The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Monday, April 1, 2013
TIME: 3:15 —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	**CS/SB 370** Regulated Industries / Sachs (Identical CS/H 171)	Disposition of Human Remains; Revising procedures for the registration of certificates of death or fetal death and the medical certification of causes of death; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; revising provisions prohibiting the selling or buying of human remains or the transmitting or conveying of such remains outside the state, etc. RI 03/07/2013 Fav/CS HP 03/14/2013 Favorable JU 04/01/2013 Favorable AP	Favorable Yeas 8 Nays 0
2	**CS/CS/SB 390** Criminal Justice / Military and Veterans Affairs, Space, and Domestic Security / Dean (Compare CS/H 1077)	Misrepresentations Concerning Solicitations for Military or Veterans; Prohibiting a business entity from holding itself out as a veterans' organization under certain circumstances; authorizing an affected veterans' organization to bring a civil action in a court of competent jurisdiction against the offending business entity; authorizing the court to impose a civil penalty of up to $500 and payment of court costs and reasonable attorney fees; providing for criminal penalties; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia, etc. MS 02/06/2013 Fav/CS CJ 02/19/2013 Fav/CS JU 04/01/2013 Fav/CS RC	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 400** Criminal Justice / Dean (Identical CS/H 611)	False Reports to Law Enforcement Officers; Providing that it is a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime if the defendant has previously been convicted of such offense and the information is communicated in writing, or, if the information is communicated orally, the information is corroborated in a specified manner, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU 04/01/2013 Favorable ACJ AP	Favorable Yeas 8 Nays 1
4	**CS/SB 540** Criminal Justice / Dean (Similar CS/H 829)	Mandatory Supervision of Specified Offenders by the Department of Corrections; Requiring that persons convicted on or after a specified date of crimes in specified categories be released only under mandatory supervision; renaming the conditional release program as the “mandatory supervision program", etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU 04/01/2013 Favorable ACJ AP	Favorable Yeas 9 Nays 0
5	**SB 490** Stargel (Similar CS/H 77, Compare H 755, S 1120)	Landlords and Tenants; Revising exclusions from application relating to residential tenancies; providing that the right to attorney fees may not be waived in a lease agreement; revising the requirements of landlord disclosure relating to deposit money and advance rent; prohibiting a landlord from retaliating against a tenant for certain conducts; requiring that a mobile home park owner be given an opportunity to cure a deficiency in any notice or pleading before dismissal of an eviction action, under certain circumstances, etc. JU 04/01/2013 Fav/CS RI RC	Fav/CS Yeas 7 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 528** Community Affairs / Simpson (Similar CS/CS/H 537)	Growth Management; Clarifying the prohibition on an initiative or referendum process in regard to development orders, comprehensive plan amendments, and map amendments; clarifying that the exception to the prohibition on an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is limited to a local government charter provision in effect on June 1, 2011, that specifically authorized an initiative or referendum process for local comprehensive plan or map amendments that affect more than five parcels of land, etc. CA 03/07/2013 Fav/CS JU 04/01/2013 Favorable CM RC	Favorable Yeas 9 Nays 0
7	**CS/SB 646** Health Policy / Children, Families, and Elder Affairs (Similar CS/H 1319, Compare H 187, CS/H 1015, H 1313, S 1212)	Assisted Living Facilities; Providing that Medicaid prepaid behavioral health plans are responsible for enrolled mental health residents; revising the actions in which the Agency for Health Care Administration may deny, revoke, or suspend the license of an assisted living facility and impose an administrative fine; requiring the agency to regularly inspect every licensed assisted living facility; requiring the agency to propose a rating system of assisted living facilities for consumers and create content for the agency's website that makes available to consumers information regarding assisted living facilities, etc. HP 03/07/2013 Fav/CS JU 04/01/2013 Favorable	Favorable Yeas 8 Nays 0
8	**SB 706** Montford (Identical CS/H 341)	Uninsured Motorist Insurance Coverage; Providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds, etc. BI 03/14/2013 Favorable JU 04/01/2013 Not Considered RC	Not Considered
9	**SB 742** Evers (Similar H 685)	Parole Interview Dates for Certain Inmates; Extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes, etc. CJ 03/04/2013 Not Considered CJ 03/11/2013 Favorable JU 04/01/2013 Favorable ACJ AP	Favorable Yeas 8 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 1016** Health Policy / Hays (Similar CS/H 1205)	Sovereign Immunity for Dentists and Dental Hygienists; Requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges, etc. HP 03/14/2013 Fav/CS JU 04/01/2013 Not Considered RC	Not Considered
11	**SB 1036** Children, Families, and Elder Affairs (Similar CS/H 1315)	Independent Living; Providing that when the court obtains jurisdiction over a child who has been found to be dependent, the court retains jurisdiction until the child reaches 21 years of age; providing exceptions; directing the Department of Children and Families to work in collaboration with the Board of Governors, the Florida College System, and the Department of Education to help address the need for a comprehensive support structure in the academic arena to assist young adults who have been or remain in the foster care system, etc. JU 04/01/2013 Favorable AHS AP	Favorable Yeas 9 Nays 0
12	**SB 1300** Simmons (Similar CS/H 1079)	Limited Liability Companies; Providing for applicability of and transition from the Florida Limited Liability Company Act to the Florida Revised Limited Liability Company Act, as created by this act; providing definitions and general provisions relating to operating agreements, powers, property, rules of construction, names, and registered agents of limited liability companies; providing for the relationship of members and management, voting, standards of conduct, records, and the right to obtain information, etc. JU 04/01/2013 Fav/CS CM	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1384** Galvano (Compare H 869)	Nursing Home Litigation; Providing that a nursing home resident who alleges negligence or a violation of residents' rights has a cause of action against the nursing home licensee or its management company and the licensee's direct caregiver employees; providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence proffered by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied, etc. JU 04/01/2013 Fav/CS HP RC	Fav/CS Yeas 7 Nays 2
14	**SB 1398** Hukill (Compare CS/H 1025)	Appraisers; Defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals, etc. RI 03/21/2013 Favorable JU 04/01/2013 Not Considered	Not Considered
15	**SJR 1740** Negron (Similar HJR 7081, Compare H 7083, Link S 1750)	Postconviction Death Penalty Proceedings; Proposing amendments to the State Constitution to prohibit a court from requiring or authorizing collateral or postconviction judicial review of a capital case except as provided for by general law and providing an effective date, etc. JU 04/01/2013 Favorable AP RC	Favorable Yeas 6 Nays 3
16	**SB 1750** Negron (Similar H 7083, Compare H 4005, H 4057, HJR 7081, S 1022, Link SJR 1740)	Postconviction Capital Case Proceedings; Citing this act as the "Timely Justice Act;" providing that the capital collateral regional counsel and the attorneys appointed pursuant to law shall file only those postconviction or collateral actions authorized by statute; removing a request to the Supreme Court to adopt by rule the provisions that limit the time for postconviction proceedings in capital cases; providing procedures that apply if an inmate seeks both to dismiss a pending postconviction proceeding and to discharge collateral counsel, etc. JU 04/01/2013 Favorable ACJ AP	Favorable Yeas 7 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**SB 288** Bradley (Similar CS/H 311)	Costs of Prosecution, Investigation, and Representation; Providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld, etc. CJ 02/05/2013 Favorable JU 04/01/2013 Not Considered ACJ AP	Not Considered
18	**SJR 570** Bradley (Identical HJR 747)	Revising Age Limits for Justices and Judges; Proposing amendments to the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office, to provide for the amendment to apply to justices and judges appointed on or after a specified date, etc. JU 04/01/2013 Not Considered ACJ AP RC	Not Considered
19	**SB 590** Joyner (Identical H 941, Compare H 943)	Fees and Costs Incurred in Guardianship Proceedings; Providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; directing that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for expert witness fees if the court finds the petition to have been filed in bad faith, etc. JU 04/01/2013 Not Considered CF ACJ AP	Not Considered
20	**SB 986** Soto (Identical H 235)	Requirements for Driver Licenses; Including notice of the approval of an application for Deferred Action for Childhood Arrivals status issued by the United States Citizenship and Immigration Services as valid proof of identity for purposes of applying for a driver license, etc. TR 03/14/2013 Favorable JU 04/01/2013 Not Considered RC	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**SB 1210** Soto (Compare CS/H 905, CS/CS/S 718)	Family Law; Providing for consideration of time-sharing schedules as a factor in the adjustment of awards of child support; authorizing the court in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking, etc. JU 04/01/2013 Fav/CS CF RC	Fav/CS Yeas 9 Nays 0
22	**SB 1098** Richter (Identical CS/H 833)	General Assignments; Requiring an assignee's bond to be in at least a specific amount or double the liquidation value of the unencumbered and liquid assets of the estate, whichever is higher; authorizing an assignee to conduct certain discovery to determine whether to prosecute certain claims or causes of action; extending the time period for which a court may authorize an assignee to conduct the business of the assignor; providing that the Florida Rules of Civil Procedure apply to objections to claims in all pending cases beginning on a specific date, etc. JU 04/01/2013 Favorable BI RC	Favorable Yeas 9 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 370

INTRODUCER: Regulated Industries Committee; and Senator Sachs

SUBJECT: Disposition of Human Remains

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.	Looke	Stovall	HP	**Favorable**
3.	Munroe	Cibula	JU	**Favorable**
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 370 amends various provisions relating to the disposition of human remains. The bill:

- Addresses technical issues such as adding the Department of Health (DOH) as an authorized issuer of extensions of time to provide the medical certification and of burial-transit permits, permitting electronic transfer of medical certification for cause of death, adding the appropriate district medical examiner as a persons who may file a death certificate, and clarifying the obligations of primary and attending physicians of a deceased person;
- Defines several terms to have the same meaning as provided in chapter 497, F.S.;
- Authorizes nontransplant anatomical donation organizations (NADOs) to accept donations of human remains.
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at public expense to notify the anatomical board at the University of Florida Health Science Center (board);
- Defines the reasonable efforts that must be undertaken to dispose of unclaimed remains and to identify deceased persons, including veterans who may be eligible for burial in a national cemetery;
- Authorizes the board to embalm the human remains it receives;

- Permits a funeral director licensed under chapter 497, F.S., to act as a legally authorized person for the unclaimed remains when no family exists or is available and releases a funeral director from liability for damages when exercising that authority;
- Provides that, when the identity of the unclaimed remains cannot be ascertained, the remains may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons provided in s. 497.005, F.S.;
- Permits the board to lend remains to accredited colleges of mortuary science for education or research purposes;
- Requires the board, rather than the Department of Financial Services (DFS), to keep a record of all fees and other financial transactions, and authorizes the University of Florida to audit these records using an accounting firm paid by the board at least once every 3 years and provide DFS with the audit;
- Allows third parties to convey human remains or any part thereof outside the state for dental education or research purposes, with proper notice to and approval by the board;
- Creates an exception for NADOs that are accredited by the American Association of Tissue Banks (AATB) to convey human remains into or outside the state for medical or dental education or research purposes;
- Requires that the original burial-transit permit accompany human remains received by the board or a NADO;
- Requires that a NADO obtain written consent to dissect, segment, or disarticulate human remains, with such consent expressly stating such long-term preservation or extensive preparation methods that may be used on the remains being dissected, segmented or disarticulated; and
- Prohibits any person, institution or organization giving any monetary inducement or other valuable consideration to the donor's estate, or other third party for human remains. The payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, payment or reimbursement to a funeral establishment or removal service, and payment for the reasonable costs after use, including the disposition of human remains are not considered valuable consideration.

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.006, 382.008, 382.011, 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 497.005, 497.382, 497.607, and 765.513.

The bill creates section 406.49, Florida Statutes. The bill repeals section 406.54, Florida Statutes.

