledged includes securities, Federal Home Loan Bank letters of credit, and cash.⁶ The CFO may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events, such as a QPD's insolvency or a determination by the CFO that an immediate danger to public health, safety, or welfare exists.⁷ When the CFO has determined that a default or insolvency has occurred the CFO must notify all public depositors and provide instructions on the filing of claims.⁸ The losses are to be satisfied, first, through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. The CFO is to cover any remaining losses by assessment against other QPDs.

³ A public deposit refers to moneys of the state, any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, that are placed on deposit in a bank, savings bank, or savings association and for which the bank, savings bank, or savings association is required to maintain reserves. s. 280.02(23), F.S.

⁴ A qualified public depository is a bank, savings bank, or savings association that is organized under the laws of the United States or any state or territory of the United States, has a principal place of business or branch office in this state authorized to receive deposits, has federally-insured deposits, has procedures and practices that accurately report and collateralize public deposits, meets the requirements of the Florida Security for Public Deposits Act, and has been designated as a qualified public depository by the CFO. s. 280.02(26), F.S.

⁵ Chapter 69C-2, F.A.C., sets forth the collateral requirements.

⁶ Sections 280.02(12) and 280.13, F.S. Other eligible collateral includes obligations of the United States Government, federal agencies, any state, Puerto Rico, political subdivision, or municipality; tax anticipation certificates; public housing obligations; revenue bonds of any state of the United States or of a political subdivision or municipality thereof; corporate bonds; and other securities designated allowable by law.

⁷ For a complete list of events that may trigger a demand of payment, see s. 280.041(6), F.S.

⁸ Sections 280.08 and 280.085, F.S.

Federal Home Loan Bank Letters of Credit

Congress created the Federal Home Loan Bank System in 1932. Its mission is to support residential mortgage lending and community investment at a local level.⁹ The FHLBank is composed of 12 regional cooperative banks that are entirely owned by their members.¹⁰ Obligations of the FHLBanks are not obligations of the U.S. and are not guaranteed by the federal government or any government agency.¹¹

Section 280.13, F.S., provides that an FHLBank letter of credit may be pledged as eligible collateral by a QPD, if, among other things, the obligations of an FHLBank issuing the letter of credit maintain a AAA rating by a nationally recognized source.¹² The long-term debt of the FHLBank is rated by both Standard & Poor's Rating (Standard & Poor's) and Moody's Investor Service (Moody's). On August 15, 2012, Standard & Poor's gave FHLBank's long-term senior debt a credit rating of AA+. The rating is a reflection of the negative outlook on the U.S. government.¹³ Moody's has maintained a AAA credit rating of the FHLBank's long-term senior debt. According to the Department of Financial Services, there are currently 17 QPDs that have pledged a total of \$1.88 billion in FHLBank letters of credit.¹⁴

U.S. Credit Ratings

On August 5, 2011, Standard & Poor's lowered the long-term sovereign credit rating for the United States from "AAA" to "AA+."¹⁵ The lowered rating was based on the uncertainty of the political and economic climate. While Moody's and Fitch have not downgraded the U.S. sovereign rating, they have both announced that their short-term outlook for the U.S. is negative and they may downgrade the U.S. if Congress fails to address the fiscal issues and growing deficit.¹⁶ There is a distinct possibility that all three nationally recognized rating agencies could downgrade the U.S. sovereign rating if concerns about the ongoing issues with U.S. fiscal policy

⁹ Federal Home Loan Bank, Office of Finance, *History of Service*, available at http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/mission--history-29 (last visited March 13, 2013).

¹⁰ Federal Home Loan Bank, *The Federal Home Loan Banks: The Basics*, http://www.fhlbanks.com/assets/pdfs/sidebar/FHLBanks_TheBasics_4_2012.pdf (last visited March 13, 2013).

¹¹ Federal Home Loan Bank, Office of Finance, *Credit Ratings*, http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/credit-ratings-31 (last visited March 13, 2013).

¹² A nationally recognized statistical rating organization (NRSRO) is a credit rating organization, registered with the Securities and Exchange Commission, which provides its opinion on the creditworthiness of an entity and the financial obligations issued by an entity. There are currently ten firms registered as NRSROs: A.M. Best Company, Inc.; DBRS, LTD.; Egan-Jones Rating Company; Fitch, Inc.; Japan Credit Rating, Ltd.; Kroll Bond Rating Agency, Inc.; Moody's Investors Service, Inc.; Rating and Investment Information, Inc.; Realpoint LLC; and Standard & Poor's Rating Services. U.S. Securities and Exchange Commission, *Credit Rating Agencies – NRSROs*, available at <http://www.sec.gov/answers/nrsro.htm> (last visited March 13, 2013).

¹³ Federal Home Loan Bank, Office of Finance, *Credit Ratings*.

¹⁴ Policy and Research Memorandum from the Department of Financial Services, (October 29, 2012) (on file with the Senate Commerce and Tourism Committee).

¹⁵ Press Release, Standard & Poor's, *United States of America Long-Term Rating Lowered to 'AA+' Due to Political Risks, Rising Debt Burden; Outlook Negative* (Aug. 5, 2011), available at <http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245316529563>.

¹⁶ Newman, Rick, *What Will Cause the Next U.S. Credit Downgrade*, U.S. News and World Report, (Jan. 3, 2013), available at <http://www.usnews.com/news/blogs/rick-newman/2013/01/03/what-will-cause-the-next-us-credit-downgrade>.

are not adequately addressed.¹⁷ The credit rating of the FHLBank is integrally tied to those of the U.S.'s sovereign debt. This is evident by Standard & Poor's downgrade of the FHLBank's credit rating on the heels of the downgrade of the U.S. sovereign debt in August 2011. Standard & Poor's noted "...if we lowered the rating on the U.S., we would likely lower the ratings on [the FHLBank] System debt and the individual FHLBs according to our GRE [government-related entity] criteria, since we do not believe an institution that receives support should be rated above the institution that supports it, except in very unique situations."¹⁸ If the other nationally recognized rating agencies were to downgrade the U.S. sovereign debt, this would eliminate the ability of QPDs to use letters of credit from the FHLBank to meet the requirements of s. 280.13, F.S.

Currently, all FHLBanks, except Seattle, hold an "AA+" credit rating on long-term obligations from Standard and Poor's, which is the same rating as the U.S. sovereign rating.¹⁹ All of the FHLBanks currently hold Moody's top credit rating for both short and long-term obligations, which reflects the ratings Moody's holds for the U.S. generally.²⁰ In 2011, Fitch affirmed the "AAA" rating of the FHLBank System and the U.S. sovereign debt; however, Fitch issued a negative rating outlook on both entities.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 280.13, F.S., to allow QPDs to continue using letters of credit issued by a Federal Home Loan Bank as collateral in the event other major credit rating agencies downgrade their ratings of the FHLBank obligations below AAA. The bill would permit the use of the FHLBank letters of credit if the FHLBank obligations are rated by a nationally recognized source at a rating at least the rating of U.S. sovereign debt.

Section 2 provides that the act will take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ Lopez, Luciana, *Fitch Backs Away from Downgrade of U.S. Credit Rating*, (Jan. 28, 2013), available at <http://www.reuters.com/article/2013/01/28/us-usa-rating-fitch-idUSBRE90R0WS20130128>.

¹⁸ Standard and Poor's Rating Services, *Ratings Direct Federal Home Loan Banks*, (Aug. 15, 2012), available at http://www.fhlf-of.com/ofweb_userWeb/resources/SandPCreditAnalysis081512.pdf.

¹⁹ *Id.*

²⁰ Federal Home Loan Bank, Office of Finance, *Credit Ratings*.

²¹ Press Release, Fitch, Inc., *Fitch Revises the Rating Outlook on the Federal Home Loan Banks to Negative* (Nov. 28, 2011), available at <http://www.reuters.com/article/2011/11/28/idUS226613+28-Nov-2011+BW20111128>.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will assure that QPDs will continue to be able to use FHLBank letters of credit as eligible collateral.

This change in letters of credit as eligible collateral would eliminate any potential disruption to banks and savings associations that use FHLBank letters of credit as collateral should the long-term sovereign credit rating of the United States drop below triple-A.

C. Government Sector Impact:

The letters of credit issued by the FHLBank provide operational and cost efficiencies to the CFO who can directly make a demand on the FHLBank letters of credit in the event of a QPD's default, without having to sell and transfer pledged securities. The Department of Financial Services does not anticipate that the bill will have a fiscal impact.

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.

B. Amendments:

None.

By Senator Detert

28-00691A-13

2013558__

1 A bill to be entitled
2 An act relating to letters of credit issued by a
3 Federal Home Loan Bank; amending s. 280.13, F.S.;
4 revising circumstances under which letters of credit
5 issued by a Federal Home Loan Bank are eligible as
6 collateral; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (c) of subsection (5) of section
11 280.13, Florida Statutes, is amended to read:

12 280.13 Eligible collateral.—

13 (5) Letters of credit issued by a Federal Home Loan Bank
14 are eligible as collateral under this section provided that:

15 (c) Obligations issued by the Federal Home Loan Bank remain
16 ~~triple-A~~ ~~triple-A~~ rated by a nationally recognized source or, if
17 no longer triple-A rated, rated by a nationally recognized
18 source at not lower than its rating of the long-term sovereign
19 credit of the United States.

20 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic FHUBank Letters of Credit

Bill Number 558
(if applicable)

Name Kim Siomkos

Amendment Barcode _____
(if applicable)

Job Title Asst Vp of Gov Relations

Address 1001 Thomasville Road
Street

Phone 861 317 4707

Tallahassee FL 32308
City State Zip

E-mail ksiomkos@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 604

INTRODUCER: Senator Bean

SUBJECT: Practitioners

DATE: March 15, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Favorable
2.	Munroe	Cibula	JU	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 604 reorganizes the provisions relating to fees for organizations licensed or permitted and persons certified under part III of ch. 401, F.S., relating to medical transportation services. The bill directs fees collected for certification of emergency medical technicians (EMTs) and paramedics to be deposited into the Medical Quality Assurance Trust Fund, rather than the Emergency Medical Services Trust Fund.

The bill clarifies that the Department of Financial Services (DFS) must defend any claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners or students.

The bill expands access to the prescription drug monitoring program database to an impaired practitioner consultant upon consent of the impaired practitioner for the purpose of reviewing the impaired practitioner's controlled substance prescription history.

This bill substantially amends the following sections of the Florida Statutes: 401.34, 456.076, 893.055, and 893.0551.

II. Present Situation:

Emergency Medical Services

Part III of ch. 401, F.S., pertains to medical transportation services. Among other things, this part provides for the certification of a person to act as an EMT, paramedic, or 911 public safety

telecommunicator; licensing of an organization to provide basic life support (BLS) service, advanced life support (ALS) service, or air ambulance service; and permitting of vehicles to be operated as a basic support or advance support transport vehicle or an ALS nontransport vehicle providing BLS or ALS. Organizationally, this program is under the Division of Emergency Preparedness and Community Support (EPCS) within the Department of Health (DOH).

Fees for certification, licensing, and permitting must be deposited into the Emergency Medical Services Trust Fund and applied solely for salaries and expenses of the department incurred in implementing and enforcing part III of ch. 401, F.S.¹

Currently, the fees are used to:

- Process EMT and paramedic certification, recertification and testing;
- Fund 66 percent of the state EMS medical director's contracted salary; and
- Fund a portion of the salaries of 10 EMS staff members to:
 - License, permit, and inspect 274 ALS, BLS, and air medical service providers having 4,335 permitted vehicles;
 - Approve and inspect 71 EMT and paramedic training programs;
 - Oversee 32 EMT and paramedic recertification training programs; and
 - Provide administrative support.

The 10 EMS staff, through additional funding sources, also investigate complaints and discipline EMS providers, training programs, and 911 public safety telecommunicators. According to the DOH, funding provided by county courts per s. 318.21(2)(b), F.S., which is intended to fund 100 percent of the 10 EMS positions and the state EMS medical director, is inadequate to support these positions. Revenue from licensing fees for the 2-year, 2010-2012 licensure cycle totaled \$2,518,750 while expenses were approximately \$3,860,354.²

The EPCS and the Division of Medical Quality Assurance (MQA) have a Memorandum of Understanding in effect which authorizes the MQA to charge EPCS for services relating to the licensure of EMTs and paramedics. The charges derived from the MQA regulatory functions exceed the amount of funding EPCS receives from licensing revenues of EMTs and paramedics. The DEPCS reimburses MQA with available funding.³

Medical Quality Assurance Trust Fund

Funds credited to the Medical Quality Assurance Trust Fund consist of fees and fines related to the licensing of health care professionals. Funds must be used for the purpose of providing administrative support for the regulation of health care professionals and for other such purposes as may be appropriate pursuant to legislative appropriation.⁴

¹ See ss. 401.34 and 401.465(3), F.S.

² Department of Health Bill Analysis for SB 604 (March 1, 2013) (on file with the Senate Committee on Judiciary).

³ *Ibid.*

⁴ Section 20.435 (4), F.S.

Impaired Practitioner Treatment Program

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness; use of alcohol, drugs, narcotics, chemicals or any other type of material; or as the result of any mental or physical condition. The impaired practitioner treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse.

By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program.⁵ To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioner treatment program consultant.⁶

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. An impaired practitioner consultant may also contract for services to be provided by a school for students enrolled in schools for licensure as allopathic physicians, physicians assistants, osteopathic physicians, nurses, or pharmacists who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.

The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director who is so licensed. Consultants must refer impaired practitioners to department-approved treatment programs and providers.⁷ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions for impaired practitioner consultant services.

The relationship of PRN and IPN to the practitioner involves monitoring only and there is no doctor-patient relationship, therefore PRN and IPN consultants have no authority to access the Prescription Drug Monitoring Program database.

An impaired practitioner consultant, the consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of

⁵ Section 456.076(3)(a), F.S.

⁶ *Id.*

⁷ *See* s. 456.076, F.S.

a licensee or student when the consultant is unable to perform the intervention are considered agents of the DOH for purposes of s. 768.28, F.S., (related to sovereign immunity) while acting within the scope of the consultant's duties under the contract with the DOH.⁸ The DFS currently defends any claim, suit, action or proceeding against the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties.⁹

Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.005, F.S. The PDMP is a comprehensive electronic system to monitor the prescribing and dispensing of certain controlled substances. Dispensers of certain controlled substances must report specified information to the PDMP, including the patient's name to whom the controlled substance is dispensed and other dispensing information.

Direct access to the PDMP is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists. Indirect access to the PDMP is provided to: (1) the DOH or its relevant health care regulatory boards; (2) the attorney general for Medicaid fraud cases; (3) a law enforcement agency; and (4) a patient or the legal guardian or designated health care surrogate of an incapacitated patient.

Section 893.0551, F.S., enacted at the same time, provides a public records exemption for personal information of a patient and certain information concerning health care professionals outlined in the statute. This section sets forth enumerated exceptions for disclosure of this information after the DOH ensures the legitimacy of the person's request for the information.

III. Effect of Proposed Changes:

Section 1 amends s. 401.34, F.S., reorganizing the provisions relating to license fees for EMTs and paramedics. All license fees for EMTs and paramedics that are currently deposited into the EMS trust fund will instead be deposited into the MQA trust fund.

Section 2 amends s. 456.076, F.S., providing that the DFS defend any claim suit, action, or proceeding, *including injunctive, affirmative, or declaratory relief*, against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties. Thus, if an action for injunctive, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Sections 3 and 4 amends s. 893.055 and s. 893.0551, F.S., respectively, to define "impaired practitioner consultant" and expand access to the PDMP to impaired practitioner consultants upon consent of the impaired practitioner for the purpose of reviewing the impaired

⁸ Section 456.076(7)(a), F.S.

⁹ Section 456.076(7)(b), F.S.

practitioner's controlled substance prescription history. The bill authorizes impaired practitioner consultants to have direct access to the PDMP for the purpose of reviewing the controlled substance prescription history of an impaired practitioner who has agreed to be evaluated or monitored through the PDMP by the consultant.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill provides for release of information that is already confidential and exempt under s. 893.0551, F.S., to an impaired practitioner consultant, the bill is not subject to the requirements of s. 24, Article I of the State Constitution and ch. 119, F.S., related to creating or expanding a public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill deposits fees into the MQA trust fund which currently are deposited into the EMS trust fund. The bill does not specify what the funds will be used for or otherwise revise specific duties and responsibilities of the EMS program or the MQA. Revenue from licensing fees for 2010-2011 and 2011-2012 totaled \$2,518,750. Expenditures are currently \$3,860,354 (average from 2006-2012) for a 2-year period. Revenue and expenditures vary dramatically during a recertification year so the revenue and expenditure amounts reflect a 2-year period to show appropriate numbers.¹⁰

B. Private Sector Impact:

If an action for injunctive, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Impaired practitioners in the impaired practitioner treatment program will be able to authorize the consultant to use the PDMP as another tool to monitor the practitioner's progress in the treatment program.

¹⁰ *Supra*, fn 2

C. Government Sector Impact:

The licensure fees transferred to MQA under the bill will not be available to fund the salaries of the EMS positions and other expenses currently being incurred.

The DOH indicates that its rule pertaining to access the PDMP will need to be amended to address access to the database by impaired practitioner consultants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the impaired practitioner consultant to access the PDMP for an impaired practitioner; however, it does not specifically authorize access for a student who is participating in the impaired practitioner treatment program. Given the sensitive nature of access to the PDMP, specifically including students participating in the impaired practitioner program might be appropriate.

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.

By Senator Bean

4-00173D-13

2013604

1 A bill to be entitled
 2 An act relating to practitioners; amending s. 401.34,
 3 F.S.; reorganizing provisions relating to license fees
 4 for certain practitioners; amending s. 456.076, F.S.;
 5 providing that the Department of Financial Services
 6 shall defend certain claims, suits, actions, or
 7 proceedings for injunctive, affirmative, or
 8 declaratory relief involving emergency interventions
 9 on behalf of impaired practitioners; amending s.
 10 893.055, F.S.; defining the term "impaired
 11 practitioner consultant"; providing that impaired
 12 practitioner consultants retained by the Department of
 13 Health have access to information in the prescription
 14 drug monitoring program's database in certain
 15 circumstances; amending s. 893.0551, F.S.; defining
 16 the term "impaired practitioner consultant"; allowing
 17 impaired practitioner consultants access to certain
 18 confidential information in the prescription drug
 19 monitoring program's database when necessary to
 20 evaluate or monitor a practitioner as part of a
 21 treatment program for impaired practitioners;
 22 providing an effective date.