II. Present Situation:

The Disposition of Human Remains

The transportation, handling, and disposition of human remains is addressed by multiple Florida laws regulating various departments and persons:

- The Department of Health (DOH), Office of Vital Statistics (Chapter 382, F.S., the Florida Vital Statistics Act);
- Medical examiners and state anatomical board (Chapter 406, F.S., the Medical Examiners Act);
- Funeral directors, crematories, and direct disposers (Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act);[1] and
- Persons making advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or portions thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks or tissue banks (Chapter 765, F.S.).[2]

Section 382.002, F.S., defines "final disposition" as burial, interment, cremation, removal from the state, or other authorized disposition. Cremation, rather than dispersion of the resulting ashes or residue, is deemed final disposition. Death certificates are to be filed by the funeral director assuming custody of a dead body or a physician or other person in attendance at or after the death. Within 72 hours after receipt of a death certificate, the medical certification of cause of death must be completed by the physician in charge of the decedent's care for the illness or condition that resulted in death, the physician in attendance at the time of death (or immediately before or after death), or the medical examiner.[3]

Medical examiners must investigate and determine the cause of death when:

- Death is due to unlawful acts, unlawful neglect, violence, accident, or suicide;
- Sudden death occurs while the deceased was in apparent good health;
- Death occurs in prison, in police custody, under suspicious or unusual circumstances, or unattended by a physician;
- Death occurs by criminal abortion, by poison, or by disease constituting a public health threat;
- Death occurs by disease, injury, or toxic agent resulting from employment;
- The dead body is brought into the state without proper medical certification; or
- A body is to be cremated, dissected, or buried at sea.[4]

There are 24 medical examiner districts in Florida and 22 chief medical examiners. Some of the medical examiners serve more than one district.[5]

The legal disposition of human remains is further regulated in s. 406.50 through s. 406.61, F.S. Anyone (typically public officers and employees of governmental entities, and those in charge of

[1] Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, includes defined terms concerning the various methods of final disposition of dead human bodies, including procedures, descriptions of facilities and merchandise, and priority of those persons legally authorized to decide upon and direct such disposition.
[2] Chapter 765, F.S., addresses advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or parts thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks, or tissue banks. The term "anatomical gift" is defined in s. 765.511(2), F.S., as "a donation of all or part of a human body to take effect after the donor's death and to be used for transplantation, therapy, research, or education."
[3] Section 382.008, F.S.
[4] Section 406.11, F.S.
[5] *See* http://myfloridamedicalexaminer.com/ (Last visited March 12, 2013).

prisons, morgues, hospitals, funeral parlors, or mortuaries) coming into possession of human remains that are not claimed by a legally authorized person as defined in s. 497.005, F.S., or of remains to be buried or cremated at public expense, must notify the anatomical board. However, such notification is not required if the death was caused by crushing injury, the deceased had a contagious disease, an autopsy was required to determine the cause of death, the body was in a state of severe decomposition, or a family member objects to the use of the body for medical education and research.[6]

There are special requirements for the identification and handling of veterans or others entitled to burial in a national cemetery. The person in control of such dead bodies must contact certain county or federal offices.[7] Similar provisions exist for the handling of unclaimed bodies of indigent persons.[8]

The Anatomical Board

The stated mission of the board is to supply anatomical materials for teaching and research programs in the State of Florida.[9] The program provides donated bodies for the training of physicians, dentists, physician assistants, and other health workers.[10]

The board is permitted to accept and receive the bodies of those who die within the state of Florida, if they executed wills leaving their body to the board for the advancement of medical science.[11] Bodies received by the board may not be used for medical science purposes until 48 hours after receipt.[12] If there is a surfeit of bodies, or if the board deems a body unfit for anatomical purposes, the board may notify the county where the person died for identification and contact of relatives.

After the delivery of a body to the board friends, representatives of a fraternal society of which the deceased was a member, or representatives of any charitable or religious organization, may claim a body, and the board must surrender the body after its reasonable expenses have been reimbursed.[13]

The board or its duly authorized agent shall distribute any bodies it receives to medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require cadaveric material for study. Alternatively, those bodies may be loaned for examination or study purposes to recognized associations of licensed embalmers or funeral directors or medical or dental examining boards.[14]

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[6] Section 406.50, F.S.
[7] *Id.*
[8] Section 406.53, F.S.
[9] The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.
[10] *See* http://old.med.ufl.edu/anatbd/ (Last visited March 12, 2013).
[11] Section 406.56, F.S.
[12] Section 406.52, F.S.
[13] Section 406.54, F.S.
[14] Section 406.57, F.S.

The board is prohibited from entering into any contract, oral or written, for the payment of any sum of money to a living person in exchange for the delivery of the body of that person upon death[15] Moreover, the buying or selling of bodies or parts of bodies (except transmittal or conveyances by recognized Florida medical or dental schools) is prohibited in this state, which is punishable as a misdemeanor of the first degree.[16]

Fees may be charged by the board to defray the costs of obtaining and preparing the bodies. The board is also empowered to receive money from public or private sources to defray the costs of embalming, handling, shipping, storage, cremation, or other costs relating to the obtaining and use of the bodies. The record of all fees and other financial transactions are audited annually by the Department of Financial Services (DFS), and a report of the audit is provided to the University of Florida.[17]

Nontransplant Anatomical Donation Organizations

According to the American Association of Tissue Banks (AATB), an organization that promulgates industry standards and accredits tissue banks in the United States and Canada,[18] a nontransplant anatomical donation organization (NADO) is a tissue bank or other organization that facilitates nontransplant anatomical donations. Facilitating activities include referral, obtaining informed consent or authorization, acquisition, traceability, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluating intended use, distribution, and final disposition of nontransplant anatomical donations.[19] The AATB developed accreditation standards for NADOs in 2012. There are currently four NADOs accredited by AATB, including one in Florida.[20]

Organ Procurement Organizations

In addition to the organizations mentioned, the law defines several types of organizations permitted to handle human organs, human eye tissue, or other human tissue. An organ procurement organization is defined as an organization designated by the Secretary of the United States Department of Health and Human Services which engages in the retrieval, screening, testing, processing, storage, or distribution (hereafter collectively the "evaluation and conveyance") of human organs.[21] Four major organ and tissue procurement organizations operate in Florida to facilitate the process of organ donation. These organizations are certified by the U.S. Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and coordinate the donation process when organs become available.[22] Each organization serves a different region of the state.[23] In addition to federal

[15] Section 406.55, F.S.
[16] Section 406.61(1), F.S.
[17] Section 406.58, F.S.
[18] Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB (Last visited March 12, 2013).
[19] *See* http://www.aatb.org/index.asp?bid=271# for accreditation requirements (Last visited March 12, 2013).
[20] *See supra* note 19.
[21] Section 765.511(15), F.S.
[22] Organ Procurement Organizations, Organdonor.gov, available at http://organdonor.gov/materialsresources/materialsopolist.html, (last visited Mar. 12, 2013).

certification of organ procurement organizations, the Agency for Healthcare Administration (AHCA) also certifies these organ procurement organizations and other eye and tissue organizations.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 382.002, F.S. The definition of "final disposition" is amended to include "anatomical donation" as an authorized final disposition of a dead body and to indicate that such a donation is considered final disposition. The term "funeral director" is amended to delete a reference to other persons as individuals who may first assume custody of, or who effect the final disposition of, a dead body.

Section 2 amends s. 382.006, F.S., to add the Department of Health (DOH) as an authorized issuer of burial-transit permits.[25]

Section 3 amends s. 382.008, F.S., to:

- Require, in the absence of a funeral director who first assumes custody of the body, the district medical examiner of the county in which the death occurred or the body was found to file a death certificate.
- Permit electronic transfer of the medical certification of cause of death.
- Allow the decedent's primary or attending physician, or the local district medical examiner in the event of a death in violent or suspicious circumstances, to provide certification of cause of death. Under existing law, the certification could be supplied only by the physician in charge of care for the illness or condition which resulted in death or the physician in attendance at the time of, or immediately before or after, the death.
- Define the term "primary or attending physician" as a physician who treated the deceased through examination, medical advice, or medication during the 12 months preceding the date of death.
- Conform additional references to physicians and medical examiners to the definition of "primary physician or attending physician" created in the section.
- Identify the appropriate medical examiner as the district medical examiner of the county in which the death occurred or the body was found.

Section 4 amends s. 382.011, F.S., to:

- Mandate that a medical examiner determine the cause of death when death occurs more than 12 months (rather than only 30 days) after last treatment by a primary or attending physician.
- Add the medical examiner of the county in which the body was found to the people to whom a case may be referred for investigation.

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[23] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[24] AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks is available on FloridaHealthFinder at www.floridahealthfinder.gov, (last visited on Mar. 12, 2013.)
[25] The county health departments appoint the registrars and deputy registrars.

Section 5 creates s. 406.49, F.S., to:

- Create definitions for "cremated remains," "final disposition," "human remains or remains," and "legally authorized person" identical to definitions in s. 497.005, F.S.
- Create the definition of "nontransplant anatomical donation organization" as a tissue bank or other organization that facilitates nontransplant anatomical donations, including activities such as- referral, obtaining of consents and authorizations, acquisition, transport, assessment of acceptability of donors, preparation, storage, release, evaluation of intended use, distribution, and final disposition of nontransplant donations.
- Create a definition for "anatomical board"[26] and "indigent person."[27]
- Define the term "unclaimed remains" to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.
- Define "human remains" or "remains" to mean the body of a deceased human person for which a death certificate or fetal death certificate is required under chapter 382, F.S., and includes the body in any stage of decomposition.[28] "Final disposition" is defined, in part, to mean the final disposal of a dead human body by earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.[29]

Section 6 amends s. 406.50, F.S., to direct a person or entity that comes into possession, charge, or control of unclaimed remains that are required to be buried or cremated at public expense to notify the board.[30] The notice is not required if:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease;
- A legally authorized person objects to the use of the remains for medical education or research; or
- The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a national cemetery.

The bill deletes an exception to the notification requirements for death caused by crushing injury.

The bill amends provisions to require that before final disposition, the person or entity that comes into possession, charge, or control of unclaimed remains make reasonable effort to

[26]The definition of "anatomical board" is comparable to the term as used in s 406.50, F.S. Section 406.50(4), F.S., defines "anatomical board" to mean the anatomical board of this state located at the University of Florida Health Science Center.
[27] The definition of "indigent person" is comparable to the definition of the term as used in s. 406.53(3), F.S. "Indigent" is defined to be 100 percent of the federal poverty level recognized by the Federal Income Guidelines produced by the United States Department of Health and Human Services. *See* s. 406.53(3), F.S.
[28] *See* s. 497.005(38), F.S.
[29] See s. 497.005(32), F.S.
[30] The duty of notification is presently on "all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons" coming into possession of such remains.

identify the remains, contact relatives, and determine if the deceased person is eligible for burial in a national cemetery. A reasonable effort is defined to include contacting the National Cemetery Scheduling Office in addition to contacting the county veterans' service office and the regional office of the United States Department of Veterans Affairs. If the deceased is eligible for burial in a national cemetery,[31] the person or entity in charge of the remains make those arrangements in accordance with federal regulations and must also make a reasonable effort to cause the remains or cremated remains to be delivered to a national cemetery.

The bill provides that a funeral director licensed under chapter 497, F.S., may assume the responsibility of a legally authorized person when no family exists or is available. The funeral director after 24 hours has elapsed since the time of death may authorize arterial embalming for the purpose of storage and delivery of the unclaimed remains to the board. Funeral directors are released from liability for damages relating to embalming and delivering the remains to the board.

The bill provides that the remains of a deceased person whose identity cannot be ascertained may not be:

- Cremated;
- Donated as an anatomical gift;
- Buried at sea; or
- Removed from the state.

The bill strikes language which provides that competing claims for a body for interment by legally authorized persons shall be prioritized in accordance with s. 732.103, F.S.

The bill creates provisions that allow the board of county commissioners or its designated department of the county in which the remains were found or the death occurred to authorize and arrange for the burial or cremation of the entire remains if the anatomical board does not accept unclaimed remains. Boards of county commissioners may, by ordinance or resolution, prescribe policies and procedures for final disposition of unclaimed remains.

Section 7 amends s. 406.51, F.S., to make conforming changes and clarify references to federal law.

Section 8 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill:

- Authorizes the anatomical board to embalm human remains upon receipt and to refuse to accept unclaimed remains or the remains of an indigent person; and
- Provides that, at any point prior to use for medical education or research, human remains may be claimed by a legally authorized person, after payment of the board's expenses incurred for transporting, embalming, and storing the remains;
- Exempt licensees under chapter 497, F.S., from liability for any damages resulting from cremating or burying human remains at the written direction of the county.