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

25
 26 Section 1. Subsections (2) through (7) of section 401.34,
 27 Florida Statutes, are redesignated as subsections (3) through
 28 (8), respectively, subsection (1) of that section is amended,
 29 and a new subsection (2) is added, to read:

Page 1 of 6

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4-00173D-13

2013604

30 401.34 Fees.—
 31 (1) Each organization ~~or person~~ subject to this part must
 32 pay to the department the following nonrefundable fees:
 33 (a) Basic life support service license application: \$660,
 34 to be paid biennially.
 35 (b) Advanced life support service license application:
 36 \$1,375, to be paid biennially.
 37 (c) Original or renewal vehicle permit application for
 38 basic or advanced life support: \$25, to be paid biennially.
 39 (d) Air ambulance service application: \$1,375, to be paid
 40 biennially.
 41 (e) Original or renewal aircraft permit application for air
 42 ambulance: \$25, to be paid biennially.
 43 (2) Each person subject to this part must pay to the
 44 department the following nonrefundable fees, and these fees must
 45 be deposited into the Medical Quality Assurance Trust Fund:
 46 (a) ~~(d)~~ Emergency medical technician certification
 47 examination application: \$40.
 48 (b) ~~(e)~~ Emergency medical technician original certificate
 49 application: \$35.
 50 (c) ~~(f)~~ Emergency medical technician renewal certificate
 51 application: \$20, to be paid biennially.
 52 (d) ~~(g)~~ Paramedic certification examination application:
 53 \$40.
 54 (e) ~~(h)~~ Paramedic original certificate application: \$45.
 55 (f) ~~(i)~~ Paramedic renewal certificate application: \$45, to
 56 be paid biennially.
 57 ~~(j) Air ambulance service application: \$1,375, to be paid~~
 58 ~~biennially.~~

Page 2 of 6

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4-00173D-13

2013604

59 ~~(k) Original or renewal aircraft permit application for air~~
 60 ~~ambulance: \$25, to be paid biennially.~~

61 Section 2. Paragraph (b) of subsection (7) of section
 62 456.076, Florida Statutes, is amended to read:

63 456.076 Treatment programs for impaired practitioners.-
 64 (7)

65 (b) In accordance with s. 284.385, the Department of
 66 Financial Services shall defend any claim, suit, action, or
 67 proceeding, including a claim, suit, action, or proceeding for
 68 injunctive, affirmative, or declaratory relief, against the
 69 consultant, the consultant's officers or employees, or those
 70 acting at the direction of the consultant for the limited
 71 purpose of an emergency intervention on behalf of a licensee or
 72 student as described in subsection (2) when the consultant is
 73 unable to perform such intervention, which claim, suit, action,
 74 or proceeding is brought as a result of an any act or omission
 75 by any of the consultant's officers and employees and those
 76 acting under the direction of the consultant for the limited
 77 purpose of an emergency intervention on behalf of the a licensee
 78 or student ~~as described in subsection (2)~~ when the consultant is
 79 unable to perform such intervention, ~~if the~~ when such act or
 80 omission arises out of and is in the scope of the consultant's
 81 duties under its contract with the department.

82 Section 3. Paragraphs (f) through (j) of subsection (1) of
 83 section 893.055, Florida Statutes, are redesignated as
 84 paragraphs (g) through (k), respectively, a new paragraph (f) is
 85 added to that subsection, and paragraph (b) of subsection (7) of
 86 that section is amended, to read:

87 893.055 Prescription drug monitoring program.-

Page 3 of 6

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

4-00173D-13

2013604

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

89 (f) "Impaired practitioner consultant" means a consultant
 90 retained by the department under s. 456.076.

91 (7)

92 (b) 1. A pharmacy, prescriber, or dispenser shall have
 93 access to information in the prescription drug monitoring
 94 program's database which relates to a patient of that pharmacy,
 95 prescriber, or dispenser in a manner established by the
 96 department as needed for the purpose of reviewing the patient's
 97 controlled substance prescription history.

98 2. An impaired practitioner consultant who is retained by
 99 the department shall have access to information in the
 100 prescription drug monitoring program's database, in a manner
 101 established by the department, if:

102 a. The impaired practitioner has a documented or has
 103 acknowledged history of controlled substance abuse.

104 b. The impaired practitioner agrees in writing to be
 105 evaluated and monitored through the prescription drug monitoring
 106 program.

107 c. The impaired practitioner consultant has access to only
 108 those records of impaired practitioners who have provided
 109 written consent.

110 3. Other access to the program's database shall be limited
 111 to the program's manager and to the designated program and
 112 support staff, who may act only at the direction of the program
 113 manager or, in the absence of the program manager, as
 114 authorized. Access by the program manager or such designated
 115 staff is for prescription drug program management only or for
 116 management of the program's database and its system in support

Page 4 of 6

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

4-00173D-13 2013604
117 of the requirements of this section and in furtherance of the
118 prescription drug monitoring program. Confidential and exempt
119 information in the database shall be released only as provided
120 in paragraph (c) and s. 893.0551. The program manager,
121 designated program and support staff who act at the direction of
122 or in the absence of the program manager, and any individual who
123 has similar access regarding the management of the database from
124 the prescription drug monitoring program shall submit
125 fingerprints to the department for background screening. The
126 department shall follow the procedure established by the
127 Department of Law Enforcement to request a statewide criminal
128 history record check and to request that the Department of Law
129 Enforcement forward the fingerprints to the Federal Bureau of
130 Investigation for a national criminal history record check.

131 Section 4. Paragraphs (e) through (h) of subsection (1) of
132 section 893.0551, Florida Statutes, are redesignated as
133 paragraphs (f) through (i), respectively, a new paragraph (e) is
134 added to that subsection, and paragraph (h) is added to
135 subsection (3) of that section, to read:

136 893.0551 Public records exemption for the prescription drug
137 monitoring program.—

138 (1) For purposes of this section, the term:

139 (e) "Impaired practitioner consultant" has the same meaning
140 as provided in s. 893.055.

141 (3) The department shall disclose such confidential and
142 exempt information to the following entities after using a
143 verification process to ensure the legitimacy of that person's
144 or entity's request for the information:

145 (h) An impaired practitioner consultant who certifies in

4-00173D-13 2013604
146 writing that the information is necessary to evaluate or monitor
147 a practitioner as part of a treatment program for impaired
148 practitioners.

149 Section 5. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

3-18-2013

Meeting Date

Topic IMPAIRED PRACTITIONERS

Bill Number SB 604
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-7463

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic _____

Bill Number 604
(if applicable)

Name Judy S. Rivenbark

Amendment Barcode _____
(if applicable)

Job Title Medical Director

Address P.O. Box 1020
Street
Fernandina Beach FL 32035
City State Zip

Phone 800-888-8776

E-mail _____

Speaking: For Against Information

Representing PRN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic Practitioners

Bill Number 604
(if applicable)

Name Matthew Farrar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2910 Kerry Forest Pkwy

Phone 850-832-1763

Street

Tallahassee FL 32309

City

State

Zip

E-mail matth@finninsconsulting.com

Speaking: For Against Information

Representing Intervention Project for Nurses

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic Impaired Practitioners

Bill Number 604
(if applicable)

Name Rebecca O'Hara

Amendment Barcode _____
(if applicable)

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Phone 339 6211

Tallahassee FL 32309
City State Zip

E-mail rohara@flmedical.org

Speaking: For Against Information

Representing Fla Medical Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1464

INTRODUCER: Senator Lee

SUBJECT: Office of the Attorney General

DATE: March 15, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Favorable
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1464 makes changes to laws enforced by or governing the Office of the Attorney General, also known as the Department of Legal Affairs. These changes:

- Clarify how much money in the Legal Affairs Revolving Trust Fund that reverts to the General Revenue Fund at the end of a fiscal year by conforming the statute to changes in the Office of the Attorney General;
- Correct a discrepancy in statute and specify that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Operating Trust Fund;
- Incorporate current in federal consumer protection laws and regulations of the Federal Trade Commission into the Deceptive and Unfair Trade Practices Act, effectively specifying additional deceptive and unfair trade practices;
- Allow final written notification of the need to repair a vehicle that does not conform to the manufacturer's warranty to be made by any method providing a delivery confirmation.
- Require that, upon receipt from a manufacturer of a procedure for handling consumer complaints, the Department of Legal Affairs notify the manufacturer of any deficiencies in the procedure, certify the procedure for a period not to exceed 1 year, or deny the certification and state why.
- Allow a notice sent by the Department of Legal Affairs which rejects a motor vehicle dispute for arbitration be sent by any method by deleting a requirement that the notice be sent by registered mail.
- Allow the Attorney General discretion as to whether to file an action based on a complaint involving discriminatory housing practices.

This bill substantially amends the following sections of the Florida Statutes: 16.53, 409.9203, 501.203, 501.204, 681.102, 681.104, 681.108, 681.109, and 760.34.

II. Present Situation:

Legal Affairs Revolving Trust Fund

Section 16.53, F.S., creates the Legal Affairs Revolving Trust Fund from which the Legislature may appropriate funds for the purpose of enforcement by the Attorney General of the Racketeer Influenced and Corrupt Organization Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, or state or federal antitrust laws.¹ The fund acquires money from a portion of the money recovered by the Attorney General enforcing the state's antitrust and racketeering laws and the Florida False Claims Act.²

Currently, at the end of the fiscal year, any money remaining in the fund in excess of 3 times the budgets of the antitrust and racketeering sections of the Attorney General's office are transferred to the General Revenue fund.³

Medicaid Fraud

Currently s. 409.9203(3), F.S., requires that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Legal Affairs Revolving Trust Fund pursuant to s. 68.085, F.S. However s. 68.085(4), F.S., states that such rewards will be paid from the Operating Trust Fund instead, leading to confusion in the statutes as to what fund should be used to pay awards.

Nonconformity of Motor Vehicles

Under s. 681.104, F.S., a manufacturer of an automobile notified of a defect in the vehicle by the consumer within 24 months of the delivery of the vehicle to the consumer, must make repairs to the vehicle so that it conforms to the warranty on the vehicle. After three attempts to repair the nonconformity, the consumer must give written notice by certified or express mail to the manufacturer, allowing the manufacturer one final chance to repair the vehicle.⁴

If the manufacturer cannot repair the vehicle to conform to the warranty after this final attempt, the manufacturer, within 40 days, must either repurchase the vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or if the consumer pays a reasonable offset for use, replace the vehicle with a vehicle acceptable to the consumer.⁵

Reasonable offset for use is defined in s. 681.102(19), F.S., as "the number of miles attributable to a consumer up to the date of a settlement agreement or arbitration hearing, whichever occurs

¹ Section 16.53(1), F.S.

² Sections 16.53(2), 16.53(3), 16.53(4), and 16.53(5), F.S.

³ Section 16.53(7), F.S.

⁴ Section 681.104(1), F.S.

⁵ Section 681.104(2)(a), F.S.

first, multiplied by the purchase price of the vehicle and divided by 120,000, except in the case of a recreational vehicle, in which event it shall be divided by 60,000.”

However, under s. 601.108(1), F.S., if a manufacturer establishes a procedure that the Department of Legal Affairs (DLA) certifies as complying with the informal dispute settlement procedures in the Code of Federal Regulations,⁶ and informs the consumer how to file a claim, the consumer must follow that procedure before he or she can either receive a refund or a replacement vehicle.

In order to have such a procedure certified, the manufacturer must submit the procedure to the DLA which must either certify the procedure or notify the manufacturer of any deficiencies in the application or the procedure.⁷ The DLA is required to review each certified procedure annually.

If a manufacturer has a certified procedure, and the consumer and manufacturer cannot reach a decision on a dispute by use of the certified procedure, within 40 days after filing, the consumer may apply to the DLA to have the dispute removed to the Florida New Motor Vehicle Board for arbitration.⁸ If the DLA determines that it does not have sufficient evidence to resolve the dispute after providing the consumer with an opportunity to present additional evidence, the DLA may reject arbitration of the matter. If a dispute is rejected, the DLA must, by registered mail, notify the consumer and manufacturer and provide a brief explanation as to why.⁹

Discriminating Housing Practices

Section 760.34, F.S., requires that when a complaint of discriminatory housing practices has been filed and the Florida Commission on Human Relations finds there is reasonable cause to believe that discrimination has occurred, the Attorney general must bring an action to enforce the Florida Fair Housing Act¹⁰ and prevent the discrimination.

III. Effect of Proposed Changes:

Legal Affairs Revolving Trust Fund (Section 1)

The bill amends s. 16.53(7), F.S., to clarify how much money in the Legal Affairs Revolving Trust Fund reverts to the General Revenue Fund at the end of a fiscal year. Current law specifies the amount that will revert as the excess of 3 times the amount of the combined budgets of the antitrust and racketeering sections of the Attorney General’s office for the forthcoming fiscal year. Both of those sections of the office, however, are supported by the fund, and one of those sections was renamed. The change in the statute effectively takes the name change of one of the sections into account without affecting the amount of funds that will revert to the General Revenue Fund.

⁶ See 16 C.F.R. part 703.

⁷ Section 681.108(2), F.S.

⁸ Section 681.109(1), F.S.

⁹ Section 681.109(8), F.S.

¹⁰ Sections 760.20-760.37, F.S.

Medicaid Fraud (Section 2)

The bill amends s. 409.9203(3), F.S., to require that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Operating Trust Fund, removing the inconsistency between ss. 409.9203(3) and 68.085(4), F.S.

Incorporation of Current Federal Laws and Regulations (Sections 3 and 4)

The bill amends ss. 501.203 and 501.204, F.S., to incorporate current in federal consumer protection laws and regulations of the Federal Trade Commission into the Deceptive and Unfair Trade Practices Act, effectively specifying additional deceptive and unfair trade practices.

Nonconformity of Motor Vehicles (Sections 5, 6, 7, and 8)

The bill amends s. 681.104, F.S., to allow final written notification of the need to repair a vehicle not conforming to the manufacturer's warranty to be made by any method providing a delivery confirmation as opposed to only registered or express mail.

The bill amends s. 681.102(14), F.S., to redefine the term "reasonable offset for use" as:

the number of miles attributable to a consumer up to the date of a settlement agreement or arbitration hearing, whichever occurs first, multiplied by the base selling or sale purchase price of the vehicle as reflected on the purchase invoice, exclusive of taxes, government fees, and dealer fees, or in the case of a lease, the agreed upon value as reflected in the lease agreement and divided by 120,000, except in the case of a recreational vehicle, in which event it shall be divided by 60,000.

The difference between the definition in existing law and in the bill is that the revised definition excludes government or dealer fees in calculating the reasonable offset for use. This will result in a slightly lower offset that manufacturers will be allowed to withhold when refunding the price of a vehicle that does not conform to its warranty.

The bill amends s. 681.108(2), F.S., to require that upon receipt from a manufacturer of a procedure for handling consumer complaints the DLA shall:

- Notify the manufacturer of any deficiencies in the procedure;
- Certify the procedure for a period not to exceed 1 year; or
- Deny the certification and state why.

The bill requires that a manufacturer seeking a procedure to be recertified must notify the DLA at least 60 days before the 1 year certification period elapses for the department to review and decide whether to recertify the procedure. This will allow the DLA to only review those procedures that manufacturers wish to have recertified.

The bill amends s. 681.109(6), F.S., which governs disputes overseen by the Florida New Motor Vehicle Board, to allow the DLA flexibility in providing notice to the consumer and manufacturer of a rejection of a dispute. The bill removes the requirement that notice may be sent by registered mail. The legislature may wish to consider a requirement that the notice be in writing and mailed to the consumer and manufacturer.

Discriminating Housing Practices (Section 9)

The bill amends s. 760.34(4), F.S., to allow the Attorney General discretion as to whether to file an action based on a complaint involving discriminatory housing practices.

The bill takes effect July 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 changes the way reasonable offset for use is calculated. This will result in a slightly lower offset that manufacturers will be allowed to withhold when refunding the price of a vehicle that does not conform to its warranty.

C. Government Sector Impact:

The bill's changes to how the Legal Affairs Revolving Trust Fund and the Operating Trust Fund are technical in nature and will not have a financial impact. The changes to the statutes concerning nonconforming motor vehicles may result in a small increase in caseload for the Department of Legal Affairs. The increase discretion for the Attorney General as to whether to file an action for a complaint involving discriminatory housing practices will potentially reduce the number of cases filed and result in a minor positive fiscal impact.

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.

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 Lee

24-01365A-13

20131464__

A bill to be entitled

An act relating to the Office of the Attorney General; amending s. 16.53, F.S.; revising the Legal Affairs Revolving Trust Fund with regard to which funds are required to be transferred to the General Revenue Fund unallocated; amending s. 409.9203, F.S.; providing that rewards for reporting Medicaid fraud shall be paid from the Operating Trust Fund; amending ss. 501.203 and 501.204, F.S.; revising obsolete dates; amending s. 681.102, F.S.; revising definitions; amending s. 681.104, F.S.; revising notice requirements; amending s. 681.108, F.S.; revising duties of the Department of Legal Affairs relating to manufacturer certification of dispute-settlement procedures; providing notice requirements for certain manufacturers seeking recertification of a procedure or ceasing operation of a certified procedure; amending s. 681.109, F.S.; revising notice requirements relating to the rejection of a dispute by the department; amending s. 760.34, F.S.; authorizing, rather than requiring, the office to bring an action for complaints involving discriminatory housing practices; providing an effective date.

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

Section 1. Subsection (7) of section 16.53, Florida Statutes, is amended to read:
16.53 Legal Affairs Revolving Trust Fund.—

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20131464__

(7) Any moneys remaining in the fund at the end of any fiscal year in excess of 3 times the amount of the combined budgets for the ~~antitrust and racketeering~~ sections of the Attorney General's office supported by the fund for the forthcoming fiscal year shall be transferred to the General Revenue Fund unallocated.

Section 2. Subsection (3) of section 409.9203, Florida Statutes, is amended to read:

409.9203 Rewards for reporting Medicaid fraud.—

(3) The reward shall be paid from the Operating Legal Affairs ~~Revolving~~ Trust Fund from moneys collected pursuant to s. 68.085.

Section 3. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2013 ~~2006~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts;

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

Section 4. Subsection (2) of section 501.204, Florida Statutes, is amended to read:

Page 2 of 9

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24-01365A-13

20131464__

59 501.204 Unlawful acts and practices.-

60 (2) It is the intent of the Legislature that, in construing
61 subsection (1), due consideration and great weight shall be
62 given to the interpretations of the Federal Trade Commission and
63 the federal courts relating to s. 5(a)(1) of the Federal Trade
64 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2013 ~~2006~~.

65 Section 5. Subsections (14) and (19) of section 681.102,
66 Florida Statutes, are amended to read:

67 681.102 Definitions.-As used in this chapter, the term:

68 (14) "Motor vehicle" means a new vehicle, propelled by
69 power other than muscular power, which is sold or registered in
70 this state to transport persons or property, and includes a
71 recreational vehicle or a vehicle used as a demonstrator or
72 leased vehicle if a manufacturer's warranty was issued as a
73 condition of sale, or the lessee is responsible for repairs, but
74 does not include vehicles run only upon tracks, off-road
75 vehicles, trucks over 10,000 pounds gross vehicle weight,
76 motorcycles, mopeds, or the living facilities of recreational
77 vehicles. "Living facilities of recreational vehicles" are those
78 portions designed, used, or maintained primarily as living
79 quarters and include, but are not limited to, the flooring,
80 plumbing system and fixtures, roof air conditioner, furnace,
81 generator, electrical systems other than automotive circuits,
82 the side entrance door, exterior compartments, and windows other
83 than the windshield and driver and front passenger windows.

84 (19) "Reasonable offset for use" means the number of miles
85 attributable to a consumer up to the date of a settlement
86 agreement or arbitration hearing, whichever occurs first,
87 multiplied by the base selling or sale ~~purchase~~ price of the

Page 3 of 9

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

24-01365A-13

20131464__

88 vehicle as reflected on the purchase invoice, exclusive of
89 taxes, government fees, and dealer fees, or in the case of a
90 lease, the agreed upon value as reflected in the lease agreement
91 and divided by 120,000, except in the case of a recreational
92 vehicle, in which event it shall be divided by 60,000.

93 Section 6. Subsection (1) of section 681.104, Florida
94 Statutes, is amended to read:

95 681.104 Nonconformity of motor vehicles.-

96 (1) (a) After three attempts have been made to repair the
97 same nonconformity, the consumer shall give written
98 notification, ~~by registered or express mail~~ to the manufacturer,
99 by any method providing a delivery confirmation, of the need to
100 repair the nonconformity to allow the manufacturer a final
101 attempt to cure the nonconformity. The manufacturer shall have
102 10 days, commencing upon receipt of such notification, to
103 respond and give the consumer the opportunity to have the motor
104 vehicle repaired at a reasonably accessible repair facility
105 within a reasonable time after the consumer's receipt of the
106 response. The manufacturer shall have 10 days, except in the
107 case of a recreational vehicle, in which event the manufacturer
108 shall have 45 days, commencing upon the delivery of the motor
109 vehicle to the designated repair facility by the consumer, to
110 conform the motor vehicle to the warranty. If the manufacturer
111 fails to respond to the consumer and give the consumer the
112 opportunity to have the motor vehicle repaired at a reasonably
113 accessible repair facility or perform the repairs within the
114 time periods prescribed in this subsection, the requirement that
115 the manufacturer be given a final attempt to cure the
116 nonconformity does not apply.