[31] The bill clarifies who is eligible by referencing 38 C.F.R. s. 38.620.

The bill deletes the provisions which:

- Deem county commissioners of the county where the death occurred as a legally authorized person under s. 497.005, F.S.;
- Allow the board to provide written notice to the appropriate county commission or other legally authorized persons that more bodies had been made available than could be used for medical science or that a body had been deemed unfit for anatomical purposes. In such cases the unclaimed body must be buried or cremated in compliance with rules, laws, and practices for disposing of unclaimed bodies; and
- Require the county to make reasonable efforts to determine the identity of the body, contact relatives, and accommodate the requests of relatives if a preference is expressed for either burial or cremation.

Section 9 substantially rewords s. 406.53, F.S. Notwithstanding the provisions of s. 406.50(1), F.S.,[32] a county is not required to notify the anatomical board of the unclaimed remains of an indigent person if:

- The remains are decomposed or mutilated by wounds;
- An autopsy is performed;
- A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense;
  - If such person or relative is also an indigent person, the person must provide for final disposition in a manner consistent with policies of the county in which the death occurred or the remains were found;
- The deceased person was a veteran, or the spouse or dependent child of a veteran, of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery; or
- A licensed funeral director certifies that the board has been notified and either accepted or declined the remains.

The bill deletes notification exceptions for the following circumstances:

- In the event of death caused by crushing injury;
- Where the deceased had a contagious disease; or
- Where the body is claimed for burial at the expense of any friend or a representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, or a governmental agency that was providing residential care to the indigent person at the time of his or her death.

The bill also deletes the provision directing the DOH to assess fees for burial pursuant to s. 402.33, F.S., when it claims the body of an indigent client.

Section 10 amends s. 406.55, F.S., to make conforming and technical changes.

[32] This section deals with unclaimed human remains generally.

Section 11 amends s. 406.56, F.S., to make conforming and technical changes.

Section 12 amends s. 406.57, F.S., to make conforming and technical changes and to require the board to loan remains to accredited colleges of mortuary science for education or research purposes.

Section 13 amends s. 406.58, F.S., to make conforming and technical changes and specify that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services.

The bill requires the board, not the Department of Financial Services (DFS), to keep records of all fees and other financial transactions. The bill directs the University of Florida to audit these records at least once every 3 years or more frequently if deemed necessary, and to provide a copy of the audit to DFS within 90 days after completion. The bill authorizes the University of Florida to contract with a licensed public accounting firm "to provide for" the audit, and the accounting firm "may be paid from the fees collected by the board."

Section 14 amends s. 406.59, F.S., to make conforming and technical changes and mandate that entities receiving remains from the board may not use them for any purposes other than medical education or research.

Section 15 amends s. 406.60, F.S., to reference "human remains" and to provide that the board or a cinerator facility licensed under chapter 497, F.S., may dispose of human remains by cremation when such remains have been used for, and are not of any further value to, medical or dental education or research.

Section 16 amends s. 406.61, F.S., to make conforming and technical changes and to affirmatively state that the anatomical board may transport human remains outside the state for educational or scientific purposes. The bill allows other persons, institutions or organizations that convey human remains or any part thereof outside the state to do so for dental education or research purposes, but only upon the required notification to, and approval from, the anatomical board.

The bill allows a nontransplant anatomical donation association (NADO) that is accredited by the American Association of Tissue Banks (AATB) to convey human remains into or outside the state, for medical or dental education or research purposes without notifying the board or receiving board approval for the conveyance. The bill also requires that a NADO be accredited by the AATB effective October 1, 2014.

The bill makes buying or selling human remains or conveying human remains out of the state a misdemeanor of the first degree. Recognized Florida medical and dental schools are exceptions to this provision.

The bill requires that the original burial-transit permit issued pursuant to s. 382.007, F.S., accompany human remains received by the board or a NADO. It also prohibits the dissection,

segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred or the remains were found grants approval pursuant to s. 406.11, F.S.

The bill requires that a NADO obtain specific written consent for the dissection, segmentation, or disarticulation of any part of the remains from all persons who are authorized to consent to an anatomical gift as described in s. 765.512, F.S. Such consent must expressly state that the remains may undergo long-term preservation or extensive preparation, including but not limited to, removal of the head, arms, legs, hands, feet, spine, organs, tissues, or fluids.

The bill prohibits any person from offering any monetary inducement or other valuable consideration, including goods and services, to a donor, legally authorized person, the donor's estate, or any other third party, in exchange for human remains. The bill provides, however, that the term "valuable consideration" does not include, and does not prohibit payment or reimbursement of the following expenses:

- Reasonable costs associated with the removal, storage, and transportation of human remains;
- Fees of a licensed funeral establishment or removal service;
- Reasonable costs after use of the human remains; or
- Disposition by cremation of human remains after use when they are deemed of no further value to medical or dental education or research.

The bill also deletes language that provides a substitute format to comply with required documentation for plastinated remains exhibited before July 1, 2009, by entities accredited by the American Association of Museums. The substitute method of compliance expired on January 1, 2012, by the terms of the subsection.

Section 17 amends s. 497.005, F.S., to redefine "final disposition" as it relates to the Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Delivery of an anatomical donation is deemed to be final disposition if the medical institution or entity receiving it assumes responsibility for disposition after use.

Section 18 amends s. 497.382, F.S., to require that reports of embalming or other handling of dead bodies be recorded and signed monthly as appropriate by embalmers, funeral directors or direct disposers, and maintained at the business premises for inspection by staff of the Division of Funeral, Cemetery, and Consumer Services within the DFS. The bill deletes the requirement that the reports be submitted to or filed with the division. The bill also revises the reporting procedure for funeral directors performing a disinterment.

Section 19 amends s. 497.607, F.S., to require a reasonable effort be made by a funeral or direct disposal establishment to determine whether remains that have not been claimed within 120 days after cremation are those of a veteran or the spouse or dependent child of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery. If they are, the establishment must arrange for interment in a national cemetery and may use the assistance of a veterans' service organization for this purpose. A funeral or direct disposal establishment or veterans' service organization acting in good faith is not liable for damages resulting from the release of required information to determine eligibility.

There is no requirement to determine if the deceased is an eligible veteran if the funeral or direct disposal establishment is informed by a legally authorized person that the deceased was not a veteran. Similarly, there is no requirement to relinquish possession of cremated remains to a veteran's service organization if the establishment is informed by a legally authorized person that the deceased did not desire any funeral, ceremony, or interment-related services recognizing the deceased's service as a veteran.

The bill defines "reasonable effort" to include contacting the National Cemetery Scheduling Office, the county veterans' service office, the regional office of the U.S. Department of Veterans Affairs, or a veteran's service organization. The term "veterans' service organization" is defined as a tax-exempt entity under s. 501(c) (3) or 501(c)(10) of the Internal Revenue Code, organized for the benefit of veterans' burial and interment, that is recognized by the Memorial Affairs Division of the U.S. Department of Veterans Affairs. This includes members and employees of those organizations that assist in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Section 20 amends s. 765.513, F.S., to specify that the anatomical board or a NADO may be a donee of the whole body for medical or dental education or research.

Section 21 repeals s. 406.54, F.S., which relates to the anatomical board surrendering a body to the claimant after payment of certain expenses. This is addressed by the bill in s. 406.52, F.S.

Section 22 provides an effective date of 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:

Effective October 1, 2014, a nontransplant anatomical donation organization must be accredited by the AATB to convey human remains outside and into the state. Staff at the American Association of Tissue Banks report that the initial application cost is $5,000, and annual renewals thereafter range between a minimum of $3,250 and $75,000 annually, based on gross revenues.[33]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The title of part II of chapter 406, F.S., remains "Disposition of Dead Bodies," even though all references therein will refer to "human remains" or "remains," the Division of Law Revision and Information in the Office of Legislative Services should conform the reference accordingly as needed.

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 Regulated Industries on March 7, 2013:
The committee substitute:

- Conforms the bill to its House companion (CS/HB 171);
- Allows the Department of Health as well as the local health department registrar to grant an extension of time for the submission of the medical certification of the cause of death;
- Defines nontransplant anatomical donation organizations (NADO) as authorized to accept donations of human remains;
- Describes specific requirements for the contents of consents to be obtained by NADOs;
- Provides that an institution or organization may not offer monetary or other valuable consideration in exchange for human remains; and
- Defines the term "valuable consideration" to exclude payments or reimbursement of reasonable costs associated with the handling of the remains before and after use, including cremation.

[33] Teleconference by the Senate Committee on Regulated Industries with D. Newman at AATB March 5, 2013.

B. Amendments:

None.

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

By the Committee on Regulated Industries; and Senator Sachs

580-02033-13 2013370c1

A bill to be entitled

An act relating to disposition of human remains; amending s. 382.002, F.S.; revising definitions for purposes of the Florida Vital Statistics Act; amending s. 382.006, F.S.; authorizing the Department of Health to issue burial-transit permits; amending s. 382.008, F.S.; revising procedures for the registration of certificates of death or fetal death and the medical certification of causes of death; providing a definition; amending s. 382.011, F.S.; extending the time by which certain deaths must be referred to the medical examiner for investigation; creating s. 406.49, F.S.; providing definitions; amending s. 406.50, F.S.; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; limiting the liability of licensed funeral directors who authorize the embalming of unclaimed remains under certain circumstances; amending s. 406.51, F.S.; requiring that local governmental contracts for the final disposition of unclaimed remains comply with certain federal regulations; amending s. 406.52, F.S.; revising procedures for the anatomical board's retention of human remains before their use; providing for claims by, and the release of human remains to, legally authorized persons after payment of certain expenses; authorizing county ordinances or resolutions for the final disposition of the unclaimed remains of

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indigent persons; limiting the liability of certain licensed persons for cremating or burying human remains under certain circumstances; amending s. 406.53, F.S.; revising exceptions from requirements for notice to the anatomical board of the death of indigent persons; deleting a requirement that the Department of Health assess fees for the burial of certain bodies; amending ss. 406.55, 406.56, and 406.57, F.S.; conforming provisions; amending s. 406.58, F.S.; requiring audits of the financial records of the anatomical board; conforming provisions; amending s. 406.59, F.S.; conforming provisions; amending s. 406.60, F.S.; authorizing certain facilities to dispose of human remains by cremation; amending s. 406.61, F.S.; revising provisions prohibiting the selling or buying of human remains or the transmitting or conveying of such remains outside the state; providing penalties; excepting accredited nontransplant anatomical donation organizations from requirements for the notification of and approval from the anatomical board for the conveyance of human remains for specified purposes; requiring that nontransplant anatomical donation organizations be accredited by a certain date; requiring that human remains received by the anatomical board be accompanied by a burial-transit permit; requiring approval by the medical examiner and consent of certain persons before the dissection, segmentation, or disarticulation of such remains;

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59 prohibiting the offer of any monetary inducement or
60 other valuable consideration in exchange for human
61 remains; providing a definition; deleting an expired
62 provision; conforming provisions; amending s. 497.005,
63 F.S.; revising a definition for purposes of the
64 Florida Funeral, Cemetery, and Consumer Services Act;
65 amending s. 497.382, F.S.; revising certain reporting
66 requirements for funeral establishments, direct
67 disposal establishments, cinerator facilities, and
68 centralized embalming facilities; amending s. 497.607,
69 F.S.; providing requirements for the disposal of
70 unclaimed cremated remains by funeral or direct
71 disposal establishments; limiting the liability of
72 funeral or direct disposal establishments and
73 veterans' service organizations related to the release
74 of information required to determine the eligibility
75 for interment in a national cemetery of the unclaimed
76 cremated remains of a veteran; providing definitions;
77 amending s. 765.513, F.S.; revising the list of donees
78 who may accept anatomical gifts and the purposes for
79 which such a gift may be used; repealing s. 406.54,
80 F.S., relating to claims of bodies after delivery to
81 the anatomical board; providing an effective date.
82
83 Be It Enacted by the Legislature of the State of Florida:
84
85 Section 1. Subsections (8) and (9) of section 382.002,
86 Florida Statutes, are amended to read:
87 382.002 Definitions.—As used in this chapter, the term:

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88 (8) "Final disposition" means the burial, interment,
89 cremation, removal from the state, anatomical donation, or other
90 authorized disposition of a dead body or a fetus as described in
91 subsection (7). In the case of cremation, dispersion of ashes or
92 cremation residue is considered to occur after final
93 disposition; the cremation itself is considered final
94 disposition. In the case of anatomical donation of a dead body,
95 the donation itself is considered final disposition.
96 (9) "Funeral director" means a licensed funeral director or
97 direct disposer licensed pursuant to chapter 497 ~~or other person~~
98 who first assumes custody of or effects the final disposition of
99 a dead body or a fetus as described in subsection (7).
100 Section 2. Subsection (2) of section 382.006, Florida
101 Statutes, is amended to read:
102 382.006 Burial-transit permit.—
103 (2) A burial-transit permit shall be issued by the
104 department or the local registrar or subregistrar of the
105 registration district in which the death occurred or the body
106 was found. A burial-transit permit may ~~shall~~ not be issued:
107 (a) Until a complete and satisfactory certificate of death
108 or fetal death is ~~has been~~ filed in accordance with the
109 requirements of this chapter and adopted rules, unless the
110 funeral director provides adequate assurance that a complete and
111 satisfactory certificate will be so registered.
112 (b) Except under conditions prescribed by the department,
113 if the death occurred from some disease that ~~which~~ is deemed
114 ~~held~~ by the department to be infectious, contagious, or
115 communicable and dangerous to the public health.
116 Section 3. Paragraph (a) of subsection (2) and subsections

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117 (3), (4), and (5) of section 382.008, Florida Statutes, are
118 amended to read:
119 382.008 Death and fetal death registration.—
120 (2)(a) The funeral director who first assumes custody of a
121 dead body or fetus shall file the certificate of death or fetal
122 death. In the absence of the funeral director, the physician or
123 other person in attendance at or after the death or the district
124 medical examiner of the county in which the death occurred or
125 the body was found shall file the certificate of death or fetal
126 death. The person who files the certificate shall obtain
127 personal data from the next of kin or the best qualified person
128 or source available. The medical certification of cause of death
129 shall be furnished to the funeral director, either in person or
130 via certified mail or electronic transfer, by the physician or
131 medical examiner responsible for furnishing such information.
132 For fetal deaths, the physician, midwife, or hospital
133 administrator shall provide any medical or health information to
134 the funeral director within 72 hours after expulsion or
135 extraction.
136 (3) Within 72 hours after receipt of a death or fetal death
137 certificate from the funeral director, the medical certification
138 of cause of death shall be completed and made available to the
139 funeral director by the decedent's primary or attending
140 physician ~~in charge of the decedent's care for the illness or~~
141 ~~condition which resulted in death, the physician in attendance~~
142 ~~at the time of death or fetal death or immediately before or~~
143 ~~after such death or fetal death,~~ or, if s. 382.011 applies, the
144 district medical examiner of the county in which the death
145 occurred or the body was found ~~if the provisions of s. 382.011~~

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146 ~~apply~~. The primary or attending physician or medical examiner
147 shall certify over his or her signature the cause of death to
148 the best of his or her knowledge and belief. As used in this
149 section, the term "primary or attending physician" means a
150 physician who treated the decedent through examination, medical
151 advice, or medication during the 12 months preceding the date of
152 death.
153 (a) The local registrar may grant the funeral director an
154 extension of time upon a good and sufficient showing of any of
155 the following conditions:
156 1. An autopsy is pending.
157 2. Toxicology, laboratory, or other diagnostic reports have
158 not been completed.
159 3. The identity of the decedent is unknown and further
160 investigation or identification is required.
161 (b) If the decedent's primary or attending physician or
162 district medical examiner of the county in which the death
163 occurred or the body was found indicates ~~has indicated~~ that he
164 or she will sign and complete the medical certification of cause
165 of death~~,~~ but will not be available until after the 5-day
166 registration deadline, the local registrar may grant an
167 extension of 5 days. If a further extension is required, the
168 funeral director must provide written justification to the
169 registrar.
170 (4) If the department or local registrar grants ~~has granted~~
171 an extension of time to provide the medical certification of
172 cause of death, the funeral director shall file a temporary
173 certificate of death or fetal death which shall contain all
174 available information, including the fact that the cause of

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175 death is pending. The decedent's primary or attending physician
176 or the district medical examiner of the county in which the
177 death occurred or the body was found shall provide an estimated
178 date for completion of the permanent certificate.
179 (5) A permanent certificate of death or fetal death,
180 containing the cause of death and any other information that
181 ~~which~~ was previously unavailable, shall be registered as a
182 replacement for the temporary certificate. The permanent
183 certificate may also include corrected information if the items
184 being corrected are noted on the back of the certificate and
185 dated and signed by the funeral director, physician, or district
186 medical examiner of the county in which the death occurred or
187 the body was found, as appropriate.
188 Section 4. Subsection (1) of section 382.011, Florida
189 Statutes, is amended to read:
190 382.011 Medical examiner determination of cause of death.—
191 (1) In the case of any death or fetal death due to causes
192 or conditions listed in s. 406.11, any ~~or where the~~ death that
193 occurred more than 12 months ~~30 days~~ after the decedent was last
194 treated by a primary or attending physician as defined in s.
195 382.008(3) ~~unless the death was medically expected as certified~~
196 ~~by an attending physician~~, or any death for which ~~where~~ there is
197 reason to believe that the death may have been due to an
198 unlawful act or neglect, the funeral director or other person to
199 whose attention the death may come shall refer the case to the
200 district medical examiner of the county ~~district~~ in which the
201 death occurred or the body was found for investigation and
202 determination of the cause of death.
203 Section 5. Section 406.49, Florida Statutes, is created in

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204 part II of chapter 406, Florida Statutes, to read:
205 406.49 Definitions.—As used in this part, the term:
206 (1) "Anatomical board" means the anatomical board of the
207 state headquartered at the University of Florida Health Science
208 Center.
209 (2) "Cremated remains" has the same meaning as provided in
210 s. 497.005.
211 (3) "Final disposition" has the same meaning as provided in
212 s. 497.005.
213 (4) "Human remains" or "remains" has the same meaning as
214 provided in s. 497.005.
215 (5) "Indigent person" means a person whose family income
216 does not exceed 100 percent of the current federal poverty
217 guidelines prescribed for the family's household size by the
218 United States Department of Health and Human Services.
219 (6) "Legally authorized person" has the same meaning as
220 provided in s. 497.005.
221 (7) "Nontransplant anatomical donation organization" means
222 a tissue bank or other organization that facilitates
223 nontransplant anatomical donation, including referral, obtaining
224 informed consent or authorization, acquisition, traceability,
225 transport, assessing donor acceptability, preparation,
226 packaging, labeling, storage, release, evaluating intended use,
227 distribution, and final disposition of nontransplant anatomical
228 donations.
229 (8) "Unclaimed remains" means human remains that are not
230 claimed by a legally authorized person, other than a medical
231 examiner or the board of county commissioners, for final
232 disposition at the person's expense.

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

Section 6. Section 406.50, Florida Statutes, is amended to read:

406.50 Unclaimed ~~dead bodies or human~~ remains; disposition, procedure.—

(1) A person or entity that comes ~~All public officers, agents, or employees of every county, city, village, town, or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons coming~~ into possession, charge, or control of unclaimed ~~any dead human body or~~ remains that ~~which are unclaimed or which~~ are required to be buried or cremated at public expense shall ~~are hereby required to notify,~~ immediately notify~~,~~ the anatomical board, unless:

(a) The unclaimed remains are decomposed or mutilated by wounds;

(b) An autopsy is performed on the remains;

(c) The remains contain ~~whenever any such body, bodies, or remains come into its possession, charge, or control. Notification of the anatomical board is not required if the death was caused by crushing injury, the deceased had~~ a contagious disease;

(d) A legally authorized person~~, an autopsy was required to determine cause of death, the body was in a state of severe decomposition, or a family member~~ objects to use of the remains ~~body~~ for medical education or ~~and~~ research; or

(e) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a

national cemetery.

(2)~~(1)~~ Before the final disposition of unclaimed remains, the person or entity in charge or control of the ~~dead body or human~~ remains shall make a reasonable effort to ~~determine~~:

(a) Determine the identity of the deceased person and ~~shall further make a reasonable effort to~~ contact any relatives of the ~~such~~ deceased person.

(b) Determine whether ~~or not~~ the deceased person is eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a national cemetery as a veteran of the armed forces and, if eligible ~~so~~, to cause the deceased person's remains or cremated remains to be delivered to a national cemetery ~~shall make arrangements for such burial services in accordance with the provisions of 38 C.F.R~~.

For purposes of this subsection, "a reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, or the regional office of the United States Department of Veterans Affairs.

(3)~~(2)~~ Unclaimed remains ~~Such dead human bodies as described in this chapter~~ shall be delivered to the anatomical board as soon as possible after death. When no family exists or is available, a funeral director licensed under chapter 497 may assume the responsibility of a legally authorized person and may, after 24 hours have elapsed since the time of death, authorize arterial embalming for the purposes of storage and delivery of unclaimed remains to the anatomical board. A funeral director licensed under chapter 497 is not liable for damages under this subsection.

(4) The remains of a deceased person whose identity is not known may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state.

(5) If the anatomical board does not accept the unclaimed remains, the board of county commissioners or its designated county department of the county in which the death occurred or the remains were found may authorize and arrange for the burial or cremation of the entire remains. A board of county commissioners may by resolution or ordinance, in accordance with applicable laws and rules, prescribe policies and procedures for final disposition of unclaimed remains.

(6)~~(3)~~ This part does not ~~Nothing herein shall~~ affect the right of a medical examiner to hold human ~~such dead body or~~ remains for the purpose of investigating the cause of death or~~,~~ ~~nor shall this chapter affect~~ the right of any court of competent jurisdiction to enter an order affecting the disposition of such ~~body or~~ remains.

~~(4) In the event more than one legally authorized person claims a body for interment, the requests shall be prioritized in accordance with s. 732.103.~~

~~For purposes of this chapter, the term "anatomical board" means the anatomical board of this state located at the University of Florida Health Science Center, and the term "unclaimed" means a dead body or human remains that is not claimed by a legally authorized person, as defined in s. 497.005, for interment at that person's expense.~~

Section 7. Section 406.51, Florida Statutes, is amended to read:

406.51 Final disposition of unclaimed deceased veterans; contract requirements.—Any contract by a local governmental entity for the final disposition ~~disposal~~ of unclaimed ~~human~~ remains must provide for compliance with s. 406.50(2) ~~406.50(1)~~ and require that the procedures in 38 C.F.R. s. 38.620, relating to disposition of unclaimed deceased veterans, are ~~be~~ followed.

Section 8. Section 406.52, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.52, F.S., for present text.)

406.52 Retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains of indigent persons.—

(1) The anatomical board shall keep in storage all human remains that it receives for at least 48 hours before allowing their use for medical education or research. Human remains may be embalmed when received. The anatomical board may, for any reason, refuse to accept unclaimed remains or the remains of an indigent person.

(2) At any time before their use for medical education or research, human remains delivered to the anatomical board may be claimed by a legally authorized person. The anatomical board shall release the remains to the legally authorized person after payment of the anatomical board's expenses incurred for transporting, embalming, and storing the remains.

(3)(a) A board of county commissioners may by resolution or ordinance, in accordance with applicable laws and rules, prescribe policies and procedures for the burial or cremation of the entire unclaimed remains of an indigent person whose death

occurred, or whose remains were found, in the county.

(b) A person licensed under chapter 497 is not liable for any damages resulting from cremating or burying such human remains at the written direction of the board of county commissioners or its designee.

Section 9. Section 406.53, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 406.53, F.S., for present text.)