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

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117 (b) If the motor vehicle is out of service by reason of
 118 repair of one or more nonconformities by the manufacturer or its
 119 authorized service agent for a cumulative total of 15 or more
 120 days, exclusive of downtime for routine maintenance prescribed
 121 by the owner's manual, the consumer shall so notify the
 122 manufacturer in writing by any method providing a delivery
 123 confirmation ~~registered or express mail~~ to give the manufacturer
 124 or its authorized service agent an opportunity to inspect or
 125 repair the vehicle.

126 Section 7. Section 681.108, Florida Statutes, is amended to
 127 read:

128 681.108 Dispute-settlement procedures.—

129 (1) If a manufacturer has established a procedure that the
 130 department has certified as substantially complying with the
 131 provisions of 16 C.F.R. part 703, in effect October 1, 1983, as
 132 amended, and with the provisions of this chapter and the rules
 133 adopted under this chapter, and has informed the consumer how
 134 and where to file a claim with such procedure pursuant to s.
 135 681.103(3), the provisions of s. 681.104(2) apply to the
 136 consumer only if the consumer has first resorted to such
 137 procedure. The decisionmakers for a certified procedure shall,
 138 in rendering decisions, take into account all legal and
 139 equitable factors germane to a fair and just decision,
 140 including, but not limited to, the warranty; the rights and
 141 remedies conferred under 16 C.F.R. part 703, in effect October
 142 1, 1983, as amended; the provisions of this chapter; and any
 143 other equitable considerations appropriate under the
 144 circumstances. Decisionmakers and staff for a procedure shall be
 145 trained in the provisions of this chapter and in 16 C.F.R. part

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

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146 703, in effect October 1, 1983, as amended. In an action brought
 147 by a consumer concerning an alleged nonconformity, the decision
 148 that results from a certified procedure is admissible in
 149 evidence.

150 (2) A manufacturer may apply to the department for
 151 certification of its procedure. After receipt and evaluation of
 152 the application, the department shall:

153 ~~(a) certify the procedure or~~ Notify the manufacturer of any
 154 deficiencies in the application or the procedure;

155 (b) Certify the procedure as substantially complying with
 156 the provisions of 16 C.F.R. part 703, in effect October 1, 1983,
 157 as amended, and with the provisions of this chapter and rules
 158 adopted under this chapter, for a period not to exceed 1 year;
 159 or

160 (c) Deny certification of the procedure and state the
 161 reason for such denial.

162 (3) A certified procedure or a procedure of an applicant
 163 seeking certification shall submit to the department a copy of
 164 each settlement approved by the procedure or decision made by a
 165 decisionmaker within 30 days after the settlement is reached or
 166 the decision is rendered. The decision or settlement must
 167 contain at a minimum the:

168 (a) Name and address of the consumer;

169 (b) Name of the manufacturer and address of the dealership
 170 from which the motor vehicle was purchased;

171 (c) Date the claim was received and the location of the
 172 procedure office that handled the claim;

173 (d) Relief requested by the consumer;

174 (e) Name of each decisionmaker rendering the decision or

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

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175 person approving the settlement;

176 (f) Statement of the terms of the settlement or decision;

177 (g) Date of the settlement or decision; and

178 (h) Statement of whether the decision was accepted or
179 rejected by the consumer.

180 (4) Any manufacturer establishing or applying to establish
181 a certified procedure must file with the department a copy of
182 the annual audit required under the provisions of 16 C.F.R. part
183 703, in effect October 1, 1983, as amended, together with any
184 additional information required for purposes of certification,
185 including the number of refunds and replacements made in this
186 state pursuant to the provisions of this chapter by the
187 manufacturer during the period audited.

188 (5) The department shall review each certified procedure at
189 least annually to determine if the procedure should be
190 recertified. A manufacturer seeking recertification of its
191 procedure shall notify the department in writing at least 60
192 days before the end of the 1-year certification period. Upon
193 review, the department shall: ~~prepare an annual report~~
194 ~~evaluating the operation of certified procedures established by~~
195 ~~motor vehicle manufacturers and procedures of applicants seeking~~
196 ~~certification, and, for a period not to exceed 1 year, shall~~
197 ~~grant certification to, or~~

198 (a) Renew certification of the procedure for a period not
199 to exceed 1 year if the procedure is found to, ~~those~~
200 ~~manufacturers whose procedures~~ substantially comply with the
201 provisions of 16 C.F.R. part 703, in effect October 1, 1983, as
202 amended, and with the provisions of this chapter and rules
203 adopted under this chapter;

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204 (b) Notify the manufacturer of any deficiencies in the
205 procedure; or

206 (c) Decline to renew certification of the procedure. If
207 certification is declined ~~revoked or denied~~, the department
208 shall state the reasons for such action. ~~The reports and records~~
209 ~~of actions taken with respect to certification shall be public~~
210 ~~records.~~

211 (6) If a manufacturer ceases operation of a certified
212 procedure, the manufacturer shall notify the department
213 immediately in writing, and upon receipt of such notification,
214 the department shall revoke certification for that procedure,
215 effective the date the certified procedure ceased.

216 (7) ~~(6)~~ A manufacturer whose certification is declined
217 ~~denied or revoked~~ is entitled to a hearing pursuant to chapter
218 120.

219 (8) ~~(7)~~ If federal preemption of state authority to regulate
220 procedures occurs, the provisions of subsection (1) concerning
221 prior resort do not apply.

222 (9) ~~(8)~~ The department may adopt rules to administer this
223 section.

224 Section 8. Subsection (6) of section 681.109, Florida
225 Statutes, is amended to read:

226 681.109 Florida New Motor Vehicle Arbitration Board;
227 dispute eligibility.—

228 (6) The department may reject a dispute that it determines
229 to be fraudulent or outside the scope of the board's authority.
230 Any dispute deemed by the department to be ineligible for
231 arbitration by the board due to insufficient evidence may be
232 reconsidered upon the submission of new information regarding

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20131464

233 the dispute. The department after a second review, may reject a
234 dispute if the evidence is clearly insufficient to qualify for
235 relief. If the department rejects a dispute, it must provide
236 notice of the rejection and a brief explanation of the reason
237 for rejection to the consumer and to the manufacturer ~~If a~~
238 ~~dispute is rejected by the department, the department shall send~~
239 ~~by registered mail to the consumer and the manufacturer a brief~~
240 ~~explanation as to the reason for rejection.~~

241 Section 9. Subsection (4) of section 760.34, Florida
242 Statutes, is amended to read:

243 760.34 Enforcement.—

244 (4) If, within 180 days after a complaint is filed with the
245 commission or within 180 days after expiration of any period of
246 reference under subsection (3), the commission has been unable
247 to obtain voluntary compliance with ss. 760.20-760.37, the
248 person aggrieved may commence a civil action in any appropriate
249 court against the respondent named in the complaint or petition
250 for an administrative determination pursuant to s. 760.35 to
251 enforce the rights granted or protected by ss. 760.20-760.37.
252 If, as a result of its investigation under subsection (1), the
253 commission finds there is reasonable cause to believe that a
254 discriminatory housing practice has occurred, at the request of
255 the person aggrieved, the Attorney General may ~~shall~~ bring an
256 action in the name of the state on behalf of the aggrieved
257 person to enforce the provisions of ss. 760.20-760.37.

258 Section 10. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic AGENCY BILL

Bill Number 1464
(if applicable)

Name ROB JOHNSON

Amendment Barcode _____
(if applicable)

Job Title LEG. DIRECTOR

Address PC-01
Street

Phone 245-0145

TALL FL 32389
City State Zip

E-mail rob.johnson@
myfloridalegal.com

Speaking: For Against Information

Representing AC PAM BOND

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic Civil Rights - 76D.34 change

Bill Number 1464
(if applicable)

Name Danille Carroll

Amendment Barcode _____
(if applicable)

Job Title Director - Civil Rights

Address 107 W. Gaines Street
Street
Tallahassee, FL 32317
City State Zip

Phone 414-3618

E-mail danille.Carroll@myfloridalegal.com

Speaking: For Against Information

Representing Attorney General's OFFICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic AGENCY BILL

Bill Number 1464
(if applicable)

Name Jan Smith

Amendment Barcode _____
(if applicable)

Job Title LEMON LAW DIVISION DIRECTOR

Address COLLINS BLDG. GAINES STREET
Street

Phone 850-444-3500

TALL FL 32399
City State Zip

E-mail janet.smith@myflorida.legal.com

Speaking: For Against Information

Representing FL. ATTORNEY GENERAL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1468

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Appointment of an Attorney for a Dependent Child with Disabilities

DATE: March 19, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Fav/CS
2.			CF	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1468 creates s. 39.01305, F.S., to require a court to appoint attorneys to represent dependent children having disabilities who either reside in a skilled nursing home facility or are under consideration for placement in a skilled nursing facility.

This bill creates section 39.01305, Florida Statutes.

II. Present Situation:

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation of the state of Florida regarding the services the state provides to children having disabilities.¹ The DOJ visited a number of nursing homes that served severely disabled children throughout Florida. The DOJ found that the children housed at these facilities had little social activity, received little stimulation, and were often confined to their rooms or housed among the elderly.² The DOJ found that the state failed to provide for these children as required by the Americans with

¹ Letter to Attorney General Pam Bondi from Thomas E. Perez, Assistant Attorney General, Department of Justice (September 4, 2012), available at http://www.ada.gov/olmstead/documents/florida_findings_letter.pdf.

² *Id.*

Disabilities Act.³ In a letter from the DOJ, which was received by Attorney General Pam Bondi on September 1, 2012, the DOJ warned, “In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies described in this letter, the [U.S.] Attorney General may initiate a lawsuit pursuant to the ADA.”⁴

An attorney representing a dependent child having a disability could provide the necessary legal services to protect a child from a harmful environment and also insure that he or she receives all the necessary medical needs and other services needed to live full lives. This could include advocacy for benefits from the Agency for Persons with Disabilities, Agency for Health Care Administration, or the Social Security Administration.⁵

The purpose of ch. 39, F.S., is to provide for the care, safety, and protection of dependent children and to prevent child abuse, neglect, and abandonment.⁶ Chapter 39, F.S., provides for the appointment of a Guardian Ad Litem to represent the interest of the child in dependency cases.⁷ However, there is no provision in ch. 39, F.S., which specifically provides an attorney for a dependent child having a disability and who resides in a skilled nursing home. Additionally, while the Guardian Ad Litem program is required to represent all children in dependency hearings, according to the Statewide Guardian Ad Litem Office, due to cost constraints, the program represents only 69 percent of the children in the system.⁸

III. Effect of Proposed Changes:

The bill creates s. 39.01305, F.S., to require the court to appoint an attorney to represent a dependent child with a disability who either resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility.

The bill requires that the attorney be appointed in writing. The appointed attorney must provide the child with all necessary legal services, including all available appellate proceedings so that the attorney can address the medical and other services that the disabled child needs. The attorney must be adequately compensated and provided funding for costs of litigation. The appointment stays in effect until the attorney is discharged by the court, permitted to withdraw, or the case terminates.

The bill does not negate the authority of the court to appoint an attorney for a dependent child under other sections of ch. 39, F.S.

The bill takes effect July 1, 2013.

³ *Id.*

⁴ *Id.*

⁵ Statewide Guardian Ad Litem Office, *White paper: Bill Analysis* (2013) (on file with the Senate Committee on Judiciary).

⁶ Section 39.001(1)(a), F.S.

⁷ Section 39.822(1), F.S.

⁸ Statewide Guardian Ad Litem Office, *supra* note 5.

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 bill creates a requirement for the appointment of an attorney to represent a dependent child having a disability who resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility. Though this is a small group of individuals, attorneys representing these children must be compensated, including costs of litigation, until the termination of the case or the attorney is permitted to withdraw or is released. The bill provides that the implementation of the bill is subject to the appropriation of funds by the Legislature. The cost to implement the bill is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 39.01305(2)(c), F.S., appears to be the main substantive portion of the bill. However, the provision appears to be structured as intent. “It is the intent of the Legislature that an attorney be appointed by the court” To avoid ambiguity, the Legislature may wish to restructure the provision as a command, such that: “A court must appoint an attorney to represent each dependent child”

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 March 18, 2013

The CS makes technical changes to the underlying 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.



533146

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

Delete line 24
and insert:
supervision and resides in a skilled nursing facility or is
being considered for placement in a skilled nursing facility.



448044

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

Delete lines 29 - 30
and insert:

(b) The Legislature also finds that dependent children with disabilities as defined in this section have a particular need for an attorney



191654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

Delete lines 59 - 61
and insert:
under this chapter.

By Senator Lee

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20131468__

A bill to be entitled

An act relating to the appointment of an attorney for a dependent child with disabilities; creating s. 39.01305, F.S.; defining terms; providing legislative findings and intent; requiring an attorney to be appointed in writing; requiring that the appointment continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is terminated; requiring that the attorney be adequately compensated for his or her service; providing a limitation; providing for a conditional implementation; providing an effective date.

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

Section 1. Section 39.01305, Florida Statutes, is created to read:

39.01305 Appointment of an attorney for a dependent child with disabilities.-

(1) As used in this section, the term "dependent child with a disability" means a medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision and resides in a nursing home.

(2)(a) The Legislature finds that all children in chapter 39 proceedings have important interests at stake, such as health, safety, and well-being and the need to obtain permanency.

(b) The Legislature also finds that dependent children who

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have certain disabilities have a particular need for an attorney to represent them in such proceedings, as well as in fair hearings and appellate proceedings, so that the attorney can address the medical and related needs and the services and supports necessary for these children to live successfully in the community.

(c) It is the intent of the Legislature that an attorney be appointed by the court to represent each dependent child who has a disability and who has been placed in a skilled nursing facility, or is being considered for placement in a skilled nursing facility, solely because that facility can provide medical care as determined by a Children's Multi-Disciplinary Assessment Team staffing.

(3) An order appointing an attorney for a dependent child who has a disability must be in writing.

(4) The appointment of an attorney for the dependent child continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed to represent the child shall provide the complete range of legal services from removal from the home or initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to handle proceedings at an appellate hearing.

(5) The attorney must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation.

(6) This section does not negate the authority of the court to appoint an attorney for a dependent child in a proceeding

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59 under this chapter, limit a dependent child's right to an
60 attorney, or preclude an attorney from appearing on behalf of a
61 dependent child.

62 (7) Implementation of this section is subject to
63 appropriations expressly provided for this purpose.

64 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic SB 1468

Bill Number 1468
(if applicable)

Name TONY MARSHALL

Amendment Barcode _____
(if applicable)

Job Title SR. DIRECTOR OF REIMBURSEMENT

Address 307 W. PARK AVE.
Street

Phone 850 224 3907

TALLAHASSEE FL 32301
City State Zip

E-mail tmarshall@fhca.org

Speaking: For Against Information

Representing FLORIDA HEALTH CARE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic Counsel for Disabled Foster Children Bill Number 1468
(if applicable)

Name CHRISTINA SPUDAS Amendment Barcode _____
(if applicable)

Job Title Ex. Dir.

Address 1801 N. University Drive Phone 954-296-0860

Street

Ste 3B, Coral Springs, FL 33071

City

State

Zip

E-mail CHRISTINA.SPUDAS@FLORIDACHILDREN.FIRST-ORG

Speaking: For Against Information

Representing FLORIDA'S CHILDREN FIRST

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1494

INTRODUCER: Judiciary Committee and Senator Thrasher

SUBJECT: Florida False Claims Act

DATE: March 19, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1494 conforms the Florida False Claims Act (FFCA)¹ to the Federal False Claims Act.² Specifically, the bill:

- Expands the authority of the Department of Legal Affairs to issue subpoenas to investigate false claims against the state.
- Removes the statement of purpose for the FFCA.
- Revises the definitions under the FFCA to conform to the Federal False Claims Act, revises the violations under the FFCA,
- Revises procedures for the Department of Legal Affairs to intervene in a case under the FFCA.
- Expands the authority of the Attorney General’s Office to prosecute false claims allegedly made by certain governmental officials which are not acted upon by other state officials having authority to act.
- Revises provisions for the burden of proof, to provide that if a defendant in a state or federal proceeding is found guilty, pleads guilty, or pleads *nolo contendere* in a criminal action with

¹ Section 68.081, F.S., states that ss. 68.081 - 68.09, F.S., may be cited as the “Florida False Claims Act.”

² See Federal False Claims Act currently codified at 31 U.S.C. ss. 3729-3733 (Supp IV. 2010).

underlying facts that would support a *qui tam* action, the defendant may not deny any of the matters in the criminal proceeding, as if the department had been a party.

This bill creates section 68.0831, Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 68.081, 68.082, 68.083, 68.084, 68.085, 68.086, 68.087, 68.089, and 68.09.

II. Present Situation:

The Florida False Claims Act (FFCA)³ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval by a state agency. The Florida Legislature enacted the FFCA in 1994 and the FFCA is modeled after the Federal Civil False Claims Act.⁴ The Federal Civil False Claims Act was enacted during the Civil War in response to widespread fraud among defense contractors.⁵ The Federal Civil False Claims Act provides that the United States Attorney General and the Department of Justice may enforce the provisions of the federal act.⁶ The “*qui tam*” provisions of the Federal Civil False Claims Act, however, also authorize private individuals to enforce its provisions on behalf of the United States.⁷ “*Qui tam* action” means “[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.”⁸

In 1986, the Federal False Claims Act was substantially amended and the amendments revitalized the *qui tam* provisions of the federal act by allowing persons to bring an action regardless of the government’s prior knowledge of the allegations.⁹ As a result of the financial success that the Federal False Claims Act brought for federal government, a number of states in addition to Florida have adopted false claims act with *qui tam* provisions.¹⁰

In Florida, the FFCA has often been used to combat health care, nursing home, and Medicaid fraud.¹¹ An action under the FFCA can be brought either by the state itself, or by a private individual on behalf of the state. The Department of Legal Affairs and the Department of Financial Services are responsible for investigating and litigating actions brought under the FFCA. *Qui tam* actions may be brought by private entities on behalf of the State of Florida.¹²

³ Section 68.081, F.S., *supra* note 1

⁴ See House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) by the House Committee on Judiciary (Mar. 15, 1994) and *see also*, Federal False Claims Act, *supra* note 2.

⁵ See *Rainwater v. United States*, 356 U.S. 590, 592 (1958) (“The Act was originally passed in 1863 after disclosure of widespread fraud against the Government during the War Between the States.”).

⁶ See 31 U.S.C. s. 3729.

⁷ See 31 U.S.C. s. 3730(a) and (b)(1).

⁸ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁹ House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) *supra* note 5.

¹⁰ House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) *supra* note 5 and *also see* The False Claims Act Legal Center, Taxpayers Against Fraud Education Fund, State False Claims Acts, <http://www.taf.org/states-false-claims-acts> (last visited March 12, 2013).

¹¹ Florida Department of Legal Affairs.

¹² See s. 68.083(2), F.S. *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private

When a private person files a *qui tam* action, a copy of the complaint and disclosure of all material evidence must be served on the Attorney General, as head of the Department of Legal Affairs, and the Chief Financial Officer, as head of the Department of Financial Services.¹³ The FFCA does not explicitly provide that a complaint is to be sealed automatically upon filing. However, certain provisions in s. 68.083, F.S., arguably only have meaning if they are construed to mean that a complaint is automatically sealed. Section 68.083(2), F.S., provides that “[p]rior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed” Section 68.083(5), F.S., allows the Department of Legal Affairs to request an extension of the time during which the complaint remains sealed under subs. 68.035(2), F.S. Furthermore, the Leon County Clerk of Courts office indicated that the office’s current practice in order to comply with s. 68.083, F.S., is to automatically seal such complaints for 90 days. The complaint is unsealed on the 91st day unless a party successfully moves the court to keep it under seal.

Section 68.083(3), F.S., also provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 60 days to decide whether they are going to intervene and take over litigating the FFCA action from the private individual.

Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;¹⁴
- Making or using a false record to get a false or fraudulent claim paid or approved;¹⁵
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid;¹⁶ or
- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.¹⁷

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government.¹⁸ For example, if a person is found guilty of making a false claim where he or she defrauded \$100,000 from the state, that person is liable to pay the state \$300,000 plus the \$5,500 to \$11,000 penalty per claim.

Section 68.089, F.S., provides a statute of limitation where a civil action under the FFCA cannot be brought:

- More than 6 years after the date on which the false claim against the state is committed; or

entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. *See* ss. 68.085 and 68.086, F.S. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment. Section 68.085(3), F.S.

¹³ Section 68.083(3), F.S.

¹⁴ Section 68.082(2)(a), F.S.

¹⁵ Section 68.082(2)(b), F.S.

¹⁶ Section 68.082(2)(c), F.S.

¹⁷ Section 68.082(2)(g), F.S.

¹⁸ Section 68.082(2), F.S.

- More than 3 years after the date when the facts are known or reasonably should have been known by the state; but in no event more than 10 years after the date on which the violation is committed.

III. Effect of Proposed Changes:

The Florida False Claims Act – Section 68.081, F.S.

The current statute includes a statement of purpose that the FFCA is:

to deter persons from knowingly causing or assisting in causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false or fraudulent claim.

The bill removes the statement of purpose. The bill clarifies that the Florida False Claims Act includes ss. 68.091 and 68.092, F.S. Section 68.091, F.S., states that the “act shall be liberally construed to effectuate its remedial and deterrent purposes” and also contains a severability clause. Section 68.092, F.S., states that all moneys recovered by the Chief Financial Officer as head of the Department of Financial Services in any civil action for violation of the FFCA based on an action brought under the FFCA must be deposited in the Administrative Trust Fund of the Department of Financial Services.

Definitions – Section 68.082, F.S.

The current statute defines “agency” as an official or other subset of the executive branch of the state government.

The bill removes this definition, and consistently changes the term “agency” throughout the balance of the FFCA to “state.” The term “state” is defined in the bill so as to include state agencies, authorities, and instrumentalities. The net effect of these changes is to expand the applicability of the FFCA to state subdivisions and instrumentalities where prior law limited it to executive branch agencies.¹⁹

The bill also adds definitions for “material” and “obligation”²⁰ which conforms with definitions found in the Federal False Claims Act. “Material” includes the ability to influence the payment of money, and “obligation” now includes an established duty.

¹⁹ Cf. Fla. AGO 2011-10, which excludes municipalities from the act because of the definitions of “agency,” and “instrumentality.” 2011 WL 2429107.

²⁰ Under the Federal False Claims Act, “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. 31 U.S.C. 3729(b)(3). Under the Federal False Claims Act, “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment. 31 U.S.C. 3729 (b)(4).

Violations under Section 68.082(2), F.S.

The bill substantially expands the jurisdiction of the Department of Legal Affairs to investigate and prosecute violations of the FFCA. Currently, the jurisdiction of the Department of Legal Affairs under the FFCA is limited to pursuing perpetrators of fraudulent claims against executive branch entities. The bill authorizes the Attorney General's Office to investigate or prosecute perpetrators of false claims against any instrumentality of the state, which would include the Legislative and Judicial Branches.

Currently, an agency or the department may take action against perpetrators of false claims. Because the bill consistently removes "agency" and replaces it with "department," the bill makes the Department of Legal Affairs the sole entity in the state to pursue the FFCA, except for those initiated by or intervened in by the Department of Financial Services pursuant to s. 68.083, F.S.

Under the bill, a person is liable under the FFCA who:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation the violations statute;
- Has possession, custody, or control of property or money used or to be used by the state and knowingly delivers or causes to be delivered less than all or that money or property;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the state, makes or delivers the receipt without knowing that the information on the receipt is true;
- Knowingly buys or received, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.

The conduct prohibited by the FFCA as revised by the bill is only subtly different than the conduct prohibited under existing law. The civil penalties for violating the FFCA of \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government are unchanged.

Civil Actions for False Claims – Section 68.083, F.S.

Section 68.083(7), F.S., provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, as appropriate, have 60 days to decide whether to intervene and take over litigating the FFCA action from the private individual. The bill removes the reference to "on behalf of the state," which appears to preclude other government entities other than the Department of Legal Affairs or the Department of Financial Services from intervening or bringing a related action.

Subpoenas – Section 68.0831, F.S.

Under current law, the Department of Legal Affairs may investigate claims but is not authorized to issue subpoenas to facilitate the investigation of claims. The department reports that the lack of subpoena authority can make it difficult for the department to determine if it is appropriate to intervene in a FFCA case.

The bill creates s. 68.0831, F.S., to grant the Department of Legal Affairs discovery capabilities prior to the institution of a civil proceeding, if it has reason to believe that any person has testimony or evidence relevant to an investigation. The bill provides that the department may issue subpoenas requiring the recipient to:

- Produce documents;
- Answer interrogatories under oath; and
- Give sworn testimony.

The bill provides:

- A subpoena will be served as other process;
- A subpoena must detail the materials requested and the nature of the conduct to which the materials relate;
- The recipient of a subpoena may petition the Circuit Court of Leon County for relief from the subpoena;
- The recipient of a subpoena has 30 days to respond at the time and place specified, or risk being subject to contempt;
- Transcribed testimony may be reviewed by the deponent;
- The department may stipulate to protective orders; and
- The department may request that a person who refuses to comply on Fifth Amendment grounds may be compelled to comply by the court.

The bill provides that the discovery provisions do not impair the ability of the department to:

- Institute a civil proceeding; or
- Invoke the power of the court to compel production of evidence before a grand jury.

The bill provides for a civil penalty up to \$100,000 for a natural person and \$1 million for any other entity, plus reasonable attorney fees and costs if the person or entity knowingly creates or destroys evidence while a subpoena is pending.

Rights of Parties in Civil Actions – Section 68.084, F.S.

Currently, the department may dismiss a cause voluntarily over the objections of the person who initiated the action. The bill authorizes the department to dismiss an action “at any point” over the objections of said person.

Currently, the application of one civil remedy under the Act does not preclude another. The bill authorizes the state to elect to pursue a false claim through an administrative remedy to determine a civil monetary penalty, and if the state does so, the person bringing the action has the same rights as the person will have in an action brought through the courts.

The bill also specifies when a finding or conclusion is final once the time for appeal has expired.

Awards to Plaintiffs Bringing Actions – Section 68.085, F.S.

Currently, the private party bringing the action is entitled to recover a portion of the proceeds awarded by the court in the event that the department prevails in a false claims action.

The bill adds that the person bringing the claim will also be entitled to expenses incurred in pursuit of the claim, including reasonable attorney fees and costs. Moreover, those fees and costs will be assessed against the defendant and are payable only from the proceeds of the action.

Expenses and Attorney Fees – Section 68.086, F.S.

Currently, the provisions for the fees and costs of the person bringing the action and the department are contained in the same section of the FFCA. Because the provisions for the payment of private parties has been moved to s. 68.085, F.S., that provision was removed from s. 68.087, F.S., leaving provision for payment of attorney fees to the department intact.

Exemptions to Civil Actions – Section 68.087, F.S.

Government Officials

Section 68.087, F.S., closely resembles the federal false claims statute.²¹ Currently, the statute provides that no court shall have jurisdiction over an action under the statute against any member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government.

The bill departs from the federal model, which continues to provide that a court has no jurisdiction over a false claims action for acts known to “the [g]overnment.” The bill changes this limitation to information known to the Department of Legal Affairs or Department of Financial Services. This distinction has the effect of expanding potential false claims actions to now include previously excluded government officials where information is not previously known to the Department of Legal Affairs or the Department of Financial Services.

Publicly Disclosed Evidence

Currently if a false claim is brought based upon evidence which was disclosed in a pending investigation, the court does not have jurisdiction to entertain the action. Disclosure of the

²¹ 31 U.S.C. 3730(e)(2)(A) provides “[n]o court shall have jurisdiction over an action brought under [the Federal False Claims Act] against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.”

evidence through the media also causes the court to lose jurisdiction, unless the person bringing the action was the original source of the information.²²

The bill provides that the court may dismiss an action brought upon publicly disclosed facts, and gives the department the opportunity to object to such dismissal of the action.

Local Governments

Currently, the statute²³ provides that the court has no jurisdiction over a case brought against local governments, which is defined as a county or municipality.

The bill removes the reference to local governments and continues to provide that the court cannot have jurisdiction over an action brought under the act against a county or municipality.

Limitations and Interventions by the Department – Section 68.089, F.S.

Limitation of Actions

Currently, no action may be brought for false claims more than 6 years after the violation, or more than 3 years after the material facts were known to the public official charged with responsibility of the matter, but in no event more than 10 years after the date on which the violation was committed.

Under the bill expands the limitation on actions so that an action may not be brought more than three years after the date when the material facts were known or reasonably should have been known by Department of Legal Affairs or the Department of Financial Services, as appropriate, rather than the state official charged with responsibility of the matter. The distinction of this effect will allow the department to sit in the shoes of the government official who has responsibility for the matter. Therefore, no action may be brought more than 3 years after material facts were known to the department.

Intervention by the Department

The bill adds a new provision which allows the Department of Legal Affairs or the Department of Financial Services, as appropriate, to amend the pleadings if it intervenes in an existing action. It may also file a completely new complaint. For statute of limitations purposes, the bill provides that such changes relate back to the original date the action was brought. The bill authorizes the department to intervene and make such changes in pending actions.

²² The current provision which deprives the court of jurisdiction subjects a suit in these circumstances to dismissal pursuant to Fla. R. Civ. Pro. 1.140 on the basis of a lack of subject matter jurisdiction. Further, a court order entered without jurisdiction is void. *Blewitt v. Nicholson*, 2 Fla. 200 (1848).

²³ Section 68.088(6), F.S.

Burden of Proof – Section 68.09, F.S.

Currently the statute provides that the State of Florida must prove the essential elements of a false claim action by a preponderance of the evidence. The bill changes the “State of Florida” to the “department.”

The bill adds that if a defendant in a state or federal proceeding is found guilty, pleads guilty, or pleads *nolo contendere* in a criminal action with underlying facts that would support a *qui tam* action, the defendant is estopped (may not deny) any of the matters in the criminal proceeding, as if the department had been a party.

Effective date

The bill takes effect July 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:

None.

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 March 18, 2013:

The committee substitute corrects a scrivener’s error, replacing the word “department” with “state government.”

- B. **Amendments:**

None.

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



802870

LEGISLATIVE ACTION

Senate	.	House
	.	
Comm: RCS	.	
03/19/2013	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 521 - 529.

=====
D I R E C T O R Y C L A U S E A M E N D M E N T
=====

And the directory clause is amended as follows:

Delete line 518

and insert:

Section 8. Subsections (2), (3), and (6) of section

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

And the title is amended as follows:



802870

13 Delete line 53
14 and insert:
15 68.087, F.S.; revising

By Senator Thrasher

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1 A bill to be entitled
 2 An act relating to the Florida False Claims Act;
 3 amending s. 68.081, F.S.; revising a cross-reference;
 4 deleting a statement of purpose; amending s. 68.082,
 5 F.S.; deleting, revising, and providing definitions;
 6 revising conditions under which a person is liable for
 7 a specified civil penalty; amending s. 68.083, F.S.;
 8 revising terminology; revising language concerning who
 9 may intervene or bring a related action after a person
 10 files an action under the act; creating s. 68.0831,
 11 F.S.; authorizing the Department of Legal Affairs to
 12 issue subpoenas for specified purposes before the
 13 institution of civil proceedings; providing
 14 requirements for the content and service of subpoenas;
 15 providing that such subpoenas may not require
 16 specified protected documents or testimony; specifying
 17 that the department's power to require the appearance
 18 of witnesses or production of documents or other
 19 tangible evidence located outside the state is
 20 unaffected; providing for petitions to modify or set
 21 aside subpoenas; providing for orders to comply with
 22 subpoenas; providing for the examination of witnesses;
 23 providing for review of transcripts of testimony;
 24 authorizing the department to stipulate to protective
 25 orders of submitted documents and information;
 26 providing for natural persons who decline to testify
 27 or produce documents after asserting a privilege
 28 against self-incrimination to be ordered to testify or
 29 produce documents; providing for contempt to comply

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

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30 with such orders; providing for examination of
 31 testimony, answers, or materials by the person who
 32 produced such materials or answers; providing for
 33 construction; prohibiting specified actions by a
 34 person knowing or having reason to believe that a
 35 subpoena is pending; providing civil penalties;
 36 amending s. 68.084, F.S.; clarifying that the
 37 department may dismiss actions at any point; revising
 38 language concerning the costs to the department for
 39 continuing to receive pleadings and transcripts of an
 40 action after it has elected to withdraw; providing
 41 that the state may elect to pursue available
 42 alternative remedies, including administrative
 43 proceedings; specifying what constitutes a final
 44 finding or conclusion in an alternative proceeding
 45 that is binding on all parties to an action under the
 46 act; amending s. 68.085, F.S.; providing for
 47 successful plaintiffs to receive, in addition to a
 48 portion of the amount recovered, awards of expenses
 49 and attorney fees and costs; amending s. 68.086, F.S.;
 50 deleting references to awards of attorney fees to
 51 successful plaintiffs; revising provisions relating to
 52 awards of attorney fees to the department; amending s.
 53 68.087, F.S.; revising terminology; revising
 54 provisions relating to dismissal of an action if
 55 substantially the same allegations or transactions as
 56 alleged in the action were publicly disclosed;
 57 amending s. 68.089, F.S.; providing for the treatment
 58 for statutes of limitations purposes of pleadings

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

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59 filed in interventions by the department; amending s.
60 68.09, F.S.; providing for estoppel as to certain
61 matters following a final judgment or decree rendered
62 in favor of the state or the Federal Government in
63 certain criminal proceedings; providing an effective
64 date.

65
66 Be It Enacted by the Legislature of the State of Florida:

67
68 Section 1. Section 68.081, Florida Statutes, is amended to
69 read:

70 68.081 Florida False Claims Act; short title; ~~purpose.~~

71 ~~(1)~~ Sections 68.081-68.092 ~~68.081-68.09~~ may be cited as the
72 "Florida False Claims Act."

73 ~~(2) The purpose of the Florida False Claims Act is to deter~~
74 ~~persons from knowingly causing or assisting in causing state~~
75 ~~government to pay claims that are false or fraudulent, and to~~
76 ~~provide remedies for obtaining treble damages and civil~~
77 ~~penalties for state government when money is obtained from state~~
78 ~~government by reason of a false or fraudulent claim.~~

79 Section 2. Section 68.082, Florida Statutes, is amended to
80 read:

81 68.082 False claims against the state; definitions;
82 liability.-

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

84 ~~(a) "Agency" means any official, officer, commission,~~
85 ~~board, authority, council, committee, or department of the~~
86 ~~executive branch of state government.~~

87 ~~(a)(b)~~ "Claim" means ~~includes~~ any ~~written or electronically~~

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88 ~~submitted~~ request or demand, whether under a contract or
89 otherwise, for money or property, regardless of whether the
90 state has title to the money or property, that: ~~or services,~~
91 ~~which~~

92 1. Is presented ~~made~~ to any employee, officer, or agent of
93 the state; ~~an agency,~~ or

94 2. Is made to a ~~any~~ contractor, grantee, or other recipient
95 if the ~~state agency~~ provides or has provided any portion of the
96 money or property requested or demanded, or if the ~~state agency~~
97 will reimburse the contractor, grantee, or other recipient for
98 any portion of the money or property that is requested or
99 demanded.

100 (c) "Knowing" or "knowingly" means, with respect to
101 information, that a person:

- 102 1. Has actual knowledge of the information;
103 2. Acts in deliberate ignorance of the truth or falsity of
104 the information; or
105 3. Acts in reckless disregard of the truth or falsity of
106 the information.

107
108 No proof of specific intent to defraud is required. Innocent
109 mistake shall be a defense to an action under this act.

110 (d) "Material" means having a natural tendency to
111 influence, or be capable of influencing, the payment or receipt
112 of money or property.

113 (e) "Obligation" means an established duty, fixed or
114 otherwise, arising from an express or implied contractual,
115 grantor-grantee, or licensor-licensee relationship, from a fee-
116 based or similar relationship, from statute or regulation, or

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117 from the retention of any overpayment.

118 ~~(f)(d)~~ "State government" means the government of the state
119 or any department, division, bureau, commission, regional
120 planning agency, board, district, authority, agency, or other
121 instrumentality of the state.

122 ~~(b)(c)~~ "Department" means the Department of Legal Affairs,
123 except as specifically provided in ss. 68.083 and 68.084.

124 (2) Any person who:

125 (a) Knowingly presents or causes to be presented ~~to an~~
126 ~~officer or employee of an agency~~ a false or fraudulent claim for
127 payment or approval;

128 (b) Knowingly makes, uses, or causes to be made or used a
129 false record or statement material to ~~get~~ a false or fraudulent
130 claim ~~paid or approved by an agency~~;

131 (c) Conspires to commit a violation of this subsection
132 ~~submit a false or fraudulent claim to an agency or to deceive an~~
133 ~~agency for the purpose of getting a false or fraudulent claim~~
134 ~~allowed or paid~~;

135 (d) Has possession, custody, or control of property or
136 money used or to be used by the state an agency and, ~~intending~~
137 ~~to deceive the agency or~~ knowingly ~~conceal the property,~~
138 delivers or causes to be delivered less ~~property~~ than all of
139 that money or property ~~the amount for which the person receives~~
140 ~~a certificate or receipt~~;

141 (e) Is authorized to make or deliver a document certifying
142 receipt of property used or to be used by the state an agency
143 and, intending to defraud ~~deceive~~ the state agency, makes or
144 delivers the receipt without knowing that the information on the
145 receipt is true;

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146 (f) Knowingly buys or receives, as a pledge of an
147 obligation or a debt, public property from an officer or
148 employee of the state an agency who may not sell or pledge the
149 property ~~lawfully~~; or

150 (g) Knowingly makes, uses, or causes to be made or used a
151 false record or statement material to an obligation to pay or
152 transmit money or property to the state, or knowingly conceals
153 or knowingly and improperly avoids or decreases ~~to conceal,~~
154 ~~avoid, or decrease~~ an obligation to pay or transmit money or
155 property to the state an agency,

156
157 is liable to the state for a civil penalty of not less than
158 \$5,500 and not more than \$11,000 and for treble the amount of
159 damages the state agency sustains because of the act ~~or omission~~
160 of that person.

161 (3) The court may reduce the treble damages authorized
162 under subsection (2) if the court finds one or more of the
163 following specific extenuating circumstances:

164 (a) The person committing the violation furnished the
165 department officials of the agency responsible for investigating
166 ~~false claims violations~~ with all information known to the person
167 about the violation within 30 days after the date on which the
168 person first obtained the information;

169 (b) The person fully cooperated with any official
170 investigation of the violation; or

171 (c) At the time the person furnished the department agency
172 with the information about the violation, no criminal
173 prosecution, civil action, or administrative action had
174 commenced under this section with respect to the violation, and

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175 the person did not have actual knowledge of the existence of an
176 investigation into the violation;

177
178 in which case the court shall award no less than 2 times the
179 amount of damages sustained by the ~~state agency~~ because of the
180 act of the person. The court shall set forth in a written order
181 its findings and basis for reducing the treble damages award.

182 Section 3. Subsection (7) of section 68.083, Florida
183 Statutes, is amended to read:

184 68.083 Civil actions for false claims.—

185 (7) When a person files an action under this section, no
186 person other than the department ~~on behalf of the state~~ may
187 intervene or bring a related ~~an~~ action ~~under this act~~ based on
188 the facts underlying the pending action.

189 Section 4. Section 68.0831, Florida Statutes, is created to
190 read:

191 68.0831 Subpoena.—

192 (1) Whenever the department has reason to believe that any
193 person may be in possession, custody, or control of any
194 documentary material or may have any information, which
195 documentary material or information is relevant to a civil
196 investigation authorized by s. 68.083, the department may,
197 before the institution of a civil proceeding thereon, issue in
198 writing and cause to be served upon the person a subpoena
199 requiring the person to:

200 (a) Produce such documentary material for inspection and
201 copying or reproduction;

202 (b) Answer, under oath and in writing, written
203 interrogatories;

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204 (c) Give sworn oral testimony concerning the documentary
205 material or information; or

206 (d) Furnish any combination of such material, answers, or
207 testimony.