406.53 Unclaimed remains of indigent person; exemption from notice to the anatomical board.—A board of county commissioners or its designated county department that receives a report of the unclaimed remains of an indigent person, notwithstanding s. 406.50(1), is not required to notify the anatomical board of the remains if:

(1) The indigent person's remains are decomposed or mutilated by wounds or if an autopsy is performed on the remains;

(2) A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense or, if such relative or legally authorized person is also an indigent person, in a manner consistent with the policies and procedures of the board of county commissioners of the county in which the death occurred or the remains were found;

(3) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a

national cemetery; or

(4) A funeral director licensed under chapter 497 certifies that the anatomical board has been notified and either accepted or declined the remains.

Section 10. Section 406.55, Florida Statutes, is amended to read:

406.55 Contracts for delivery of human remains ~~body~~ after death prohibited.—The anatomical board may not enter ~~is specifically prohibited from entering~~ into any contract, oral or written, that provides for ~~whereby~~ any sum of money to ~~shall~~ be paid to any living person in exchange for ~~which~~ the delivery of that person's remains ~~body of said person shall be delivered~~ to the anatomical board when the ~~such living~~ person dies.

Section 11. Section 406.56, Florida Statutes, is amended to read:

406.56 Acceptance of human remains ~~bodies~~ under will.—If any person ~~being~~ of sound mind executes ~~shall execute~~ a will leaving his or her remains ~~body~~ to the anatomical board for ~~the advancement of~~ medical education or research ~~science~~ and the ~~such~~ person dies within the geographical limits of the state, the anatomical board may ~~is hereby empowered to~~ accept and receive the person's remains ~~such body~~.

Section 12. Section 406.57, Florida Statutes, is amended to read:

406.57 Distribution of human remains ~~dead bodies~~.—The anatomical board or its duly authorized agent shall take and receive human remains ~~the bodies~~ delivered to it as provided in ~~under the provisions of~~ this chapter and shall:

(1) Distribute the remains ~~them~~ equitably ~~to and~~ among the

407 medical and dental schools, teaching hospitals, medical
408 institutions, and health-related teaching programs that require
409 cadaveric material for study; or
410 (2) Loan the remains ~~same may be loaned for examination or~~
411 ~~study purposes~~ to accredited colleges of mortuary science
412 ~~recognized associations of licensed embalmers or funeral~~
413 ~~directors,~~ or medical or dental examining boards for educational
414 or research purposes ~~at the discretion of the anatomical board~~.
415 Section 13. Section 406.58, Florida Statutes, is amended to
416 read:
417 406.58 Fees; authority to accept additional funds; annual
418 audit.—
419 (1) The anatomical board may:
420 (a) Adopt ~~is empowered to prescribe~~ a schedule of fees to
421 be collected from the institutions ~~institution or association~~ to
422 which the human remains ~~bodies, as described in this chapter,~~
423 are distributed or loaned to defray the costs of obtaining and
424 preparing the remains ~~such bodies~~.
425 (b) ~~(2) The anatomical board is hereby empowered to~~ Receive
426 money from public or private sources, in addition to the fees
427 collected from the institutions ~~institution or association~~ to
428 which human remains ~~the bodies~~ are distributed, to be used to
429 defray the costs of embalming, handling, shipping, storing,
430 cremating, and otherwise ~~storage, cremation, and other costs~~
431 ~~relating to the~~ obtaining and using the remains. ~~use of such~~
432 ~~bodies as described in this chapter; the anatomical board is~~
433 ~~empowered to~~
434 (c) Pay or reimburse the reasonable expenses, as determined
435 by the anatomical board, incurred by a funeral establishment or

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436 removal service licensed under chapter 497 for the removal,
437 storage, and transportation ~~any person delivering the bodies as~~
438 ~~described in this chapter~~ to the anatomical board of unclaimed
439 human remains. ~~and is further empowered to~~
440 (d) Enter into contracts and perform such other acts ~~as are~~
441 necessary for ~~to~~ the proper performance of its duties.~~;~~
442 (2) The anatomical board shall keep a complete record of
443 all fees and other financial transactions. The University of
444 Florida shall conduct an audit of the financial records of the
445 anatomical board at least once every 3 years or more frequently
446 as the university deems necessary. Within 90 days after
447 completing an audit, the university shall provide a copy of the
448 audit to the Department of Financial Services. The university
449 may contract with a licensed public accounting firm to provide
450 for the audit, which firm may be paid from the fees collected by
451 the ~~of said~~ anatomical board ~~shall be kept and audited annually~~
452 ~~by the Department of Financial Services, and a report of such~~
453 ~~audit shall be made annually to the University of Florida~~.
454 Section 14. Section 406.59, Florida Statutes, is amended to
455 read:
456 406.59 Institutions receiving human remains ~~bodies~~.—A ~~No~~
457 university, school, college, teaching hospital, or institution
458 may not~~, or association shall be allowed or permitted to~~ receive
459 any human remains from the anatomical board ~~such body or bodies~~
460 ~~as described in this chapter~~ until its facilities are ~~have been~~
461 inspected and approved by the anatomical board. Human remains
462 ~~All such bodies~~ received by such university, school, college,
463 teaching hospital, or institution may not~~, or association shall~~
464 be used for any ~~no other~~ purpose other than ~~the promotion of~~

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465 medical education or research ~~science~~.
466 Section 15. Section 406.60, Florida Statutes, is amended to
467 read:
468 406.60 Disposition of human remains ~~bodies~~ after use. ~~At~~
469 ~~any time~~ When human remains ~~any body or bodies or part or parts~~
470 ~~of any body or bodies, as described in this chapter, shall~~ have
471 been used for, and are not ~~deemed~~ of any ~~no~~ further value to,
472 medical or dental education or research ~~science~~, ~~then~~ the
473 anatomical board or a cinerator facility licensed under chapter
474 497 ~~person or persons having charge of said body or parts of~~
475 ~~said body~~ may dispose of the remains or any part thereof by
476 cremation.
477 Section 16. Section 406.61, Florida Statutes, is amended to
478 read:
479 406.61 Selling, buying, or conveying human remains ~~bodies~~
480 outside state prohibited; exceptions; ~~,~~ penalty.—
481 (1)(a) The anatomical board may transport human remains
482 outside the state for educational or scientific purposes. ~~Any~~
483 ~~person who sells or buys any body or parts of bodies as~~
484 ~~described in this chapter or any person except a recognized~~
485 ~~Florida medical or dental school who transmits or conveys or~~
486 ~~causes to be transmitted or conveyed such body or parts of~~
487 ~~bodies to any place outside this state commits a misdemeanor of~~
488 ~~the first degree, punishable as provided in ss. 775.082 and~~
489 ~~775.083. However,~~ This chapter does not prohibit the transport
490 of ~~anatomical board from transporting~~ human remains, any part of
491 such remains ~~specimens outside the state for educational or~~
492 ~~scientific purposes or prohibit the transport of bodies, parts~~
493 ~~of bodies~~, or tissue specimens in furtherance of lawful

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494 examination, investigation, or autopsy conducted pursuant to s.
495 406.11.
496 (b) A ~~Any~~ person, institution, or organization that conveys
497 human remains ~~bodies~~ or any part thereof ~~parts of bodies~~ into or
498 outside ~~out of~~ the state for medical or dental education or
499 research purposes must ~~shall~~ notify the anatomical board of such
500 intent and receive approval from the board.
501 (c) Notwithstanding paragraph (b), a nontransplant
502 anatomical donation organization accredited by the American
503 Association of Tissue Banks may convey human remains or any part
504 thereof into or outside the state for medical or dental
505 education or research purposes without notifying or receiving
506 approval from the anatomical board. Effective October 1, 2014, a
507 nontransplant anatomical donation organization must be
508 accredited by the American Association of Tissue Banks.
509 (d) A person who sells or buys human remains or any part
510 thereof, or a person who transmits or conveys or causes to be
511 transmitted or conveyed such remains or part thereof to any
512 place outside this state, in violation of this section commits a
513 misdemeanor of the first degree, punishable as provided in s.
514 775.082 or s. 775.083. This paragraph does not apply to a
515 recognized Florida medical or dental school.
516 (2)(a) Human remains received in this state by the
517 anatomical board or a nontransplant anatomical donation
518 organization must be accompanied by the original burial-transit
519 permit issued pursuant to s. 382.007. The remains may not be
520 dissected, segmented, or disarticulated until the district
521 medical examiner of the county in which the death occurred or
522 the remains were found grants approval pursuant to s. 406.11.

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523 (b) A nontransplant anatomical donation organization must
524 obtain specific written consent for the dissection,
525 segmentation, or disarticulation of any part of the remains from
526 a person who is authorized under s. 765.512 to give such
527 consent. Such consent must expressly state that the remains may
528 undergo long-term preservation or extensive preparation,
529 including, but not limited to, removal of the head, arms, legs,
530 hands, feet, spine, organs, tissues, or fluids.
531 (3) A person, institution, or organization may not offer in
532 exchange for human remains any monetary inducement or other
533 valuable consideration, including goods or services, to a donor,
534 a legally authorized person, the donor's estate, or any other
535 third party. As used in this subsection, the term "valuable
536 consideration" does not include, and this subsection does not
537 prohibit, payment or reimbursement of the reasonable costs
538 associated with the removal, storage, and transportation of
539 human remains, including payment or reimbursement of a funeral
540 establishment or removal service licensed under chapter 497 or
541 the reasonable costs after use, including payment or
542 reimbursement for the disposition of human remains pursuant to
543 s. 406.60.
544 (4) ~~(2)~~ An ~~Any~~ entity accredited by the American Association
545 of Museums may convey plastinated human remains ~~bodies~~ or any
546 part thereof within, ~~parts of bodies~~ into, or outside ~~out of~~ the
547 state for exhibition and public educational purposes without the
548 consent of the anatomical board if the accredited entity:
549 (a) Notifies the anatomical board of the conveyance and the
550 duration and location of the exhibition at least 30 days before
551 the intended conveyance.

552 (b) Submits to the anatomical board a description of the
553 remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name
554 and address of the company providing the remains ~~bodies~~ or any
555 part thereof ~~parts of bodies~~.
556 (c) Submits to the anatomical board documentation that the
557 remains or each part thereof ~~body~~ was donated by the decedent or
558 his or her next of kin for purposes of plastination and public
559 exhibition, or, in lieu of such documentation, an affidavit
560 stating that the remains or each part thereof ~~body~~ was donated
561 directly by the decedent or his or her next of kin for such
562 purposes to the company providing the remains ~~body~~ and that such
563 company has a donation form on file for the remains ~~body~~.
564 ~~(3) Notwithstanding paragraph (2)(c) and in lieu of the~~
565 ~~documentation or affidavit required under paragraph (2)(c), for~~
566 ~~a plastinated body that, before July 1, 2009, was exhibited in~~
567 ~~this state by any entity accredited by the American Association~~
568 ~~of Museums, such an accredited entity may submit an affidavit to~~
569 ~~the board stating that the body was legally acquired and that~~
570 ~~the company providing the body has acquisition documentation on~~
571 ~~file for the body. This subsection expires January 1, 2012.~~
572 Section 17. Subsection (32) of section 497.005, Florida
573 Statutes, is amended to read:
574 497.005 Definitions.—As used in this chapter, the term:
575 (32) "Final disposition" means the final disposal of a dead
576 human body by earth interment, aboveground interment, cremation,
577 burial at sea, anatomical donation, or delivery to a medical
578 institution for lawful dissection if the medical institution or
579 entity receiving the anatomical donation assumes responsibility
580 for disposition after use pursuant to s. 406.60 ~~disposal~~. The

term ~~"Final disposition"~~ does not include the disposal or distribution of cremated remains and residue of cremated remains.

Section 18. Section 497.382, Florida Statutes, is amended to read:

497.382 Reports of cases embalmed and bodies handled.—

(1) Each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility shall record monthly ~~report~~ on a form prescribed and furnished by the licensing authority the name of the deceased and such other information as may be required by rule with respect to each dead human body embalmed or otherwise handled by the establishment or facility. Such forms shall be signed monthly by the embalmer who performs the embalming, if the body is embalmed, and the funeral director in charge of the establishment or facility or by the direct disposer who disposes of the body and shall be maintained at the business premises of the establishment or facility for inspection by division staff. The licensing authority shall prescribe by rule the procedures for preparing and retaining ~~in submitting~~ such forms ~~documentation~~. ~~Reports required by this subsection shall be filed by the 20th day of each month for final dispositions handled the preceding month.~~

(2) Funeral directors performing disinterments shall record monthly on the form specified in subsection (1) and pursuant to ~~report, using a form and~~ procedures prescribed ~~specified~~ by rule~~,~~ the name of the deceased and such other information as may be required by rule with respect to each dead human body disinterred.