208 (2) The subpoena shall:

209 (a) Be served upon the person in the manner required for
210 service of process in this state or by certified mail showing
211 receipt by the addressee or by the authorized agent of the
212 addressee.

213 (b) State the nature of the conduct that constitutes the
214 violation of this act and that is alleged to have occurred or to
215 be imminent.

216 (c) Describe the class or classes of documentary material
217 to be produced thereunder with such definiteness and certainty
218 as to permit such materials to be reasonably identified.

219 (d) Prescribe a date and time at which the person must
220 appear to testify, under oath or affirmation, or by which the
221 person must answer written interrogatories or produce the
222 documentary material for inspection or copying; however, such
223 date shall not be earlier than 30 days after the date of service
224 of the subpoena.

225 (e) Specify a place for the taking of testimony or for the
226 submission of answers to interrogatories and identify the person
227 who is to take custody of any documentary material. Inspection
228 and copying of documentary material shall be carried out at the
229 place where the documentary material is located or at such other
230 place as may be thereafter agreed to by the person and such
231 designated custodian. Upon written agreement between the person
232 and the designated custodian, copies may be substituted for

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233 original documents.

234 (3) Such subpoena may not require the production of any
 235 documentary material, the submission of any answers to written
 236 interrogatories, or the giving of any oral testimony if such
 237 material, answers, or testimony would be protected from
 238 disclosure under:

239 (a) The standards applicable to subpoenas or subpoenas
 240 duces tecum issued by a court of this state in aid of a grand
 241 jury investigation; or

242 (b) The standards applicable to a discovery request under
 243 the Florida Rules of Civil Procedure, to the extent that the
 244 application of such standards to any such subpoena is
 245 appropriate and consistent with the provisions and purposes of
 246 this act.

247 (4) This section does not limit the power of the department
 248 to require the appearance of witnesses or production of
 249 documents or other tangible evidence located outside the state.

250 (5) Within 30 days after the service of a subpoena upon any
 251 person or at any time before the return date specified therein,
 252 whichever period is longer, the person served may file, and
 253 serve on the department, a petition for an order of the court
 254 modifying or setting aside the subpoena. Any such petition shall
 255 be filed in the circuit court of the Second Judicial Circuit in
 256 and for Leon County. The time allowed for compliance in whole or
 257 in part with the subpoena as deemed proper and ordered by the
 258 court shall not run while the petition is pending before the
 259 court. The petition shall specify each ground upon which the
 260 petitioner relies in seeking relief and may be based upon the
 261 failure of the subpoena to comply with this section or upon any

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262 constitutional or other legal right or privilege of such person.

263 (6) In case of the failure of any person to comply in whole
 264 or in part with a subpoena and when such person has not filed a
 265 petition under subsection (5), the circuit court of the Second
 266 Judicial Circuit in and for Leon County, upon application of the
 267 department, may issue an order requiring compliance. The failure
 268 to obey the order of the court shall be punishable as a contempt
 269 of court.

270 (7) The examination of all witnesses under this section
 271 shall be conducted by the department before an officer
 272 authorized to administer oaths in this state. The testimony
 273 shall be taken stenographically or by a sound-recording device.
 274 Any person compelled to appear under a subpoena for oral
 275 testimony pursuant to this section may be accompanied,
 276 represented, and advised by counsel. Counsel may advise such
 277 person, in confidence, either upon the request of such person or
 278 upon counsel's own initiative, with respect to any question
 279 asked of such person. Such person or counsel may object on the
 280 record to any question, in whole or in part, and shall briefly
 281 state for the record the reason for any such objection. If such
 282 person refuses to answer any question, the person conducting the
 283 examination may petition the circuit court as provided by
 284 subsection (10).

285 (8) When the testimony is fully transcribed, the person
 286 conducting the deposition shall afford the witness, and counsel,
 287 if any, a reasonable opportunity to examine the transcript, and
 288 the transcript shall be read to or by the witness, unless such
 289 examination and reading is waived by the witness. Any changes in
 290 form or substance that the witness desires to make shall be

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 291 entered and identified upon the transcript by the officer or the
 292 department, with a statement of the reasons given by the witness
 293 for making such changes. The transcript shall then be signed by
 294 the witness unless the witness waives the signing in writing, is
 295 ill, cannot be found, or refuses to sign. If the transcript is
 296 not signed by the witness within 30 days after his or her being
 297 afforded a reasonable opportunity to examine it, the person
 298 conducting the examination shall sign it and state on the record
 299 the fact of the waiver, illness, absence, or refusal to sign,
 300 together with the reason, if any, given therefor. Any person
 301 required to testify or to submit documentary evidence is
 302 entitled, on payment of reasonable costs, to procure a copy of
 303 any document produced by such person and of his or her own
 304 testimony as stenographically reported or, in the case of a
 305 deposition, as reduced to writing by or under the direction of
 306 the person taking the deposition.

(9) The department shall have the authority to stipulate to
 307 protective orders with respect to documents and information
 308 submitted in response to a subpoena under this section.

(10) The department may request that any natural person who
 311 refuses to comply with this section on the ground that the
 312 testimony or documents may incriminate him or her be ordered by
 313 the circuit court to provide the testimony or the documents.
 314 Except in a prosecution for perjury, a natural person who
 315 complies with a court order to provide testimony or documents
 316 after asserting a privilege against self-incrimination to which
 317 he or she is entitled by law may not be subject to a criminal
 318 proceeding with respect to the transaction to which he or she is
 319 required to testify or produce documents. Any natural person who

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 320 fails to comply with such a court order to testify or produce
 321 documents may be adjudged in contempt and imprisoned until the
 322 time the person purges himself or herself of the contempt.

(11) While in the possession of the custodian, documentary
 324 material, answers to interrogatories, and transcripts of oral
 325 testimony shall be available, under such reasonable terms and
 326 conditions as the department shall prescribe, for examination by
 327 the person who produced such materials or answers or that
 328 person's duly authorized representative.

(12) This section does not impair the authority of the
 330 department to:

(a) Institute a civil proceeding under s. 68.083; or

(b) Invoke the power of a court to compel the production of
 333 evidence before a grand jury.

(13) (a) A person who knows or has reason to believe that a
 335 subpoena pursuant to this section is pending shall not:

1. Alter, destroy, conceal, or remove any record, document,
 337 or thing with the purpose of impairing its verity or
 338 availability in such proceeding or investigation; or

2. Make, present, or use any record, document, or thing
 340 knowing it to be false.

(b) Any natural person who violates this subsection is
 342 subject to a civil penalty of not more than \$100,000, reasonable
 343 attorney fees, and costs. Any other person who violates this
 344 subsection is subject to a civil penalty of not more than \$1
 345 million, reasonable attorney fees, and costs.

Section 5. Subsections (2) through (5) of section 68.084,
 347 Florida Statutes, are amended to read:

68.084 Rights of the parties in civil actions.-

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349 (2) (a) The department may at any point voluntarily dismiss
350 the action notwithstanding the objections of the person
351 initiating the action.

352 (b) Subject to s. 17.04, nothing in this act shall be
353 construed to limit the authority of the department or the qui
354 tam plaintiff to compromise a claim brought in a complaint filed
355 under this act if the court determines, after a hearing, that
356 the proposed settlement is fair, adequate, and reasonable under
357 all the circumstances.

358 (c) Upon a showing by the department that unrestricted
359 participation during the course of the litigation by the person
360 initiating the action would interfere with or unduly delay the
361 department's prosecution of the case, or would be repetitious,
362 irrelevant, or for purposes of harassment, the court may, in its
363 discretion, impose limitations on the person's participation,
364 including, but not limited to:

- 365 1. Limiting the number of witnesses the person may call;
- 366 2. Limiting the length of the testimony of the person's
367 witnesses;
- 368 3. Limiting the person's cross-examination of witnesses; or
- 369 4. Otherwise limiting the participation by the person in
370 the litigation.

371 (d) Upon a showing by the defendant that unrestricted
372 participation during the course of the litigation by the person
373 initiating the action would be for purposes of harassment or
374 would cause the defendant undue burden or unnecessary expense,
375 the court may limit the participation by the person in the
376 litigation.

377 (3) If the department elects not to proceed with the

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378 action, the person who initiated the action has the right to
379 conduct the action. If the Attorney General, as head of the
380 department, or the Chief Financial Officer, as head of the
381 Department of Financial Services, so requests, it shall be
382 served, ~~at the requesting department's expense~~, with copies of
383 all pleadings and motions filed in the action along with and
384 copies of all deposition transcripts at the requesting
385 department's expense. When a person proceeds with the action,
386 the court, without limiting the rights of the person initiating
387 the action, may nevertheless permit the department to intervene
388 and take over the action on behalf of the state at a later date
389 upon showing of good cause.

390 (4) Regardless of whether ~~or not~~ the department proceeds
391 with the action, upon a showing by the department that certain
392 actions of discovery by the person initiating the action would
393 interfere with an investigation by the state government or the
394 prosecution of a criminal or civil matter arising out of the
395 same facts, the court may stay such discovery for a period of
396 not more than 60 days. Such a showing shall be conducted in
397 camera. The court may extend the 60-day period upon a further
398 showing in camera by the department that the criminal or civil
399 investigation or proceeding has been pursued with reasonable
400 diligence and any proposed discovery in the civil action will
401 interfere with an ongoing criminal or civil investigation or
402 proceeding.

403 (5) Notwithstanding paragraph (2)(b), the state may elect
404 to pursue its claim through any available alternate remedy,
405 including any administrative proceeding to determine a civil
406 money penalty. If any such alternate remedy is pursued in

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407 another proceeding, the person initiating the action shall have
 408 the same rights in such proceeding as the person would have had
 409 if the action had continued under this section ~~The application~~
 410 ~~of one civil remedy under this act does not preclude the~~
 411 ~~application of any other remedy, civil or criminal, under this~~
 412 ~~act or any other provision of law. Civil remedies under this act~~
 413 ~~are supplemental, not mutually exclusive.~~ Any finding of fact or
 414 conclusion of law made in such other proceeding that has become
 415 final shall be conclusive on all parties to an action under this
 416 section. For purposes of ~~As used in~~ this subsection, a finding
 417 or conclusion is final if it has been finally determined on
 418 appeal to the appropriate court, if all time for filing such an
 419 appeal with respect to the finding or conclusion has expired, or
 420 if the finding or conclusion is ~~the term "final" means~~ not
 421 subject to judicial review.

422 Section 6. Section 68.085, Florida Statutes, is amended to
 423 read:

424 68.085 Awards to plaintiffs bringing action.—

425 (1) (a) If the department proceeds with ~~and prevails in~~ an
 426 action brought by a person under this act, subject to the
 427 requirements of paragraph (b), the person shall receive ~~except~~
 428 ~~as provided in subsection (2), the court shall order the~~
 429 ~~distribution to the person of~~ at least 15 percent but not more
 430 than 25 percent of the proceeds of the ~~recovered under any~~
 431 ~~judgment obtained by the department in an action under s. 68.082~~
 432 ~~or of the proceeds of any~~ settlement of the claim, depending
 433 upon the extent to which the person substantially contributed to
 434 the prosecution of the action.

435 (b)(2) If the department proceeds with an action which the

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436 court finds the action to be based primarily on disclosures of
 437 specific information, other than information ~~that~~ provided by
 438 the person bringing the action, relating to allegations or
 439 transactions in a criminal, civil, or administrative hearing; a
 440 legislative, administrative, inspector general, or auditor
 441 general report, hearing, audit, or investigation; or from the
 442 news media, the court may award such sums as it considers
 443 appropriate, but in no case more than 10 percent of the proceeds
 444 ~~recovered under a judgment or received in settlement of a claim~~
 445 ~~under this act~~, taking into account the significance of the
 446 information and the role of the person bringing the action in
 447 advancing the case to litigation.

448 (c) Any payment to a person under paragraph (a) or
 449 paragraph (b) shall be made from the proceeds. The person shall
 450 also receive an amount for reasonable expenses that the court
 451 finds to have been necessarily incurred, plus reasonable
 452 attorney fees and costs. All such expenses, fees, and costs
 453 shall be awarded against the defendant.

454 (2)(3) If the department does not proceed with an action
 455 under this section, the person bringing the action or settling
 456 the claim shall receive an amount that ~~which~~ the court decides
 457 is reasonable for collecting the civil penalty and damages. The
 458 amount shall be not less than 25 percent and not more than 30
 459 percent of the proceeds of the action or settlement and shall be
 460 paid out of such proceeds ~~recovered under a judgment rendered in~~
 461 ~~an action under this act or in settlement of a claim under this~~
 462 ~~act.~~ The person shall also receive an amount for reasonable
 463 expenses that the court finds to have been necessarily incurred,
 464 plus reasonable attorney fees and costs. All such expenses,

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465 fees, and costs shall be awarded against the defendant.

466 ~~(3)(4)~~ Following any distributions under subsection (1) or
 467 subsection (2), ~~or subsection (3)~~, the state entity agency
 468 injured by the submission of a false or fraudulent claim shall
 469 be awarded an amount not to exceed its compensatory damages. If
 470 the action was based on a claim of funds from the state Medicaid
 471 program, 10 percent of any remaining proceeds shall be deposited
 472 into the Operating Trust Fund to fund rewards for persons who
 473 report and provide information relating to Medicaid fraud
 474 pursuant to s. 409.9203. Any remaining proceeds, including civil
 475 penalties awarded under s. 68.082, shall be deposited in the
 476 General Revenue Fund.

477 ~~(5) Any payment under this section to the person bringing~~
 478 ~~the action shall be paid only out of the proceeds recovered from~~
 479 ~~the defendant.~~

480 (4)(6) Regardless of whether ~~or not~~ the department proceeds
 481 with the action, if the court finds that the action was brought
 482 by a person who planned and initiated the violation of s. 68.082
 483 upon which the action was brought, the court may, to the extent
 484 the court considers appropriate, reduce the share of the
 485 proceeds of the action ~~that which~~ the person would otherwise
 486 receive under this section, taking into account the role of the
 487 person in advancing the case to litigation and any relevant
 488 circumstances pertaining to the violation. If the person
 489 bringing the action is convicted of criminal conduct arising
 490 from his or her role in the violation of s. 68.082, the person
 491 shall be dismissed from the civil action and shall not receive
 492 any share of the proceeds of the action. Such dismissal shall
 493 not prejudice the right of the department to continue the

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494 action.

495 Section 7. Section 68.086, Florida Statutes, is amended to
 496 read:

497 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

498 (1) If the department initiates an action under this act or
 499 assumes control of an action brought by a person under this act,
 500 the department shall be awarded its reasonable attorney
 501 ~~attorney's~~ fees, expenses, and costs.

502 ~~(2) If the court awards the person bringing the action~~
 503 ~~proceeds under this act, the person shall also be awarded an~~
 504 ~~amount for reasonable attorney's fees and costs. Payment for~~
 505 ~~reasonable attorney's fees and costs shall be made from the~~
 506 ~~recovered proceeds before the distribution of any award.~~

507 (2)(3) If the department does not proceed with an action
 508 under this act and the person bringing the action conducts the
 509 action, the court may award to the defendant its reasonable
 510 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant
 511 prevails in the action and the court finds that the claim of the
 512 person bringing the action was clearly frivolous, clearly
 513 vexatious, or brought primarily for purposes of harassment.

514 ~~(3)(4) No liability shall be incurred by the state~~
 515 ~~government, the affected agency, or the department for any~~
 516 ~~expenses, attorney~~ ~~attorney's~~ fees, or other costs incurred by
 517 any person in bringing or defending an action under this act.

518 Section 8. Subsections (1), (2), (3), and (6) of section
 519 68.087, Florida Statutes, are amended to read:

520 68.087 Exemptions to civil actions.—

521 (1) No court shall have jurisdiction over an action brought
 522 under this act against a member of the Legislature, a member of

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523 the judiciary, or a senior executive branch official if the
 524 action is based on evidence or information known to the
 525 ~~department state government~~ when the action was brought. For
 526 purposes of this subsection, the term "senior executive branch
 527 official" means any person employed in the executive branch of
 528 government holding a position in the Senior Management Service
 529 as defined in s. 110.402.

530 (2) In no event may a person bring an action under s.
 531 68.083(2) based upon allegations or transactions that are the
 532 subject of a civil action or an administrative proceeding in
 533 which the state agency is already a party.

534 (3) ~~The~~ ~~no~~ court shall dismiss ~~have jurisdiction over~~ an
 535 action brought under this act unless opposed by the department,
 536 if substantially the same based upon the public disclosure of
 537 allegations or transactions as alleged in the action were
 538 publicly disclosed:

539 (a) In a criminal, civil, or administrative hearing in
 540 which the state is a party;

541 (b) In a legislative, administrative, inspector general, or
 542 ~~other state Auditor General, Chief Financial Officer, or~~
 543 ~~Department of Financial Services~~ report, hearing, audit, or
 544 investigation; or

545 (c) From the news media,

546 unless the action is brought by the department, ~~or unless~~ the
 547 person bringing the action is an original source of the
 548 information. For purposes of this subsection, the term "original
 549 source" means an individual who, before a public disclosure
 550 under subsection (3), has voluntarily disclosed to the

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552 department the information on which allegations or transactions
 553 in a claim are based, or who has knowledge that is independent
 554 of and materially adds to the publicly disclosed allegations or
 555 transactions ~~has direct and independent knowledge of the~~
 556 ~~information on which the allegations are based~~ and has
 557 voluntarily provided the information to the department before
 558 filing an action under this section ~~act based on the~~
 559 ~~information.~~

560 (6) No court shall have jurisdiction over an action brought
 561 under this act against a ~~local government~~. ~~For the purposes of~~
 562 ~~this subsection, the term "local government" means any county or~~
 563 ~~municipality.~~

564 Section 9. Section 68.089, Florida Statutes, is amended to
 565 read:

566 68.089 Limitation of actions; effect of interventions by
 567 department.—A civil action under this act may not be brought:

568 (1) More than 6 years after the date on which the violation
 569 of s. 68.082 is committed; ~~or~~

570 (2) More than 3 years after the date when facts material to
 571 the right of action are known or reasonably should have been
 572 known by the department state official ~~charged with~~
 573 ~~responsibility to act in the circumstances~~, but in no event more
 574 than 10 years after the date on which the violation is
 575 committed, whichever occurs last; ~~or~~

576 (3) If the department elects to intervene and proceed with
 577 an action brought under s. 68.083(2), the department may file
 578 its own complaint or amend the complaint of a person who has
 579 brought an action under s. 68.083(2) to clarify or add detail to
 580 the claims in which the department is intervening and to add any

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581 additional claims with respect to which the department contends
582 it is entitled to relief. For statute of limitations purposes,
583 any such pleading shall relate back to the filing date of the
584 complaint of the person who originally brought the action, to
585 the extent that the claim of the state arises out of the
586 conduct, transactions, or occurrences set forth, or attempted to
587 be set forth, in the prior complaint of that person. This
588 subsection applies to any actions under s. 68.083(2) pending on
589 or filed after July 1, 2013.

590 Section 10. Section 68.09, Florida Statutes, is amended to
591 read:

592 68.09 Burden of proof.—

593 (1) In any action brought under this act, the department
594 ~~State of Florida~~ or the qui tam plaintiff shall be required to
595 prove all essential elements of the cause of action, including
596 damages, by a preponderance of the evidence.

597 (2) Notwithstanding any other provision of law, a final
598 judgment or decree rendered in favor of the state or the Federal
599 Government in any criminal proceeding concerning the conduct of
600 the defendant that forms the basis for a civil cause of action
601 under this act, whether upon a verdict after trial or upon a
602 plea of guilty or nolo contendere, shall estop the defendant in
603 any action by the department pursuant to this act as to all
604 matters as to which such judgment or decree would be an estoppel
605 as if the department had been a party in the criminal
606 proceeding.