Section 19. Subsection (2) of section 497.607, Florida Statutes, is amended to read:

497.607 Cremation; procedure required.—

(2)(a) With respect to any person who intends to provide for the cremation of the deceased, if, after a period of 120 days from the time of cremation the cremated remains have not been claimed, the funeral or direct disposal establishment may dispose of the cremated remains. Such disposal shall include scattering them at sea or placing them in a licensed cemetery scattering garden or pond or in a church columbarium or otherwise disposing of the remains as provided by rule.

(b) A reasonable effort shall be made before such disposal to determine whether the cremated remains are those of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery or a spouse or dependent child of a veteran eligible for burial in a national cemetery.

(c) If the unclaimed cremated remains are those of an eligible veteran or the spouse or dependent child of an eligible veteran, the funeral or direct disposal establishment shall arrange for the interment of the cremated remains in a national cemetery. A funeral or direct disposal establishment may use the assistance of a veterans' service organization for this purpose. A funeral or direct disposal establishment or veterans' service organization acting in good faith is not liable for any damages resulting from the release of required information to determine eligibility for interment.

(d) This subsection does not require a funeral or direct disposal establishment to:

639 1. Determine whether the cremated remains are those of a
640 veteran if the funeral or direct disposal establishment is
641 informed by a legally authorized person that the decedent was
642 not a veteran.
643 2. Relinquish possession of the cremated remains to a
644 veterans' service organization if the funeral or direct disposal
645 establishment is informed by a legally authorized person that
646 the decedent did not desire any funeral, ceremony, or interment-
647 related services recognizing the decedent's service as a
648 veteran.
649 (e) For purposes of this subsection, the term:
650 1. "Reasonable effort" includes contacting the National
651 Cemetery Scheduling Office, the county veterans service office,
652 the regional office of the United States Department of Veterans
653 Affairs, or a veterans' service organization.
654 2. "Veterans' service organization" means an association,
655 corporation, or other entity that qualifies under s. 501(c)(3)
656 or s. 501(c)(19) of the Internal Revenue Code as a tax-exempt
657 organization, that is organized for the benefit of veterans'
658 burial and interment, and that is recognized by the Memorial
659 Affairs Division of the United States Department of Veterans
660 Affairs. The term includes a member or employee of an eligible
661 nonprofit veterans' corporation, association, or entity that
662 specifically assists in facilitating the identification,
663 recovery, and interment of the unclaimed cremated remains of
664 veterans.
665 Section 20. Subsection (1) of section 765.513, Florida
666 Statutes, is amended to read:
667 765.513 Donees; purposes for which anatomical gifts may be

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668 made.—
669 (1) The following persons or entities may become donees of
670 anatomical gifts of bodies or parts of them for the purposes
671 stated:
672 (a) Any procurement organization or accredited medical or
673 dental school, college, or university for education, research,
674 therapy, or transplantation.
675 (b) Any individual specified by name for therapy or
676 transplantation needed by him or her.
677 (c) The anatomical board or a nontransplant anatomical
678 donation organization, as defined in s. 406.49, for donation of
679 the whole body for medical or dental education or research.
680 Section 21. Section 406.54, Florida Statutes, is repealed.
681 Section 22. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/CS/SB 390

INTRODUCER: Judiciary Committee; Criminal Justice Committee; Military Affairs, Space, and Domestic Security Committee; and Senator Dean

SUBJECT: Veterans' Organizations

DATE: April 3, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	**Fav/CS**
2.	Clodfelter	Cannon	CJ	**Fav/CS**
3.	Shankle	Cibula	JU	**Fav/CS**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 390 makes it a violation of the Florida Deceptive and Unfair Trade Practices Act for an entity to advertise or hold itself out as a veterans' organization unless it is an actual veterans' organization as defined by the bill. The bill allows a veterans' organization to bring an action for injunctive relief against a violating entity. The bill provides that a business entity that unlawfully holds itself out as a veterans' organization commits a misdemeanor of the first degree.

The bill also amends s. 817.312, F.S., which prohibits persons from misrepresenting themselves as a current member or veteran of the United States military and wearing a uniform, medal or insignia that is authorized for use by members or veterans of the U.S. military while soliciting for charitable contributions. The bill amends the statute to apply when the person is either misrepresenting himself or herself as a servicemember or veteran or is wearing a military uniform, medal, or insignia that he or she is not authorized to wear. In addition, the prohibited activity is expanded to include misrepresentation or improper wear for the purpose of material gain.

This bill substantially amends section 817.312, Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans, while also providing opportunities for veterans to get involved with the larger community. Their particular roles and activities vary. While the term "veterans' organization" is not defined in Florida Statutes in a broad context, these organizations are treated in much the same way as other charitable and non-profit organizations.

Congressionally-Chartered Veterans' Organizations

Title 36 of the U.S. Code lists national or patriotic non-profit corporations who have been granted corporate charters by act of Congress and whose primary purpose is to promote patriotic, charitable, educational, or other eleemosynary activities.[1] Many of these organizations are military veteran services oriented organizations. The corporations listed in Title 36 are not agencies of the United States, and the charter does not assign any governmental attributes.[2] The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to that extent, it may provide them prestige and indirect financial benefit.

Currently, federal supervision of congressionally chartered non-profit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II,[3] are required to have independent audits annually and to have the reports of the audits submitted to Congress.[4] Such organizations are also required to submit annual reports of their activities to Congress.

Nationally Recognized Veterans' Organizations

The U.S. Department of Veterans Affairs (USDVA) is authorized to recognize certain veterans' organizations as national organizations for the purpose of assisting claimants for USDVA benefits in the preparation, presentation, and prosecution of their claims.[5] A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

- Has a primary purpose of serving veterans;
- Demonstrates a substantial service to veterans;

[1] These entities are referred to as "Title 36 corporations" because they are found in Title 36 of the U.S. Code.
[2] Ronald C. Moe, *Congressionally Charters Non-profit Organizations ("Title 36 Corporations"): What They Are and how Congress Treats Them*, CRS Report for Congress; April 8, 2004, available at: http://www.coherentbabble.com/signingstatements/CRS/CRS-RL30340%5B1%5DPL107-41.pdf.
[3] 36 U.S.C. Subtitle II.
[4] 36 U.S.C. s. 10101.
[5] 38 U.S.C. s. 5902.

- Commits a significant portion of its assets to veterans' services and has adequate funding to properly perform those services; and
- Maintains capability of providing complete claims service to each claimant requesting representation.[6]

In addition, a nationally recognized organization must have the capability and resources to provide representation to a sizeable number of claimants, must be geographically diversified (i.e., one or more posts in at least 10 states), and in the case of membership organizations, must maintain a membership of 2,000 or more persons.[7]

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.[8] This directory also includes other congressionally chartered and non-chartered veterans' organizations that are not recognized by the USDVA as national organizations, but which represent the interest of American veterans.

Annual Registration with Department of Agriculture and Consumer Services

Veterans' organizations that intend to solicit donations in Florida must register with the Florida Department of Agriculture and Consumer Services (DACS). Florida's Solicitation of Contributions Act requires charitable organizations that engage in solicitation activities in Florida to register with the DACS and provide certain financial and background information as well as pay initial and annual renewal fees.[9] Registration statements must contain prescribed information[10] and be accompanied by the appropriate fee.[11] Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.[12]

While the DACS does not oversee the activities of the organizations that are required to register with the DACS, it does monitor an organization's activities to ensure compliance with the requirements in the Solicitation of Contributions Act. In addition, the DACS provides information to the public on the organizations registered to solicit contributions in Florida via the DACS's Gift Givers' Guide.[13]

Federal and State Tax Exemptions for Veterans' Organizations

Depending on its organization or purpose, a veterans' organization may be recognized as tax exempt from federal income tax under the following sections of the Internal Revenue Code:

- 501(c)(19) – veterans' organizations

[6] 38 CFR s. 14.628.
[7] *Id.*
[8] U.S. Department of Veterans Affairs. *Veterans and Military Service Organizations (Directory)*, http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf (last visited Mar. 21, 2012).
[9] Chapter 496, F.S.
[10] Section 496.405(2), F.S.
[11] Section 496.405(4)(a), F.S.
[12] Section 496.406(3), F.S.
[13] Florida Department of Agriculture and Consumer Services. *Florida Charities Gift Givers' Guide*, https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx (last visited Mar. 21, 2012).

- 501(c)(4) – social welfare organizations
- 501(c)(7) – social clubs
- 501(c)(8) – fraternal beneficiary societies
- 501(c)(10) – domestic fraternal societies
- 501(c)(2) – title holding corporations[14]

Veterans' organizations must meet specified criteria in order to be granted tax exempt status under the Internal Revenue Code. For example, section 501(c)(19), I.R.C., provides for an exemption from federal income tax for an organization of past or present members of the United States Armed Forces if:

- It is organized in the United States;
- At least 75 percent of its members are past or present members of the U.S. Armed Forces;
- Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
- No part of the net earnings of which inures to the benefit of any private shareholder or individual.

Florida law exempts qualified veterans' organizations from tax on sales and leases, when used in carrying out customary veterans' organization activities.[15] Veterans' organizations that qualify for this exemption are those that are nationally chartered or nationally recognized as a veterans' organization, which holds a current exemption under s. 501(c)(4) or (19) of the Internal Revenue Code. Additionally, under s. 220.22(4), F.S., certain veterans' organizations are exempt from state corporate income tax in Florida.

Civil and Criminal Actions

Organizations that solicit contributions for charitable purposes, including veterans' organizations, are subject to the requirements of chs. 496 and 501, F.S. Chapter 496, F.S., specifically governs solicitation of funds. Section 496.419, F.S., gives the DACS authority to investigate violations of ch. 496, F.S., and to bring administrative action against individuals and entities that violate the solicitation requirements. The DACS can issue cease and desist orders and assess fines of up to $500 per act or omission for 501(c)(3) organizations and up to $1000 per act or omission for other individuals or entities. In addition, the DACS is required to report criminal violations of ch. 496, F.S., to the prosecuting authority. Willful and knowing violation of ss. 496.401-495.424, F.S., is a third degree felony for the first offense and a second degree felony for subsequent offenses.[16]

Section 496.416, F.S., provides that violation of any provision of ss. 496.401-495.424, F.S., is also an unfair or deceptive act or practice or an unfair method of competition in violation of

[14] Internal Revenue Service. *Tax Guide: Veterans' Organizations*, http://www.irs.gov/pub/irs-pdf/p3386.pdf (last visited Mar. 21, 2012).
[15] Section 212.08(7)(n), F.S.
[16] Section 496.417, F.S. A third degree felony is punishable by imprisonment for not more than 5 years and a fine of up to $5000. A second degree felony is punishable by imprisonment for not more than 15 years and a fine of up to $5000.

ch. 501, part II of the Florida Statutes (the "Florida Deceptive and Unfair Trade Practices Act"). Violations of the Florida Deceptive and Unfair Trade Practices Act are enforced by either the appropriate state attorney or the Department of Legal Affairs (Attorney General's Office). Available civil remedies include cease and desist orders and civil penalties of up to $10,000 per violation.[17]

In addition to action taken by an enforcing authority, s. 501.211, F.S., authorizes anyone who has been aggrieved by a practice that is in violation of the Florida Deceptive and Unfair Trade Practices Act to bring a civil action against the violator. In such an action, the aggrieved party can obtain injunctive relief, recover any actual damages, and be awarded attorney fees and court costs. However, the defendant may be awarded attorney fees and court costs if it prevails in defending the claim.

Section 817.312, F.S., makes misrepresenting oneself as a member or veteran of the United States military, while wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States military, in order to solicit charitable contributions a third degree felony.