607 Section 11. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic Falser Claims Law

Bill Number 1494, 1496
(if applicable)

Name Russell Kent

Amendment Barcode _____
(if applicable)

Job Title Special Counsel

Address 107 W. Gaines St.

Phone 850-414-3854

^{Street} Tallahassee FL 32301
_{City} _{State} _{Zip}

E-mail RUSSELL.KENT
@MYFLORIDALEGAL.COM

Speaking: For Against Information

Representing Attorney General

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic Fla. False Claims Act

Bill Number 1494
(if applicable)

Name David W. Moyé

Amendment Barcode _____
(if applicable)

Job Title Attorney - FJA Member

Address 527 E. Park Ave

Phone (850) 224-1516

Tallahassee, FL 32301
Street City State Zip

E-mail david@moyelawfirm.com

Speaking: For Against Information

Representing ~~David W. Moyé~~ Moyé Law Firm

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1496

INTRODUCER: Judiciary Committee and Senator Thrasher

SUBJECT: Public Records/Complaint and Information Requirement/Department of Legal Affairs

DATE: March 19, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin/Munroe	Cibula	JU	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1496 creates an additional exemption from requirements to disclose public records. The bill exempts records held by the Department of Legal Affairs pursuant to an investigation of a false claim against the state under the Florida False Claims Act (FFCA).¹ The specific records include complaints and other information relating to the investigation. Once an investigation is complete, the records will no longer be confidential and exempt, unless the records are otherwise protected by law. For purposes of the public records exemption created in the bill, an investigation is complete when:

- The Department of Legal Affairs files its own action or closes its investigation without filing an action; or
- The *qui tam* action² is unsealed or voluntarily dismissed before unsealing.

¹ Section 68.081, F.S., states that ss. 68.081 - 68.09, F.S., may be cited as the "Florida False Claims Act."

² "Qui tam action" means "[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive." BLACK'S LAW DICTIONARY (9th ed. 2009). See also s. 68.083(2), F.S. *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private entity that

This bill is linked to SB 1494,³ which substantially revises the authority of the Department of Legal Affairs to pursue fraud and other acts of misconduct under the FFCA.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill substantially amends section 68.083, Florida Statutes.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵ The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.⁶

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁷ guarantees every person's right to inspect and copy any state or local government public record⁸ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁹ The Sunshine Law¹⁰ requires all meetings of any board or commission of any

brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. *See* ss. 68.085 and 68.086, F.S. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment. Section 68.085(3), F.S.

³ *See* Senate Staff Analysis and Economic Impact Statement for SB 1494 (2013 Reg. Sess.) by the Senate Committee on Judiciary (Mar. 15, 2013).

⁴ FLA. CONST., Art. I, s. 24(a).

⁵ *Id.*

⁶ FLA. CONST., Art. I, s. 24(b).

⁷ Chapter 119, F.S.

⁸ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

⁹ Section 119.07(1)(a), F.S.

¹⁰ Section 286.011, F.S.

state or local agency or authority at which official acts are to be taken to be noticed and open to the public.¹¹

Only the Legislature may create an exemption to public records or open meetings requirements.¹² Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹³ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁸ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

¹¹ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

¹² FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹³ FLA. CONST., Art. I, s. 24(c).

¹⁴ The bill, however, may contain multiple exemptions that relate to one subject.

¹⁵ FLA. CONST., Art. I, s. 24(c).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁹

The Act also requires specified questions to be considered during the review process.²⁰

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.²¹ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception²² to the exemption is created.²³

Florida False Claims Act

The Florida False Claims Act (FFCA)²⁴ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The Florida Legislature enacted the FFCA in 1994 and the FFCA is modeled after the Federal Civil False Claims Act.²⁵ Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;²⁶
- Making or using a false record to get a false or fraudulent claim paid or approved;²⁷
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid;²⁸ or

¹⁹ *Id.*

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

²² An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²³ *See State of Florida v. Ronald Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, Art. I of the Florida Constitution require exceptions to a public records exemption to contain a public necessity statement).

²⁴ Section 68.081, F.S., *supra* note 1.

²⁵ *See* House Staff Analysis and Economic Impact Statement for SB 1185 (1994 Reg. Sess.) by the House Committee on Judiciary (Mar. 15, 1994) and *see also*, Federal False Claims Act, currently codified at 31 U.S.C. ss. 3729-3733 (Supp IV. 2010).

²⁶ Section 68.082(2)(a), F.S.

²⁷ Section 68.082(2)(b), F.S.

²⁸ Section 68.082(2)(c), F.S.

- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.²⁹

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for FFCA violations.³⁰ The Department of Financial Services or the Department of Legal Affairs may bring an action for a false claim, or may join a private action brought on the grounds outlined in the statute.³¹

SB 1494

Under current law, the Attorney General's office may investigate false claims against the state but does not have subpoena powers. The Department of Legal Affairs reports that the lack of subpoena authority can make it difficult for the department to determine if it is appropriate to intervene in a FFCA case.

The bill creates s. 68.0831, F.S., to grant the Department of Legal Affairs discovery capabilities before the institution of a civil proceeding, if it has reason to believe that any person has testimony or evidence relevant to the investigation.³²

III. Effect of Proposed Changes:

The bill amends s. 68.083, F.S., to create a public records exemption for information held by the Department of Legal Affairs about an investigation involving false claims against the state under the Florida False Claims Act.

This exemption prevents the premature disclosure of the complaint and related information from compromising the ability of the Department of Legal Affairs to investigate false claims against the state before filing a complaint.

This bill takes effect on the same date as SB 1494 or similar legislation, which is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a public records exemption; therefore, a two-thirds vote is required.

²⁹ Section 68.082(2)(g), F.S.

³⁰ Section 68.082(2), F.S.

³¹ See Section 68.083, F.S.

³² See Senate Staff Analysis and Economic Impact Statement for SB 1494 (2013 Reg. Sess.) supra note.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill creates a public records exemption; therefore, this bill includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Financial Services or the Department of Legal Affairs may bring an action for a false claim, or may join a private action brought on the grounds outlined in the statute.³³ As such, the Legislature may wish to consider whether the public records exemption created by the bill should also apply to information held by the Department of Financial Services.

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 March 18, 2013:

The committee substitute revises the point in time at which the complaint and other information, which relate to an investigation under the Florida False Claims Act, are subject to disclosure under the public records laws. Under the committee substitute, the records are subject to the disclosure requirements under the public records laws once an investigation is complete. Other criteria that may have authorized the Department of

³³ See Section 68.083, F.S.

Legal Affairs to maintain the confidential and exempt status of the records beyond the completion of the investigation were removed from 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.



714324

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) is added to section 68.083,
Florida Statutes, to read:

68.083 Civil actions for false claims.-

(8) (a) Except as otherwise provided in this subsection, the
complaint and other information held by the department pursuant
to an investigation of a violation of s. 68.082 is confidential
and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution. This paragraph is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand



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14 repealed on October 2, 2018, unless reviewed and saved from
15 repeal through reenactment by the Legislature.

16 (b) Information made confidential and exempt under
17 paragraph (a) may be disclosed by the department to a law
18 enforcement agency or another administrative agency in the
19 performance of its official duties and responsibilities.

20 (c) Information made confidential and exempt under
21 paragraph (a) is no longer confidential and exempt once the
22 investigation is completed, unless the information is otherwise
23 protected by law.

24 (d) For purposes of this subsection, an investigation is
25 completed:

26 1. Under subsection (1) once the department files its own
27 action or closes its investigation without filing an action.

28 2. Under subsection (2) upon the unsealing of the qui tam
29 action or upon the voluntary dismissal of the qui tam action
30 prior to the unsealing.

31 Section 2. The Legislature finds that it is a public
32 necessity that the complaint and information held by the
33 Department of Legal Affairs pursuant to an investigation of a
34 violation of s. 68.082, Florida Statutes, relating to false
35 claims against the state, be held confidential and exempt from
36 public records requirements. Because a false claims
37 investigation conducted by the Department of Legal Affairs may
38 lead to the filing of an administrative or civil proceeding, the
39 premature release of the complaint or other information held by
40 the department could frustrate or thwart the investigation and
41 impair the ability of the department to effectively and
42 efficiently administer its duties under the Florida False Claims



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43 Act, ss. 68.081-68.092, Florida Statutes. This exemption also
44 protects the reputation of the named defendant in the event the
45 allegations of the qui tam complaint ultimately prove to be
46 unfounded. Without this exemption, a plaintiff can subject a
47 defendant to serious fraud allegations in the name of the state
48 merely by filing a qui tam complaint. Additionally, given the
49 department's subpoena powers for all qui tam investigations,
50 this exemption, which mirrors the existing statutory exemption
51 in s. 409.913(12), Florida Statutes, for information obtained
52 during investigations of Medicaid fraud and abuse claims, is
53 especially appropriate. Therefore, the Legislature finds that it
54 is a public necessity that the complaint and information held by
55 the Department of Legal Affairs pursuant to an investigation of
56 a violation of s. 68.082, Florida Statutes, relating to false
57 claims against the state, be held confidential and exempt from
58 public records requirements.

59 Section 3. This act shall take effect on the same date that
60 SB 1494 or similar legislation takes effect, if such legislation
61 is adopted in the same legislative session or an extension
62 thereof and becomes a law.

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete everything before the enacting clause
67 and insert:

68 A bill to be entitled
69 An act relating to public records; amending s. 68.083,
70 F.S.; providing an exemption from public records
71 requirements for the complaint and information held by



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72 the Department of Legal Affairs pursuant to an
73 investigation of a violation of s. 68.082, F.S.,
74 relating to false claims against the state; providing
75 for future legislative review and repeal of the
76 exemption under the Open Government Sunset Review Act;
77 providing for specified disclosure; specifying
78 duration of the exemption; specifying conditions under
79 which an investigation is considered completed;
80 providing a statement of public necessity; providing a
81 contingent effective date.

By Senator Thrasher

6-01656B-13

20131496__

A bill to be entitled

An act relating to public records; amending s. 68.083, F.S.; providing an exemption from public records requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of s. 68.082, F.S., relating to false claims against the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing for specified disclosure; specifying duration of the exemption; specifying conditions that constitute an active investigation; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 68.083, Florida Statutes, to read:

68.083 Civil actions for false claims.—

(8) (a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) Information made confidential and exempt under

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

6-01656B-13

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paragraph (a) may be disclosed by the department to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once the investigation is completed or ceases to be active unless disclosure of the information would:

1. Jeopardize the integrity of another active investigation;

2. Reveal investigative techniques or procedures; or

3. Reveal trade secrets as defined in s. 688.002.

(d) For purposes of this subsection, an investigation is considered active if the investigation is proceeding with reasonable dispatch and the department has a reasonable, good faith belief that the investigation could lead to the filing of an administrative, civil, or criminal proceeding.

Section 2. The Legislature finds that it is a public necessity that the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of s. 68.082, Florida Statutes, relating to false claims against the state, be held confidential and exempt from public records requirements. Because a false claims investigation conducted by the Department of Legal Affairs may lead to the filing of an administrative or civil proceeding, the premature release of the complaint and information held by the department could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer its duties under the Florida False Claims Act, ss. 68.081-68.092, Florida Statutes. This exemption also

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

6-01656B-13

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59 protects the reputation of the named defendant in the event the
60 allegations of the qui tam complaint ultimately prove to be
61 unfounded. Without this exemption, a plaintiff can subject a
62 defendant to serious fraud allegations in the name of the State
63 of Florida merely by filing a qui tam complaint. Additionally,
64 given the department's subpoena powers for all qui tam
65 investigations, this exemption, which mirrors the existing
66 statutory exemption in s. 409.913(12), Florida Statutes, for
67 information obtained during investigations of Medicaid claims,
68 is especially appropriate. Therefore, the Legislature finds that
69 it is a public necessity that the complaint and information held
70 by the Department of Legal Affairs pursuant to an investigation
71 of a violation of s. 68.082, Florida Statutes, relating to false
72 claims against the state, be held confidential and exempt from
73 public records requirements.

74 Section 3. This act shall take effect on the same date that
75 SB ____ or similar legislation takes effect if such legislation
76 is adopted in the same legislative session, or an extension
77 thereof, and becomes law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic Falser Claims Law

Bill Number 1494, 1496
(if applicable)

Name Russell Kent

Amendment Barcode _____
(if applicable)

Job Title Special Counsel

Address 107 W. Gaines St.

Phone 850-414-3854

Tallahassee FL 32301
Street City State Zip

E-mail RUSSELL.KENT
@MYFLORIDALEGAL.COM

Speaking: For Against Information

Representing A Horney Genevaal

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SPB 7030

INTRODUCER: For consideration by the Judiciary Committee

SUBJECT: Medical Negligence Actions

DATE: March 15, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown/Shankle	Cibula		Submitted as Committee Bill
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7030 revises the laws relating to ex parte communications and qualifications of expert medical witnesses in medical negligence actions.

The bill allows a health care practitioner or provider who may be called as a witness in a medical negligence action to consult with his or her attorney. During a consultation, the practitioner or provider may disclose information disclosed by a patient or records created during the course of care or treatment of the patient. However, the bill prohibits the attorney from being a conduit for ex parte communications between the practitioner or provider and the defendant or the defendant’s insurer. If the liability insurer for the provider or practitioner represents a defendant or prospective defendant in the action:

- The insurer may not choose an attorney for the practitioner, but may recommend attorneys other than the attorney representing the defendant or a prospective defendant.
- The practitioner’s attorney may not disclose any information to the insurer, other than categories of work performed or time billed.

The bill also revises informal discovery procedures under chapter 766, F.S., to authorize the defendant and his or her insurer to conduct ex parte interviews of a claimant’s treating health care providers.

The bill limits the class of individuals who may offer expert testimony against a defendant specialist in a medical negligence action. These experts must specialize in the same, rather than similar, medical specialty as the defendant.

This bill substantially amends the following sections of the Florida Statutes: 456.057, 766.102, 766.106, 766.1065, and 381.028.

II. Present Situation:

Florida's Physician-Patient Confidentiality Law

Florida's physician-patient confidentiality law is contained in s. 456.057, F.S. The law generally prohibits the release of a patient's medical records and medical information unless the patient provides written consent. However, in the context of medical care, a patient's written consent is not needed to release his or her records to:

- The patient or the patient's legal representative; or
- Other health care providers involved in the care or treatment of the patient.¹

In the litigation context, the patient's written consent is not required for the release of information and records related to the patient's care or treatment:

- In any civil or criminal action, when a court issues a subpoena, with proper notice to the patient.²
- In a medical negligence action or administrative proceeding when a health care practitioner reasonably expects to be named as a defendant.³

Case Law on Disclosure of Medical Information by a Subsequent Treating Physician

In the recent case of *Hasan v. Garvar*, the Florida Supreme Court held that Florida's patient confidentiality statute bars communication between a subsequent treating physician and the physician's attorney.⁴ The plaintiff in the case alleged that his dentist failure to diagnose and treat his dental conditions resulting in permanent physical and emotional damage.⁵

Subsequent to his medical malpractice filing against the dentist, the plaintiff moved to prevent an ex parte private predeposition conference between the subsequent treating physician and the physician's attorney. The attorney for the subsequent treating physician was appointed by the physician's insurer, which was also the insurer of the defendant dentist.⁶ Although different attorneys represented the defendant and the subsequent treating physician, the insurer selected, retained, and paid for both.⁷ The trial authorized the predeposition conference but prohibited the discussion of privileged medical information pertaining to the plaintiff.⁸

¹ Section 456.057(7)(a), F.S.

² Section 456.057(7)(a)3., F.S.

³ Section 456.057(8), F.S.

⁴ *Hasan v. Garvar*, 2012 WL 6619334 (Fla. 2012). Florida's physician-patient confidentiality statute is s. 456.057, F.S.

⁵ *Id.* at *1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The defendant argued that the subsequent treating physician should be allowed to speak with her attorney, ex parte, to address:

- General questions about depositions and trial procedures;
- The potential for legal exposure in the lawsuit as a *Fabre* defendant, including being named as a defendant in a subsequent indemnity action; and
- The potential of giving testimony that could affect board certification or create adverse media coverage.⁹

The court held that the physician-patient confidentiality statute barred ex parte meetings, regardless of the attorney's and physician's assertions that they would limit communication to non-privileged issues. In its opinion, the Court detailed the history of physician-patient privilege in Florida.

Before the patient confidentiality statute was broadened in 1988, the statute only protected a patient's medical records from disclosure. Ex parte communications were freely permitted between defense counsel and a non-party treating physician.¹⁰

In 1984, in the landmark case of *Coralluzzo v. Fass*, the Florida Supreme Court permitted communication between the defense counsel and a subsequent treating physician.¹¹ In so doing, the Court indicated that Florida law only addressed confidentiality through medical records.¹² As the law was silent about disclosure through oral communication, the Court stated that its only option was to allow contact: “[w]e note that no evidentiary rule of physician/patient confidentiality exists in Florida and that, although several statutes preserve confidentiality in certain medical records, petitioner has failed to identify a specific statute respondents have infringed.”¹³

The *Coralluzzo* case represented the impetus for legislative expansion of physician-patient confidentiality and the decision was subsequently superseded in statute.¹⁴

In 1990, in *Franklin v. Nationwide Mutual Fire Insurance Co.*, the First District Court of Appeal reviewed a trial court order that required a plaintiff to provide a medical release form to defense counsel.¹⁵ In striking down the lower court decision, the court cited the changes in the law in ruling that the plaintiff now has a statutory right to maintain the confidentiality of his or her medical information.¹⁶ The court classified Florida's physician-patient privilege as providing a limited confidentiality waiver.

⁹ *Id.* at *7-8.

¹⁰ *Id.* at *2.

¹¹ *Coralluzzo v. Fass*, 450 So. 2d 858, 859 (Fla. 1984).

¹² *Id.* at 859.

¹³ *Id.* at 859.

¹⁴ J.B. Harris, *The Limits of Ex Parte Communications with a Plaintiff's Treating Physicians under Florida Law*, 70 FLA.B.J. 57 (Nov. 1996).

¹⁵ *Franklin v. Nationwide Mutual Fire Insurance Co.*, 566 So. 2d 529, 532 (Fla. 1st DCA 1990).

¹⁶ *Id.* at 535.

Specific to the litigation context, the court summarized the waiver as permitting the release of information only if:

- A health care provider is, or reasonably expects to be, named as a defendant.
- The information is compelled by subpoena at deposition, hearing or trial with proper notice.¹⁷

Moreover, the *Franklin* Court held that a court may not compel a person to authorize the release of his or her confidential medical information to defense counsel.¹⁸

The Fifth District Court of Appeal reached the same finding as the *Franklin* Court in *Kirkland v. Middleton*.¹⁹ Here, the court prohibited contact where the defendant pledged to limit discussions with treating health care providers to non-privileged matters, such as scheduling deposition testimony and arranging the production of medical records.²⁰

The Florida Supreme Court in *Acosta v. Richter* affirmed that Florida intended, through the 1988 amendment of the physician-patient privilege, to “create a physician-patient privilege where none existed before, and to provide an explicit but limited scheme for the disclosure of personal medical information.”²¹ In response to the defendant’s assertion that banning *ex parte* contact constituted a First Amendment violation of the defendant physician’s freedom of speech, the Court noted that the legislature provided an adequate balance between individual privacy rights and society’s reasonable need for limited disclosure.²² Further, the Court took note of the Fifth DCA’s rationale in *Kirkland v. Middleton*: “Were unsupervised *ex parte* interviews allowed, medical malpractice plaintiffs could not object and act to protect against inadvertent disclosure of privileged information, nor could they effectively prove that improper disclosure actually took place.”²³

The Florida Supreme Court has twice issued strongly worded opinions prohibiting communications between a subsequent treating health care provider and defense-linked counsel. The *Hasan* Court, however, seemed to leave unanswered the question of whether Florida law imposes a blanket ban on communications between a treating physician and any attorney, including an attorney who has no connection to the defendant. In a strongly-written dissent, Justice Polston took issue with the majority opinion, which “improperly prohibits nonparty physicians from obtaining the legal counsel to which they are entitled under the insurance that they purchased, and . . . from obtaining ANY legal counsel, even from lawyers not provided by their insurance.”²⁴ The majority did not respond to the dissent’s description of the effect of the majority’s ruling.

¹⁷ *Id.* at 531.

¹⁸ *Id.* at 535.

¹⁹ *Kirkland v. Middleton*, 639 So. 2d 1002, 1004 (Fla. 5th DCA 1994).

²⁰ *Id.* at 1004.

²¹ *Acosta v. Richter*, 671 So. 2d 149, 154 (Fla. 1996).

²² *Id.* at 156.

²³ *Kirkland*, 639 So. 2d, at 1004.

²⁴ *Hasan*, 2012 WL 6619334, at 8.

Medical Specialists as Expert Witnesses

In medical malpractice actions, the plaintiff must prove that the defendant breached the prevailing professional standard of care. Both plaintiffs and defendants use expert witnesses to testify as to what that prevailing standard of care is and whether the defendant breached that standard.

In addition to general laws on evidence, s. 766.102(5), F.S., limits who may be qualified as an expert witness against a specialist who is a defendant in a medical malpractice case. If the defendant is a specialist, only a specialist in the same or a similar specialty as the defendant may testify as an expert.²⁵ A similar specialty is a specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the medical negligence claim.²⁶ An expert who practices in a similar specialty must also have prior experience treating similar patients.²⁷ Case law has provided mixed meanings over what constitutes a similar specialty.²⁸ In *Oken v. Williams*, the First District Court of Appeal noted that: “‘Similar specialty’ is not defined within the statutes. Case law also provides little useful guidance.”²⁹

In *Oken v. Williams*, the defendant was a cardiologist and the expert who offered testimony against the defendant was an emergency room physician. The court found that the emergency room physician lacked the expertise to know what to do in the same situation; the expert did not practice in the same or similar specialty and was not qualified to testify.³⁰

However, in *Wiess v. Pratt*, the expert was also an emergency room physician and the defendant was an orthopedic surgeon. The case involved a claim that the defendant failed to properly place the plaintiff on a backboard after a football injury. The court found that, because the emergency room physician had the expertise to know what to do in the same situation the expert practiced in the same or similar specialty and was qualified to testify.³¹

In addition to specifying the qualifications of expert witnesses who may testify against a specialist, s. 766.102, F.S., specifies the qualifications of several other expert witnesses.

- Section 766.102(6), F.S., provides that an expert qualified under s. 766.102(5), F.S., who, either through clinical practice or instruction, demonstrates knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff is qualified to give expert testimony on the negligence of such staff.
- Section 766.102(7), F.S., provides that a person may give expert testimony on the standard of care on administrative issues if the person has substantial knowledge concerning the standard of care among health care facilities of the same type as the health care facility whose potential negligence the subject of the testimony.

²⁵ Section 766.102(5), F.S.

²⁶ *Id.*

²⁷ Section 766.102(5)(a)2, F.S.

²⁸ *Wiess v. Pratt*, 53 So. 3d 395, 400 (Fla. 4th DCA 2011).

²⁹ *Oken v. Williams*, 23 So. 3d 140, 146 (Fla. 1st DCA 2009).

³⁰ *Id.* at 150.

³¹ *Wiess*, 53 So. 3d at 401.

- Section 766.102(8), F.S., provides that if a health care provider is giving evaluation, treatment, or diagnosis for a condition that is not within his or her specialty, then an expert in the treatment, evaluation or diagnosis of that condition shall be considered a similar specialist.
- Section 766.102(9), F.S., provides that in any negligence action against a physician, osteopathic physician, podiatric physician, or chiropractic physician providing emergency medical services in a hospital, the court may accept expert testimony only from physicians, osteopathic physicians, podiatric physicians, and chiropractic physicians who have had substantial professional experience within the preceding 5 years in a hospital emergency department.

Section 766.102(14), F.S., grants a court flexibility in determining whether the experts described in the section may be qualified or disqualified as an expert. Specifically, s. 766.102(14), F.S., allows a court to qualify or disqualify an expert witness” on grounds other than the qualifications specified in [s. 766.102, F.S.]”

In *Oliveros v. Adventist Health Systems/Sunbelt, Inc.*, the court held that s. 766.102(14), F.S., allowed a court to consider other experiences by a doctor and admit his expert testimony even though he failed to satisfy the requirements to offer testimony against an emergency room physician. The court found that under s. 766.102(14), F.S., the emergency experience of the expert as part of a medical evacuation team constituted other grounds to admit the expert’s testimony.³²

In an earlier case, *Barrio v. Wilson*, the court excluded similar expert testimony because it found that the expert’s qualifications did not satisfy the specific requirements of the applicable standard.³³ *Barrio*, however, was decided before the adoption of s. 766.102(14), F.S.

Specialists and Specialties

The Florida Statutes do not directly define who is a specialist or what specialties exist. However, for advertising purposes, the statutes prohibit a physician from holding himself or herself out as a board-certified specialist unless the physician is recognized as a specialist by the American Board of Medical Specialties or other recognizing agency that has been approved by the Board of Medicine.³⁴ The additional recognizing agencies include the: American Board of Facial Plastic & Reconstructive Surgery, Inc., American Board of Pain Medicine, American Association of Physician Specialists, Inc./American Board of Physician Specialties, and American Board of Interventional Pain Physicians.³⁵

Similarly, an osteopathic physician may not hold himself or herself out as a board-certified specialist unless the osteopathic physician is certified by the American Osteopathic Association or the Graduate Council on Medical Education and is certified as a specialist by a certifying agency approved by the Board of Osteopathic Medicine.³⁶ The Board of Osteopathic Medicine

³² *Oliveros v. Adventist Health Systems/Sunbelt, Inc.*, 45 So. 3d 873 (Fla. 2d DCA 2010).

³³ *Barrio v. Wilson*, 779 So. 2d 413(Fla. 2d DCA 2000).

³⁴ Section 458.3312, F.S.

³⁵ Rule 64B8-11001, F.A.C.

³⁶ Section 459.0152, F.S.

has approved two recognizing agencies, the American Association of Physician Specialists, Inc., and the American Board of Interventional Pain Physicians.³⁷

According to the American Board of Medical Specialties, it certifies nearly 800,000 doctors, representing 80 to 85 percent of all licensed doctors, in 24 specialties.³⁸ While the American Board of Medical Specialties is the largest certifying medical board in the country, about 200 such boards certify specialists in the United States.³⁹

Presuit Process

All medical negligence claims are subject to statutory presuit screening and investigation requirements.⁴⁰ After a prospective defendant files a notice of claim, the parties may engage in informal discovery. In fact, failing to do so constitutes grounds for a dismissal of claims.⁴¹ Likewise, a failure to cooperate may be grounds to strike any claim or defense raised by the non-cooperative party.⁴² Informal discovery includes the taking of statements of treating health care professionals.⁴³

Florida law requires a presuit notice of intent to bring a medical malpractice claim to include an authorization for release of protected health information.⁴⁴ The sanction for failing to attach a written authorization to a presuit notice is that the notice is rendered void.⁴⁵ Section 766.1065, F.S., provides the form and clarifies that the form is in conformity with HIPAA.⁴⁶ The form reads, in part:

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, (...Name of patient or authorized representative...) [hereinafter “Patient”], authorize that (...Name of health care provider to whom the presuit notice is directed...) and his/her/its insurer(s), self-insurer(s), and attorney(s) may obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. Facilitating the investigation and evaluation of the medical negligence claim described in the accompanying presuit notice; or
2. Defending against any litigation arising out of the medical negligence claim made on the basis of the accompanying presuit notice.

³⁷ Rule 64B15-14.001, F.A.C.

³⁸ American Board of Medical Specialties, *Board Certification Editorial Background*, http://www.abms.org/news_and_events/media_newsroom/pdf/abms_editorialbackground.pdf (last visited Mar. 12, 2013).

³⁹ *Id.*

⁴⁰ Edward J. Carbone, *Presuit Nuts ‘N’ Bolts*, 26 No. 4 Trial Advoc. Q. 27, 27 (Fall 2007).

⁴¹ Section 766.106(6)(a), F.S.

⁴² Section 766.106(7), F.S.

⁴³ Section 766.106(6)(b), F.S.

⁴⁴ Section 766.1065(1), F.S.

⁴⁵ Section 766.1065(1), F.S.

⁴⁶ Section 766.1065(3), F.S., cross-references HIPAA law, contained in 45 C.F.R. parts 160 and 164.

B. The health information obtained, used, or disclosed extends to, and includes, the verbal as well as the written and is described as follows:

1. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient in connection with injuries complained of after the alleged act of negligence: (List the name and current address of all health care providers). This authorization extends to any additional health care providers that may in the future evaluate, examine, or treat the Patient for the injuries complained of.
2. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient during a period commencing 2 years before the incident that is the basis of the accompanying presuit notice.⁴⁷

The Taking of Unsworn Statements

Current law allows for the taking of the following types of unsworn statements:

- Unsworn statements, recorded by either party of the opposing party, limited to the following:
 - The taking of these statements may be used solely for presuit screening, not as evidence in a court case;
 - The party initiating the taking of an unsworn statement must provide written, reasonable notice and an opportunity to have counsel present; and
 - The court may withdraw authority if a party uses this form of discovery for abuse.⁴⁸
- Unsworn statements of treating health care providers by defense counsel:
 - The party taking statements is limited to communication about areas potentially relevant to the personal injury or wrongful death claim; and
 - The party taking statements must provide reasonable notice and the opportunity for the claimant and counsel to attend and be heard.⁴⁹

Statements, discussions, written documents, reports, or other work product produced during the presuit screening process are not discoverable or admissible in civil proceedings for any purpose.⁵⁰

III. Effect of Proposed Changes:

Consultations between a Health Care Practitioner and an Attorney

This bill clarifies that a health care practitioner or provider may consult with his or her own attorney about medical information disclosed by a patient or records generated during the time the practitioner treated the patient. The bill limits the release of the information to those situations in which the health care provider reasonably expects to be deposed, called as a witness, or receive formal or informal discovery requests in a medical negligence action, presuit investigation, or administrative proceeding.

⁴⁷ Section 766.1065(3), F.S.

⁴⁸ Section 766.106(6)(b)1., F.S.

⁴⁹ Section 766.106 (6) (b)1. and 5., F.S.

⁵⁰ Section 766.106(5), F.S.

The bill prohibits the attorney for the practitioner or provider who may be called as a witness from disclosing information to the insurer of the practitioner or provider in certain cases. If the medical liability insurer of a health care practitioner or provider represents a defendant or prospective defendant in a medical negligence action, the:

- The insurer may not choose an attorney for the practitioner, but may recommend attorneys other than the attorney representing the defendant or a prospective defendant.
- The practitioner's attorney may not disclose any information to the insurer, other than categories of work performed or time billed.

These limits on disclosures by an attorney do not apply if the attorney and practitioner reasonably expect the practitioner to be named as a defendant, the practitioner receives a presuit notice, or the practitioner is actually named as a defendant.

Ex Parte Interviews of Treating Health Care Providers

This bill allows a defendant or a defendant's counsel to conduct ex parte interviews of treating health care providers without requiring defense to provide notice to the claimant or the opportunity to be present by the claimant or the claimant's counsel. The term "interview" appears to be effectively the same as what is currently authorized in informal discovery as the taking of unsworn statements of treating health care providers, as addressed in the current s. 766.105(6)(b)5., F.S. However, the provision authorizing ex parte interviews does not require advance notice to the claimant or the claimant's legal representative or limit statements to areas potentially relevant to the claim of personal injury or wrongful death. As such, the provision relating to unsworn statements may no longer be needed in statute.

This bill amends the written authorization for release of protected health information required as part of presuit notice.

- The written authorization adds to the list of entities authorized to secure and disclose protected health information, the claimant's treating health care provider, his or her insurer, self-insurer, and counsel.
- The bill adds as a specific basis for release, the purpose of obtaining legal advice or representation arising out of the medical negligence claim.
- The written authorization expressly authorizes any of the entities listed to conduct ex parte interviews of the health care provider holding a claimant's health information without notice to the claimant or the presence of the claimant or the claimant's attorney.

The language in this bill relating to the written authorization is substantially similar to that adopted in Texas law, and upheld by the state Supreme Court.⁵¹ The marked difference between the two forms is that the form provided in this bill contains an express ex parte provision. The Texas form is silent on the issue of ex parte contact. Still, the case in Texas involved a challenge to ex parte contact based on a validly executed written authorization waiver.⁵² The Texas form,

⁵¹ The written authorization form provided in Texas law is contained in V.T.C.A., Civil Practice & Remedies Code Section 74.052(c).

⁵² *In re Collins*, 286 S.W. 3d 911 (TX 2009).

like the Florida form, authorizes the release of written and verbal protected health information. The trial court granted the plaintiff's motion for a preemptive protective order.⁵³ The Texas Supreme Court noted that HIPAA did not preempt Texas state law, and specific to the mandates of HIPAA:

While the rules strongly favor the protection of individual health information, they permit disclosure ... in a number of circumstances. ... In a judicial proceeding, protected information may be disclosed in response to a court order. ... It may also be disclosed without a court order in response to a subpoena or discovery request if the health care provider receives satisfactory assurances that the requestor has made reasonable efforts to ensure that the subject of the information has been given notice of the request. Finally, health care information may be disclosed if the patient has executed a validly written authorization.⁵⁴

The plaintiff asserted a HIPAA violation in that written consent in Texas was not voluntary, as execution of the form is a condition to bringing suit (as is the case in Florida). The Court responded that the plaintiff didn't have to bring suit.⁵⁵ The Court also noted that although several courts found HIPAA preemption to state law procedures that would permit ex parte contact, none of them involved a validly executed written authorization.⁵⁶ On these grounds, the Court vacated the protective order of the trial court.⁵⁷

Medical Specialist as Expert Witnesses

The bill amends s. 766.102(5), F.S., to limit the class of specialists qualified to offer expert testimony in a medical negligence action against a defendant specialist, to those specialists who practice in the same specialty as the defendant.

The bill repeals s. 766.102(14), F.S. This appears to have the effect of overturning *Oliveros v. Adventist Health Systems/Sunbelt, Inc.* and reinstating the holding in *Barrio v. Wilson*. Accordingly, the repeal of the subsection appears to remove the discretion of the court to qualify or disqualify an expert witness on grounds other than the specific qualifications specified in ss. 766.102(5)-(9), F.S.

Effective Date

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵³ *Id.* at 914.

⁵⁴ *Id.* at 917-918.

⁵⁵ *Id.* at 920.

⁵⁶ *Id.*

⁵⁷ *Id.* at 920-921.

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:

Medical practitioners and providers who may be called as witnesses in medical negligence actions will clear rights to consult with an attorney.

Access to information through ex parte interviews may facilitate the evaluation of a medical negligence claim by the defendant or the defendant's insurer.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, the "stringent requirements in relation to expert witness testimony will reduce the expenditure of judicial time."

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.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Judiciary

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1 A bill to be entitled
 2 An act relating to medical negligence actions;
 3 amending s. 456.057, F.S.; authorizing a health care
 4 practitioner or provider who reasonably expects to be
 5 deposed, to be called as a witness, or to receive
 6 discovery requests to consult with an attorney on
 7 certain matters; authorizing the disclosure of patient
 8 information in connection with litigation under
 9 certain circumstances; prohibiting a medical liability
 10 insurer from selecting an attorney for a health care
 11 practitioner or provider; authorizing a medical
 12 liability insurer to recommend an attorney to a health
 13 care practitioner or provider under certain
 14 circumstances; restricting the health care
 15 practitioner's or provider's attorney from disclosing
 16 information to the medical liability insurer under
 17 certain circumstances; authorizing the health care
 18 practitioner's or provider's attorney to represent the
 19 insurer or other insureds of the insurer in unrelated
 20 matters; specifying exceptions to the limitations on
 21 disclosures by the attorney to the insurer of the
 22 practitioner or provider; amending s. 766.102, F.S.;
 23 revising qualifications to give expert testimony on
 24 the prevailing professional standard of care; deleting
 25 provision regarding limitations of section; amending
 26 s. 766.106, F.S.; providing that a prospective
 27 defendant may conduct an ex parte interview with a
 28 claimant's treating health care provider as a tool of
 29 informal discovery; amending s. 766.1065, F.S.;

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30 revising the form for the authorization of release of
 31 protected health information; providing for the
 32 release of protected health information to certain
 33 treating health care providers, insurers, and
 34 attorneys; authorizing a treating health care
 35 provider, insurer, or attorney to use protected health
 36 information in connection with legal services relating
 37 to a medical negligence claim; authorizing certain
 38 individuals and entities to conduct ex parte
 39 interviews with the claimant's health care providers;
 40 amending s. 381.028, F.S.; conforming a cross-
 41 reference to changes made by the act; providing an
 42 effective date.

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

45
 46 Section 1. Subsections (7) and (8) of section 456.057,
 47 Florida Statutes, are amended, and present subsections (9)
 48 through (21) of that section are renumbered as subsections (8)
 49 through (20), respectively, to read:
 50 456.057 Ownership and control of patient records; report or
 51 copies of records to be furnished; disclosure of information.
 52 (7) (a) Except as otherwise provided in this section and in
 53 s. 440.13(4)(c), such records may not be furnished to, and the
 54 medical condition of a patient may not be discussed with, any
 55 person other than the patient, ~~or~~ the patient's legal
 56 representative, or other health care practitioners and providers
 57 involved in the patient's care or treatment ~~of the patient~~,
 58 except upon written authorization from ~~of~~ the patient. However,

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59 such records may be furnished without written authorization
60 under the following circumstances:

61 1. To any person, firm, or corporation that has procured or
62 furnished such care ~~examination~~ or treatment with the patient's
63 consent.

64 2. When compulsory physical examination is made pursuant to
65 Rule 1.360, Florida Rules of Civil Procedure, in which case
66 copies of the medical records shall be furnished to both the
67 defendant and the plaintiff.

68 3. In any civil or criminal action, unless otherwise
69 prohibited by law, upon the issuance of a subpoena from a court
70 of competent jurisdiction and proper notice to the patient or
71 the patient's legal representative by the party seeking such
72 records.

73 4. For statistical and scientific research, provided the
74 information is abstracted in such a way as to protect the
75 identity of the patient or provided written permission is
76 received from the patient or the patient's legal representative.

77 5. To a regional poison control center for purposes of
78 treating a poison episode under evaluation, case management of
79 poison cases, or compliance with data collection and reporting
80 requirements of s. 395.1027 and the professional organization
81 that certifies poison control centers in accordance with federal
82 law.

83 (b) Absent a specific written release or authorization
84 permitting utilization of patient information for solicitation
85 or marketing the sale of goods or services, any use of that
86 information for those purposes is prohibited.

87 ~~(c) (8) Except in a medical negligence action or~~

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88 ~~administrative proceeding when a health care practitioner or~~
89 ~~provider is or reasonably expects to be named as a defendant,~~
90 Information disclosed to a health care practitioner by a patient
91 in the course of the care and treatment of such patient is
92 confidential and may be disclosed only to other health care
93 practitioners and providers involved in the care or treatment of
94 the patient, ~~or if allowed~~ permitted by written authorization
95 from the patient, or if compelled by subpoena at a deposition,
96 evidentiary hearing, or trial for which proper notice has been
97 given.

98 (d) Notwithstanding paragraphs (a)-(c), information
99 disclosed by a patient to a health care practitioner or provider
100 or records created by the practitioner or provider during the
101 course of care or treatment of the patient may be disclosed:

102 1. In a medical negligence action or administrative
103 proceeding if the health care practitioner or provider is or
104 reasonably expects to be named as a defendant;

105 2. Pursuant to s. 766.106(6)(b)5.;

106 3. As provided for in the authorization for release of
107 protected health information filed by the patient pursuant to s.
108 766.1065; or

109 4. To the health care practitioner's or provider's attorney
110 during a consultation if the health care practitioner or
111 provider reasonably expects to be deposed, to be called as a
112 witness, or to receive formal or informal discovery requests in
113 a medical negligence action, presuit investigation of medical
114 negligence, or administrative proceeding.