III. Effect of Proposed Changes:

Section 1: Solicitation of Funds by Veterans' Organizations

This section of the bill defines a veterans' organization as a business entity whose earnings do not benefit of a private shareholder and that exists for one or more of the following purposes:

- Promoting the social welfare;
- Assisting needy war veterans and their dependents;
- Providing entertainment and care to hospitalized veterans;
- Carrying on programs to perpetuate the memory of deceased veterans;
- Conducting programs for religious, charitable, scientific, literary, or educational purposes;
- Providing insurance benefits for their members or their dependents;
- Providing social activities for their members;
- The earnings of the organization are devoted to charitable, religious, scientific, literary, educational, or fraternal purposes.

The bill forbids an entity from advertising or holding itself out as a veterans' organization unless it is an actual veterans' organization as defined by the bill. Any violation of this prohibition is a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 Florida Statutes. Consistent with that act, the bill allows a veterans' organization whose membership consists of current or past members of the armed forces and their families to bring an action against the entity to obtain an injunction against it.

In many cases, actions that are proscribed in the bill would also violate ch. 496 or ch. 501, F.S., but the violation might not prompt action by government entities charged with enforcing those

[17] Section 501.2077, F.S., provides for an enhanced civil penalty of up to $15,000 per violation if the illegal practice victimized senior citizens or handicapped persons.

chapters. It is also not clear that a veterans' organization would be an "aggrieved party" which could bring an individual action under s. 501.211, F.S. The bill provides a legal mechanism for legitimate veterans' organizations to stop misrepresentation and solicitation by purported veterans' organizations.

The bill also provides that it is a first degree misdemeanor for a business entity to hold itself out as a veterans' organization if it does not in fact operate primarily for the financial benefit and moral support of veterans and their families.[18]

Section 2: Solicitation While Wearing a Military Uniform

This section of the bill amends s. 817.312, F.S., in several ways:

- It prohibits soliciting for charitable contributions while either misrepresenting that one is a member or veteran of the United States military or while wearing the uniform of or any medal or insignia that is authorized for wear by members or veterans of the United States military. Currently, the statute prohibits a person from soliciting for charitable contributions while misrepresenting military or veteran status if the person is wearing a US military uniform, medal, or insignia at the time.
- It expands the scope of the criminal offense to include misrepresenting military status or wearing a United States military uniform, medal or insignia "for the purpose of material gain."
- It provides that a person does not violate the statute for wearing a US military uniform, medal, or insignia that he or she is authorized to wear, or if the person is an actor engaged in a theatrical production.

Unlike s. 250.43, F.S., which prohibits the wearing of a United States military uniform, any part of such uniform, or any similar uniform, s. 817.312, F.S., does not prohibit the wearing of part of a uniform (except for medals or insignia which the person is not authorized to wear) or a uniform that is similar to a United States military uniform. In *State v. Montas*, the court pointed out that these provisions of s. 250.43, F.S., would prohibit a child from wearing his parent's Army boots or a person wearing an imitation military uniform for Halloween.[19]

Effective date: The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[18] See *State v. Maloy*, 823 So. 2d 815 (Fla. 1st DCA 2002), which recognized "the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions."

[19] *State v. Montas*, 993 So. 2d 1127 (Fla. 5th Dist. 2008). In *Montas*, s. 250.43, F.S., was found to be unconstitutional because its provisions banned both protected and unprotected speech. The constitutional implications of this bill are discussed in Section IV, Constitutional Issues.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 817.312, F.S., to prohibit misrepresentation of military status or wearing a United States military uniform, medal, or insignia without authorization while soliciting for charitable contributions or for the purpose of material gain. This raises questions of whether such restrictions violate the Free Expression Clause of the First Amendment of the United States Constitution.

The issue of misrepresentation of military service was recently considered by the United States Supreme Court. In *United States v. Alvarez*, the Court considered the case of an official who was convicted of violating the Stolen Valor Act, 18 U.S.C. § 704(b), for falsely stating at a public meeting that he was a recipient of the Congressional Medal of Honor.[20] The Court found that the Stolen Valor Act, which made it a crime to lie about receiving military medals or honors, violated the First Amendment's guarantee of the right to free speech. In considering whether the conduct prohibited by the statute was protected speech, the Court noted that "The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain."[21] The Court also noted: "Where false claims are made to effect a fraud or secure moneys or other valuable considerations, . . . , it is well established that the Government may restrict speech without affronting the First Amendment."[22] The intent of the bill is to prohibit misrepresentation of military status only in connection with soliciting for charitable contributions or for the purpose of material gain. However, the Legislature may wish to state this explicitly to strengthen arguments that the bill does not run afoul of the First Amendment.

The prohibition against unauthorized wear of a military uniform, medal, or insignia is subject to similar analysis. As previously noted, the Fifth Circuit Court of Appeals found that the prohibition in s. 250.43, F.S., against wearing a United States military uniform, any part of such uniform, or any similar uniform was unconstitutionally broad.[23] The court focused on the fact that s. 250.43, F.S., did not include specific intent to deceive as an element of the offense, and that there was no way for it to narrowly interpret the statute to include such an element. This focus on "intent to deceive" is consistent with the reasoning in *United States v. Perelman*, which upheld 18 U.S.C. § 704(a) against a challenge that its prohibition against unauthorized wear of United States military medals

[20] *United States v. Alvarez*, 132 S. Ct. 2537 (2012).
[21] *Id.* at 2547.
[22] *Id*.
[23] *See Montas*, 993 So. 2d at 1132.

or decorations was overbroad on its face and thus unconstitutional.[24] In that case, the federal appellate court found that it could interpret the statute to reflect Congressional intent that it required "intent to deceive," even though such intent was not explicitly stated.[25]

Unlike s. 250.43, F.S., the bill's amendment to s. 817.312, F.S., would prohibit unauthorized wear of a United States military uniform, medal, or insignia only in limited circumstances. The restriction of the prohibition to times when the wearer is soliciting for charitable contributions or is seeking material gain indicates that the bill is intended to prevent deception of potential donors or benefactors. If challenged in court, this portion of the statute would likely be upheld against a First Amendment challenge because it regulates an implicit misrepresentation for the purpose of material gain. However, addition of specific "intent to deceive" language would clarify the purpose of the statute.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Organizations that misrepresent themselves as operating primarily for the benefit of veterans and their families are subject to a civil penalty of up to $500 and payment of the plaintiff's attorney's fees and court costs. If found guilty of the newly created first-degree misdemeanor offense, they are subject to a potential fine of up to $1,000.

The impact of the amendments to s. 817.312, F.S., on prison bed space needs has not yet been considered by the Criminal Justice Estimating Conference.

C. Government Sector Impact:

The Office of the State Courts Administrator notes a probable, though indeterminate, increase in judicial time and court workload associated with the new civil and criminal processes.[26]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[24] *United States v. Perelman*, 695 F.3d 866 (9th Cir. 2012).
[25] *Id*.
[26] Office of State Courts Administrator. 2013 Judicial Impact Statement for SB 390 (Feb. 24, 2013) (on file with the Senate Committee on Judiciary).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS/CS by Judiciary on April 1, 2013

- Changes the definition of veterans' organization to match the definition given for such organizations by the Internal Revenue Service.
- Expressly makes a business entity that falsely holds itself out as a veterans' organization subject to penalties under the Florida Deceptive and Unfair Trade Practices Act.

CS/CS by Criminal Justice on February 19, 2013:

- Clarifies that Section 1 of the bill applies to any business entity falsely holding itself out as a veterans' organization and that it is intended to be additional to existing statutory remedies.
- Reorganizes Section 1 to combine the elements of the criminal offense and the criminal penalties in the same subsection of the new statute.
- Amends s. 817.312, F.S., to expand the scope of the existing criminal offense that prohibits misrepresentation of military or veteran status and wear of a military uniform, medal, or insignia while soliciting for charitable contributions.

CS by Military Affairs, Space, and Domestic Security on February 6, 2013:
The Committee Substitute reorganizes and modifies the bill to address technical issues.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3
4 Delete lines 24 - 53
5 and insert:
6 (b) "Veterans' organization" means a business entity whose
7 net earnings do not inure to the benefit of any private
8 shareholder or individual and that exists substantially for one
9 or more of the following purposes:
10 1. Promoting the social welfare of the community.
11 2. Assisting disabled and needy war veterans and members of
12 the United States Armed Forces and their dependents, and the
13 widows and orphans of deceased veterans.

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14 3. Providing entertainment, care and assistance to
15 hospitalized veterans or members of the United States Armed
16 Forces.
17 4. Carrying on programs to perpetuate the memory of
18 deceased veterans and members of the United States Armed Forces,
19 and to comfort their survivors.
20 5. Conducting programs for religious, charitable,
21 scientific, literary, or educational purposes.
22 6. Providing insurance benefits for their members or
23 dependents of their members or both.
24 7. Providing social and recreational activities for their
25 members.
26 8. The earnings of the organization are devoted to
27 charitable, religious, scientific, literary, educational, or
28 fraternal purposes.
29 (2) A business entity may not advertise or hold itself out
30 to the public as a veterans' organization or similar entity
31 unless the entity is a veterans' organization.
32 (3) A business entity that violates subsection (2) violates
33 the Florida Deceptive and Unfair Trade Practices Act under part
34 II of chapter 501 Florida Statutes.
35 (4) Consistent with part II of chapter 501, Florida
36 Statutes, a veterans' organization whose membership is limited
37 to past or present members of the United States Armed Forces,
38 individuals who are cadets or are spouses, widows, widowers,
39 ancestors or lineal descendants of past or present members of
40 the United States Armed Forces or of cadets may bring an action
41 to obtain a declaratory judgment that a business entity is
42 violating this section and to enjoin the entity who has

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43 violated, is violating, or is otherwise likely to violate this
44 section.
45 (5) A business entity that knowingly and intentionally
46 represents itself as a veterans' organization or similar
47 organization but that does not comply with subsection (2)
48 commits a misdemeanor of the first degree, punishable as
49 provided in s. 775.082 or s. 775.083, Florida Statutes.
50
51 ========== T I T L E A M E N D M E N T ==========
52 And the title is amended as follows:
53 Delete lines 2 - 12
54 and insert:
55 An act relating to veterans' organizations;
56 prohibiting a business entity from advertising or
57 holding itself out to the public as a veterans'
58 organization or similar entity under certain
59 circumstances; providing that an entity that violates
60 the restrictions on advertizing violates the Florida
61 Deceptive and Unfair Trade Practices Act; authorizing
62 certain veterans' organizations to enforce the
63 prohibition against false advertising; providing for
64 criminal penalties; amending s. 817.312, F.S.;
65 prohibiting

By the Committees on Criminal Justice; and Military Affairs, Space, and Domestic Security; and Senator Dean

591-01688-13 2013390c2

A bill to be entitled

An act relating to misrepresentations concerning solicitations for military or veterans; defining terms; prohibiting a business entity from holding itself out as a veterans' organization under certain circumstances; authorizing an affected veterans' organization to bring a civil action in a court of competent jurisdiction against the offending business entity; authorizing the court to impose a civil penalty of up to $500 and payment of court costs and reasonable attorney fees; providing for criminal penalties; amending s. 817.312, F.S.; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia; providing an effective date.

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

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

(a) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Veteran" has the same meaning as in s. 1.01, Florida Statutes.

(c) "Veterans' organization" means an organization which exists primarily to benefit veterans or their families.

(2) Any veterans' organization whose membership is limited to veterans and their families that has reason to believe that a

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591-01688-13 2013390c2

business entity that holds itself out as a veterans' organization does not in fact operate primarily for the financial benefit and moral support of veterans or their families may bring a civil action in a court of competent jurisdiction for an injunction prohibiting the offending business from continuing its business practices while holding itself out as a veterans' organization. The court may also impose a civil penalty of up to $500 against the defendant and award court costs and reasonable attorney fees to the plaintiff.

(3) In a civil action brought under subsection (2), the defendant has the burden of proof to show by clear and convincing evidence that it does in fact operate primarily for the financial benefit and moral support of veterans or their families.

(4) A business entity that knowingly and intentionally represents itself as a veterans' organization but that does not in fact operate primarily for the financial benefit and moral support of veterans or their families commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(5) This section does not affect the availability of any other civil or criminal action or the imposition of any other civil remedy or criminal penalty that is authorized by another statute.