115 a. If the medical liability insurer of a health care
116 practitioner or provider described in this subparagraph

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117 represents a defendant or prospective defendant in a medical
 118 negligence action;

119 (I) The insurer may not select an attorney for the
 120 practitioner or the provider. However, the insurer may recommend
 121 attorneys who do not represent a defendant or prospective
 122 defendant in the matter.

123 (II) The attorney selected by the practitioner or the
 124 provider may not, directly or indirectly, disclose to the
 125 insurer any information relating to the representation of the
 126 practitioner or the provider other than the categories of work
 127 performed or the amount of time applicable to each category for
 128 billing or reimbursement purposes. The attorney selected by the
 129 practitioner or the provider may represent the insurer or other
 130 insureds of the insurer in an unrelated matter.

131 b. The limitations in this subparagraph do not apply if the
 132 attorney reasonably expects the practitioner or provider to be
 133 named as a defendant and the practitioner or provider agrees
 134 with the attorney's assessment, if the practitioner or provider
 135 receives a presuit notice pursuant to chapter 766, or if the
 136 practitioner or provider is named as a defendant.

137 Section 2. Paragraph (a) of subsection (5) and subsection
 138 (14) of section 766.102, Florida Statutes, are amended to read:
 139 766.102 Medical negligence; standards of recovery; expert
 140 witness.—

141 (5) A person may not give expert testimony concerning the
 142 prevailing professional standard of care unless the person is a
 143 health care provider who holds an active and valid license and
 144 conducts a complete review of the pertinent medical records and
 145 meets the following criteria:

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146 (a) If the health care provider against whom or on whose
 147 behalf the testimony is offered is a specialist, the expert
 148 witness must:

149 1. Specialize in the same specialty as the health care
 150 provider against whom or on whose behalf the testimony is
 151 offered; ~~or specialize in a similar specialty that includes the~~
 152 ~~evaluation, diagnosis, or treatment of the medical condition~~
 153 ~~that is the subject of the claim and have prior experience~~
 154 ~~treating similar patients;~~ and

155 2. Have devoted professional time during the 3 years
 156 immediately preceding the date of the occurrence that is the
 157 basis for the action to:

158 a. The active clinical practice of, or consulting with
 159 respect to, the same ~~or similar~~ specialty ~~that includes the~~
 160 ~~evaluation, diagnosis, or treatment of the medical condition~~
 161 ~~that is the subject of the claim and have prior experience~~
 162 ~~treating similar patients;~~

163 b. Instruction of students in an accredited health
 164 professional school or accredited residency or clinical research
 165 program in the same ~~or similar~~ specialty; or

166 c. A clinical research program that is affiliated with an
 167 accredited health professional school or accredited residency or
 168 clinical research program in the same ~~or similar~~ specialty.

169 ~~(14) This section does not limit the power of the trial~~
 170 ~~court to disqualify or qualify an expert witness on grounds~~
 171 ~~other than the qualifications in this section.~~

172 Section 3. Paragraph (b) of subsection (6) of section
 173 766.106, Florida Statutes, is amended to read:

174 766.106 Notice before filing action for medical negligence;

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175 presuit screening period; offers for admission of liability and
176 for arbitration; informal discovery; review.-

177 (6) INFORMAL DISCOVERY.-

178 (b) Informal discovery may be used by a party to obtain
179 unsworn statements, the production of documents or things, and
180 physical and mental examinations, as follows:

181 1. Unsworn statements.-Any party may require other parties
182 to appear for the taking of an unsworn statement. Such
183 statements may be used only for the purpose of presuit screening
184 and are not discoverable or admissible in any civil action for
185 any purpose by any party. A party desiring to take the unsworn
186 statement of any party must give reasonable notice in writing to
187 all parties. The notice must state the time and place for taking
188 the statement and the name and address of the party to be
189 examined. Unless otherwise impractical, the examination of any
190 party must be done at the same time by all other parties. Any
191 party may be represented by counsel at the taking of an unsworn
192 statement. An unsworn statement may be recorded electronically,
193 stenographically, or on videotape. The taking of unsworn
194 statements is subject to the provisions of the Florida Rules of
195 Civil Procedure and may be terminated for abuses.

196 2. Documents or things.-Any party may request discovery of
197 documents or things. The documents or things must be produced,
198 at the expense of the requesting party, within 20 days after the
199 date of receipt of the request. A party is required to produce
200 discoverable documents or things within that party's possession
201 or control. Medical records shall be produced as provided in s.
202 766.204.

203 3. Physical and mental examinations.-A prospective

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204 defendant may require an injured claimant to appear for
205 examination by an appropriate health care provider. The
206 prospective defendant shall give reasonable notice in writing to
207 all parties as to the time and place for examination. Unless
208 otherwise impractical, a claimant is required to submit to only
209 one examination on behalf of all potential defendants. The
210 practicality of a single examination must be determined by the
211 nature of the claimant's condition, as it relates to the
212 liability of each prospective defendant. Such examination report
213 is available to the parties and their attorneys upon payment of
214 the reasonable cost of reproduction and may be used only for the
215 purpose of presuit screening. Otherwise, such examination report
216 is confidential and exempt from the provisions of s. 119.07(1)
217 and s. 24(a), Art. I of the State Constitution.

218 4. Written questions.-Any party may request answers to
219 written questions, the number of which may not exceed 30,
220 including subparts. A response must be made within 20 days after
221 receipt of the questions.

222 5. Ex parte interviews of treating health care providers.-A
223 prospective defendant or his or her legal representative may
224 interview the claimant's treating health care providers without
225 notice to, or the presence of, the claimant or the claimant's
226 legal representative.

227 ~~6.5-~~ Unsworn statements of treating health care providers.-
228 A prospective defendant or his or her legal representative may
229 also take unsworn statements of the claimant's treating health
230 care providers. The statements must be limited to those areas
231 that are potentially relevant to the claim of personal injury or
232 wrongful death. Subject to the procedural requirements of

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233 subparagraph 1., a prospective defendant may take unsworn
 234 statements from a claimant's treating physicians. Reasonable
 235 notice and opportunity to be heard must be given to the claimant
 236 or the claimant's legal representative before taking unsworn
 237 statements. The claimant or claimant's legal representative has
 238 the right to attend the taking of such unsworn statements.

239 Section 4. Subsection (3) of section 766.1065, Florida
 240 Statutes, is amended to read:

241 766.1065 Authorization for release of protected health
 242 information.-

243 (3) The authorization required by this section shall be in
 244 the following form and shall be construed in accordance with the
 245 "Standards for Privacy of Individually Identifiable Health
 246 Information" in 45 C.F.R. parts 160 and 164:

247
 248 AUTHORIZATION FOR RELEASE OF
 249 PROTECTED HEALTH INFORMATION

250
 251 A. I, (...Name of patient or authorized
 252 representative...) [hereinafter "Patient"], authorize
 253 that (...Name of health care provider to whom the
 254 presuit notice is directed...) and his/her/its
 255 insurer(s), self-insurer(s), and attorney(s), and the
 256 designated treating health care provider(s) listed
 257 below and his/her/its insurer(s), self-insurer(s), and
 258 attorney(s) may obtain and disclose (within the
 259 parameters set out below) the protected health
 260 information described below for the following specific
 261 purposes:

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262 1. Facilitating the investigation and evaluation
 263 of the medical negligence claim described in the
 264 accompanying presuit notice; ~~or~~

265 2. Defending against any litigation arising out
 266 of the medical negligence claim made on the basis of
 267 the accompanying presuit notice; or-

268 3. Obtaining legal advice or representation
 269 arising out of the medical negligence claim described
 270 in the accompanying presuit notice.

271 B. The health information obtained, used, or
 272 disclosed extends to, and includes, ~~the~~ verbal health
 273 information as well as ~~the~~ written health information
 274 and is described as follows:

275 1. The health information in the custody of the
 276 following health care providers who have examined,
 277 evaluated, or treated the Patient in connection with
 278 injuries complained of after the alleged act of
 279 negligence: (List the name and current address of all
 280 health care providers). This authorization extends to
 281 any additional health care providers that may in the
 282 future evaluate, examine, or treat the Patient for the
 283 injuries complained of.

284 2. The health information in the custody of the
 285 following health care providers who have examined,
 286 evaluated, or treated the Patient during a period
 287 commencing 2 years before the incident that is the
 288 basis of the accompanying presuit notice.

289
 290 (List the name and current address of such health care

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291 providers, if applicable.)

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C. This authorization does not apply to the following list of health care providers possessing health care information about the Patient because the Patient certifies that such health care information is not potentially relevant to the claim of personal injury or wrongful death that is the basis of the accompanying presuit notice.

(List the name of each health care provider to whom this authorization does not apply and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure. If none, specify "none.")

D. The persons or class of persons to whom the Patient authorizes such health information to be disclosed or by whom such health information is to be used:

1. Any health care provider providing care or treatment for the Patient.

2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given, or to any health care provider listed in subsections B.1.-2. above, regarding the care and treatment of the Patient.

3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to

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whom presuit notice was given) and his/her/its insurer(s), self-insurer(s), or attorney(s) regarding the matter of the presuit notice accompanying this authorization.

4. Any attorney (including his/her ~~secretarial, clerical, or paralegal~~ staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) or employed by or on behalf of any health care provider(s) listed in subsections B.1.-2. above, regarding the matter of the presuit notice accompanying this authorization or the care and treatment of the Patient.

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of the Patient.

E. This authorization expressly allows the persons or class of persons listed in subsections D.2.-4. above to interview the health care providers listed in subsections B.1.-2. above, without notice to or the presence of the Patient or the Patient's attorney.

~~F.~~ This authorization expires upon resolution of the claim or at the conclusion of any litigation instituted in connection with the matter of the presuit notice accompanying this authorization, whichever occurs first.

~~G.~~ The Patient understands that, without exception, the Patient has the right to revoke this authorization in writing. The Patient further

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349 understands that the consequence of any such
 350 revocation is that the presuit notice under s.
 351 766.106(2), Florida Statutes, is deemed retroactively
 352 void from the date of issuance, and any tolling effect
 353 that the presuit notice may have had on any applicable
 354 statute-of-limitations period is retroactively
 355 rendered void.

356 ~~H.G.~~ The Patient understands that signing this
 357 authorization is not a condition for continued
 358 treatment, payment, enrollment, or eligibility for
 359 health plan benefits.

360 ~~I.H.~~ The Patient understands that information
 361 used or disclosed under this authorization may be
 362 subject to additional disclosure by the recipient and
 363 may not be protected by federal HIPAA privacy
 364 regulations.

365 Signature of Patient/Representative:

366 Date:

367 Name of Patient/Representative:

368 Description of Representative's Authority:

369 Section 5. Paragraph (c) of subsection (7) of section

370 381.028, Florida Statutes, is amended to read:

371 381.028 Adverse medical incidents.—

372 (7) PRODUCTION OF RECORDS.—

373 (c)1. Fees charged by a health care facility for copies of
 374 records requested by a patient under s. 25, Art. X of the State
 375 Constitution may not exceed the reasonable and actual cost of
 376 complying with the request, including a reasonable charge for
 377

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378 the staff time necessary to search for records and prevent the
 379 disclosure of the identity of any patient involved in the
 380 adverse medical incident through redaction or other means as
 381 required by the Health Insurance Portability and Accountability
 382 Act of 1996 or its implementing regulations. The health care
 383 facility may require payment, in full or in part, before acting
 384 on the records request.

385 2. Fees charged by a health care provider for copies of
 386 records requested by a patient under s. 25, Art. X of the State
 387 Constitution may not exceed the amount established under s.
 388 456.057(17) ~~o. 456.057(18)~~, which may include a reasonable
 389 charge for the staff time necessary to prevent the disclosure of
 390 the identity of any patient involved in the adverse medical
 391 incident through redaction or other means as required by the
 392 Health Insurance Portability and Accountability Act of 1996 or
 393 its implementing regulations. The health care provider may
 394 require payment, in full or in part, before acting on the
 395 records request.

396 Section 6. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic Medical Malpractice

Bill Number SPB 7030
(if applicable)

Name Carmen Johns

Amendment Barcode _____
(if applicable)

Job Title victim

Address 13727 Richmond Park Dr. N Apt

²⁰³ Phone (904) 386-8950

Street

Jacksonville

FL

32224

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2013

Meeting Date

Topic Medical Negligence

Bill Number SPB 7030
(if applicable)

Name Stephen F. Cain

Amendment Barcode _____
(if applicable)

Job Title A Horney

Address 15E 3rd Ave, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

E-mail scain@stfblaw.com

City

State

Zip

Speaking: For Against Information

Representing FJA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic Medical Malpractice - Same Speciality

Bill Number SPB 7030
(if applicable)

Name H. Scott Bates

Amendment Barcode _____
(if applicable)

Job Title Managing Partner, Atty

Address 20 N. Orange Ave
Street

Phone 407-420-1414

Orlando Fla 32801
City State Zip

E-mail sbates@forthepeople.com

Speaking: For Against Information

Representing Morgan - Morgan, PA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2013

Meeting Date

Topic Med mal

Bill Number SPB 7030
(if applicable)

Name Alan E. McMichael

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address S 27 East University Ave.
Street

Phone 352-375-4449

Gainesville FL 32601
City State Zip

E-mail alan@alanmcmichael.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic Ex parte - medical malpractice

Bill Number SPB 7030
(if applicable)

Name Dana Brooks

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 3360 Capital Circle NE

Phone 850-224-3310

Street
Tallahassee Fl. 32312
City *State* *Zip*

E-mail dana@tallahassee
personalinjury.com

Speaking: For Against Information

Representing Charles Barnett Fasing & Brooks

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/13

Meeting Date

Topic medical liability

Bill Number 7020
(if applicable)

Name David Hart

Amendment Barcode _____
(if applicable)

Job Title Executive VP

Address 130 S Bronough St

Phone 850-521-2000

Street

Tallahassee FL 32307

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

3-18-2013

Meeting Date

Topic MEDICAL NEGLIGENCE ACTIONS

Bill Number SB 7030
(if applicable)

Name STEPHEN R. WIND

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-7463

^{Street}
TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLA. OSEOPATHIC MEDICAL ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

Waive in Support
↓

3/18/13

Meeting Date

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

Topic Tort Reform

Bill Number SB 7030
(if applicable)

Name Ron Watson

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St

Phone 850 224-1089

Tallahassee FL 3230
City State Zip

E-mail rwatson@floridadental.org

Speaking: For Against Information

Representing FDA - Florida Dental Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13

Meeting Date

Topic Medical Liability

Bill Number 7030
(if applicable)

Name Rebecca O'Hara

Amendment Barcode PCS
(if applicable)

Job Title VP Govt Affairs

Address 113 E College Ave
Street

Phone 339 6211

Talla FL 32301
City State Zip

E-mail rohara@flmedical.org

Speaking: For Against Information

Representing Fla Medical Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/12

Meeting Date

Topic

Medical Negligence

Bill Number

7030

(if applicable)

Name

Bill Bell

Amendment Barcode

(if applicable)

Job Title

General Counsel

Address

Street

306 E College

Phone

222-9800

City

Tallah

State

Zip

FL 32301

E-mail

billb@fla.org

Speaking:

For

Against

Information

Representing

Florida Hospital Assn

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

03-18-2013

Meeting Date

Topic Medical Negligence Actions

Bill Number 7030
(if applicable)

Name Tom Dukes

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 E. Central Blvd

Phone 407-423-8571

Street

Orlando

FL

32801

E-mail tdukes@mmdorl.com

City

State

Zip

Speaking: For Against Information

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13

Meeting Date

Waive in support

Topic Medical Malpractice

Bill Number 7030
(if applicable)

Name PAUL LAMBERT

Amendment Barcode _____
(if applicable)

Job Title GENERAL COUNSEL

Address 502 NORTH ADAMS STREET
Street

Phone 850 224-9393

Tallahassee FL 32301
City State Zip

E-mail plambert@paulambertylaw.com

Speaking: For Against Information

* Waive in support

Representing FLORIDA CHIROPRACTIC ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Judiciary Committee

Case:
Judge:

Type:

Started: 3/18/2013 15:38:39
Ends: 3/18/2013 17:59:17 **Length:** 02:20:39

15:38:41 Meeting Call to Order
15:38:42 Roll Call by CAA
15:39:29 SB 558 by Senator Detert
15:41:20 Senator Detert - Waives Closing
15:41:25 Roll Call for SB 558
15:41:33 SB 558 by Senator Detert - Favorable
15:41:46 SB 186 by Diaz de la Portilla
15:42:05 A540770 by Senator Bradley offered by Senator Latvala
15:43:05 A540770 - Favorable
15:43:50 Senator Diaz de la Portilla - Waives Closing
15:43:55 Roll Call for SB 186
15:44:10 SB 186 by Senator Diaz de la Portilla - Favorable as a CS
15:44:46 Chairman Lee turned meeting over to Senator Soto
15:45:00 SB 1464 by Senator Lee
15:49:57 Danelle Carroll with Attorney General Office
15:55:33 Jan Smith with
15:59:51 Senator Lee - Waives Closing
16:00:02 Roll Call for SB 1464
16:00:07 SB 1464 by Senator Lee - Favorable
16:00:40 SB 604 by Senator Bean
16:05:27 Senator Bean - Waives Closing
16:05:33 Roll Call for SB 604
16:05:45 SB 604 by Senator Bean - Favorable
16:06:04 SB 1468 by Senator Lee
16:07:42 A533146 by Senator Lee
16:08:01 A533146 - Favorable
16:08:16 A448044 by Senator Lee
16:08:28 A448044 - Favorable
16:08:41 A191654 by Senator Lee
16:08:53 A191654 - Favorable
16:09:03 Back on SB 1468 as amended
16:09:34 Comments by Senator Lee
16:10:22 Senator Lee - Close on SB 1468
16:10:33 Roll Call for SB 1468
16:10:48 SB 1468 by Senator Lee - Favorable as a CS
16:11:03 Senator Bradley - Motion to Vote "Yea" on SB 558, SB 186, and SB 1464
16:11:41 Motion - Favorable
16:11:51 SB 1494 by Senator Thrasher
16:11:57 Comments by Senator Thrasher
16:14:39 Russell Kent Special Counsel with Attorney General Office
16:18:14 A802870 by Senator Thrasher
16:20:55 A802870 - Favorable
16:21:17 David Moy'e with Moy'e Law Firm
16:27:28 Response by Russell Kent
16:32:21 Response by David Moy'e
16:33:39 Response by Russell Kent
16:35:03 Senator Thrasher - Close on SB 1494
16:36:10 Roll Call for CS/SB 1494
16:36:33 SB 1494 by Senator Thrasher - Favorable as a CS
16:36:46 SB 1496 by Senator Thrasher
16:37:14 A714324 by Thrasher
16:37:52 A714324 - Favorable

16:38:16 Senator Thrasher - Waives Closing on SB 1496
16:38:22 Roll Call for SB 1496
16:38:43 SB 1496 passes as a CS
16:38:59 SPB 7030 by Chairman Lee
16:46:35 Senator Ring - Motion to Introduce SPB 7030 -Favorable
16:51:29 Senator Gardiner - Motion to Vote "Yea" on SBs 186, 558, 604, 1464, and 1468 - Favorable
16:51:48 Senator
16:51:49 Senator Ring - Motion to Vote "Yes" on SB 1468 - Favorable
16:52:28 Carmon Johns speaks on SPB 7030
17:03:06 Stephen Cain with FJA
17:14:11 Tom Dukes with Florida Justice Reform Institute
17:23:24 Scott Bates with Morgan and Morgan, PA
17:31:11 Alan McMichael attorney
17:39:05 Dana Brooks with Eubanks Barrett Fasig and Brooks
17:47:20 Tom Dukes Florida Justice Reform Institute
17:56:29 Senator Thrasher - Motion to Adopt SPB 7030 - Favorable
17:58:39 Roll Call for SPB 7030
17:59:04 SPB 7030 - Submitted as a Committee Bill
17:59:07 Senator Soto - Motion to Adjourn