Section 2. Subsection (1) of section 817.312, Florida Statutes, is amended to read:

817.312 Unlawful use of uniforms, medals, or insignia.—

(1) A person may not misrepresent himself or herself as a member or veteran of the United States Air Force, United States

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59 Army, United States Coast Guard, United States Marine Corps,
60 United States Navy, or National Guard or ~~and~~ wear the uniform of
61 or any medal or insignia authorized for use by members or
62 veterans of the United States Air Force, United States Army,
63 United States Coast Guard, United States Marine Corps, United
64 States Navy, or the National Guard which he or she is not
65 authorized to wear while soliciting for charitable contributions
66 or for the purpose of material gain. This section does not
67 prohibit persons in the theatrical profession from wearing such
68 uniforms, medals, or insignia while actually engaged in such
69 profession.
70 Section 3. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 400

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: False Reports to Law Enforcement Officers

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Shankle	Cibula	JU	**Favorable**
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 400 increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony if one of two circumstances apply. In the first circumstance, the information the person gives the law enforcement officer is communicated orally and the officer's account of that information is corroborated by an audio recording, a video recording, a written or recorded statement made by the person who gave that information, or by another person who is present when officer receivers the information and hears it. In the second circumstance, the information the person gives to the law enforcement officer is communicated in writing.

This bill substantially amends section 837.05, Florida Statutes.

II. Present Situation:

Recent Legislation Regarding False Information Reporting

The Senate Select Committee on Protecting Florida's Children was created on August 10, 2011, in the wake of the Casey Anthony verdict.[1] The committee was charged with examining the various policy options to further advance the protection of children and determine whether changes to current law were needed.

The committee identified the relevant laws on child abuse and providing false information in missing children investigations. The committee examined: chapter 827, F.S., relating to the abuse of children, s. 406.12, F.S., relating to the duty to report a death, and s. 837.055, F.S., relating to knowingly giving false information to a law enforcement officer during a missing person investigation. Particular attention was given to ss. 827.03[2] and 837.055, F.S.,[3] and their relationship to the circumstances in the Anthony case.

After reviewing these laws and receiving testimony from child abuse officials, law enforcement officials, prosecutors, and defense attorneys, the committee recommended amending s. 837.055, F.S., to make it a third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.[4]

The Legislature passed CS/HB 37,[5] which enacted into law the changes to s. 837.055, F.S., recommended by the committee.

False Information Reporting Under Section 837.05, F.S.

Although the Legislature amended s. 837.055, F.S., the statute under which Casey Anthony was convicted of providing false information to a law enforcement officer, Anthony was initially charged (by information) by the State Attorney with providing false information to a law

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[1] A grand jury indicted Casey Anthony based on their determination of her alleged involvement in the death of her 2 year-old daughter, Caylee. Anthony was charged with first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to a law enforcement officer. She pled not guilty. On July 5, 2011, a jury found Anthony not guilty of all of the charges except the four counts of providing false information to a law enforcement officer in violation of s. 893.055, F.S. Anthony received a sentence of one year in jail and a $1,000 fine for each count. *See* Senate Analysis of SB 858 by the Senate Committee on Criminal Justice (January 20, 2012), *available at* http://www.flsenate.gov/Session/Bill/2012/0858 (last visited March 27, 2013). The Florida Fifth District Court of Appeal recently set aside two of Anthony's four convictions for providing false information because the court found those convictions violated double jeopardy principles. *See Anthony v. State*, 2013 WL 275533 (Fla. 5th DCA January 25, 2013).

[2] Section 827.03, F.S., punishes various acts of child abuse and neglect.

[3] Section 837.055(1), F.S., which was not altered by the 2012 legislative changes to s. 837.055, F.S. (described in the text of this analysis), provides that it was a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

[4] Senate Analysis of SB 858, *supra* note 1.

[5] Chapter 2012-53, LO.F.

enforcement officer in violation of s. 837.05, F.S.[6] This statute provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime.

Staff did not find any Florida appellate case relevant to application of s. 837.05, F.S., in the context of providing false information to a law enforcement officer who is conducting a missing person investigation. However, the Florida Third District Court of Appeal, in reviewing a case involving a defendant convicted for giving false statements to police at a police station during a homicide investigation, stated, in dicta, that if the defendant "is guilty of an offense involving false statements, it must be an offense provided for in s. 837.012[7] or s. 837.05, Florida Statutes (1977)."[8]

III. Effect of Proposed Changes:

The bill amends s. 837.05, F.S., to increase the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor[9] to a third degree felony[10] if one of two circumstances applies. In the first circumstance, the information the person gives the law enforcement officer is communicated orally and the officer's account of that information is corroborated by an audio recording, a video recording, a written or recorded statement made by the person who gave that information, or by another person who is present when officer receivers the information and hears it. In the second circumstance, the information the person gives to the law enforcement officer is communicated in writing.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

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[6] Court documents on file with the Senate Committee on Criminal Justice.

[7] Section 837.012(1), F.S., provides that it is a first degree misdemeanor for a person to make a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter. Section 837.05, F.S., does not contain any 'oath' requirement.

[8] *Schramm v. State*, 374 So.2d 1043, 1045 (Fla. 3rd DCA 1979) (footnotes omitted). The appellate court reversed Schramm's conviction for a violation of s. 837.02, F.S. (perjury in an official proceeding).

[9] A first degree misdemeanor is punishable by up to a year in jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.

[10] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S. The third degree felony created by the bill is not ranked in the offense severity ranking chart of the Criminal Punishment Code and is, therefore, ranked based on its degree as a Level 1 offense. Sections 921.0022, and 921.0023, F.S.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimated that the original bill would have an insignificant prison bed impact due to low volume and the creation of an unranked third degree felony. Although, CS/SB 400 differs substantially from the original bill it also creates an unranked third degree felony and is more narrowly drawn than the original bill in regard to how this offense may be committed.

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 Criminal Justice on March 11, 2013:
Increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony if one of two circumstances applies. In the first circumstance, the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that information; a written or recorded statement made by the person who gave that

information; or another person who was present when the person gave that information to the officer and heard that information. In the second circumstance, the information the person gave to the law enforcement officer was communicated in writing.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Dean

591-02195-13 2013400c1

A bill to be entitled

An act relating to false reports to law enforcement officers; amending s. 837.05, F.S.; providing that it is a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime if the defendant has previously been convicted of such offense and the information is communicated in writing, or, if the information is communicated orally, the information is corroborated in a specified manner; providing an effective date.

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

Section 1. Section 837.05, Florida Statutes, is amended to read:

837.05 False reports to law enforcement authorities.—

(1)(a) Except as provided in paragraph (b) or subsection (2), a person who ~~whoever~~ knowingly gives false information to a ~~any~~ law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who commits a violation of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has previously been convicted of a violation of paragraph (a) and subparagraph 1. or 2. applies:

1. The information the person gave to the law enforcement officer was communicated orally and the officer's account of

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591-02195-13 2013400c1

that information is corroborated by:

(a) An audio recording or audio recording in a video of that information;

(b) A written or recorded statement made by the person who gave that information; or

(c) Another person who was present when the person gave that information to the officer and heard that information.

2. The information the person gave to the law enforcement officer was communicated in writing.

(2) A person who ~~Whoever~~ knowingly gives false information to a law enforcement officer concerning the alleged commission of a capital felony, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 540

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Mandatory Supervision of Specified Offenders by the Department of Corrections

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 540 expands the scope of the conditional release program that requires post-release supervision of certain offenders who are released from prison after serving 85 percent of their sentence. Currently, conditional release supervision is required for an inmate who is serving a sentence for a designated violent offense and who has served at least one prior felony commitment in a state or federal prison. The bill removes the condition that the inmate have served a prior felony commitment.

The bill also renames conditional release supervision as “mandatory supervision.”

This bill substantially amends sections 944.291 and 947.1405 of the Florida Statutes. The bill also amends sections 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06 of the Florida Statutes for the purpose of changing the program name.

II. Present Situation:

Most inmates who are serving sentences in Florida prisons are eligible to have the length of their sentence reduced by application of gain time. Gain time is awarded by the Department of Corrections based upon an inmate's institutional adjustment and participation in positive activities. An inmate's sentence may be reduced by as much as 15 percent on the basis of gain time.[1] In most cases, an inmate who is released early when his or her sentence expires due to application of gain time has completed the sentence and is no longer under the jurisdiction of the court or the department. The exceptions are when the sentencing court has ordered probation or community control following incarceration and when the inmate is required to be placed on conditional release.

The Legislature created conditional release in 1988 to require post-release supervision of certain inmates who are released from incarceration early because of accrued gain time. Correctional Probation Officers of the Department of Corrections supervise conditional releasees. The Parole Commission (commission) establishes the length of supervision, which cannot be any longer than the original sentence that was imposed by the court. The commission also sets conditions of supervision, which include mandatory conditions required by s. 947.1405, F.S., and any additional conditions that the commission determines appropriate. When appropriate, the commission can require conditional releasees to attend training or treatment, such as drug rehabilitation programs.

The commission is responsible for conducting hearings on alleged violations of the conditions of supervision. The commission has several options if it finds that a violation occurred, including revoking supervision and returning the offender to prison to serve the remaining portion of his or her sentence. Conditional releasees who are returned to prison forfeit any gain time that was earned prior to their release.

Section 947.1405, F.S., requires conditional release for inmates who have been sentenced as a habitual or violent habitual offender, a violent career criminal, or a sexual predator. It also requires conditional release for inmates convicted of a crime which "is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993)" if the inmate had served at least one prior felony commitment in a state or federal correctional institution. Crimes that trigger the conditional release requirement for repeat felons are:

Violent Offenses Requiring Placement on Conditional Release	
Category 1: Murder, Manslaughter	• ch. 782, F.S. – Homicide (except s. 782.04(1)(a), F.S. – capital murder) • s. 316.193(3)(c)3., F.S. – DUI Manslaughter (automobile) • s. 327.351(2), F.S. – DUI Manslaughter (vessel) (repealed in 1996)

[1] Section 944.275(4)(b)3., F.S.

Violent Offenses Requiring Placement on Conditional Release	
Category 2: Sexual Offenses	• ch. 794, F.S. – Sexual Battery • ch. 800, F.S. – Lewdness; Indecent Exposure • s. 826.04, F.S. – Incest • s. 491.0112, F.S. – Sexual Misconduct by a Psychotherapist
Category 3: Robbery	• s. 812.13, F.S. – Robbery • s. 812.133, F.S. – Carjacking • s. 812.135, F.S. – Home Invasion Robbery
Category 4: Violent Personal Crimes	• ch. 784, F.S. – Assault, Battery • s. 836.05, F.S. – Threats, Extortion • s. 836.10, F.S. – Written Threats to Kill or Do Bodily Injury • s. 843.01, F.S. – Resisting Officer with Violence • s. 381.411(4), F.S. – Battery on HRS Employee (repealed effective April 27, 2012)

In fiscal year 2011-2012, 4799 offenders were placed on conditional release. Of this number, 2448 were violent offenders. The average conditional release sentence was approximately 17 months for all conditional releasees and approximately 6 months for those who were violent offenders sentenced under the 85 percent law. The median conditional release sentence for violent offenders was 3.7 months.[2] As of January 2012, 2213 conditional releasees were under active supervision by the department.[3]

III. Effect of Proposed Changes:

The bill amends a number of statutes to change the name "conditional release" to "mandatory supervision." It also amends ss. 944.291 and 947.1405, F.S., to require mandatory supervision for all offenders who were released early by reason of gain time after serving a sentence for murder, sexual offenses, robbery, or other specified violent personal crimes. This removes the current stipulation that conditional release (now mandatory supervision) only applies to such offenders if they have also previously served at least one felony commitment in a state or federal correctional institution.

[2] "Conditional release sentence" is used to indicate the length of time between the actual time served by the offender and 100% of his or her sentence. Data for all conditional releasees is from Department of Corrections *2011-2012 Agency Statistics, Community Supervision Admissions, available at* www.dc.state.fl.us/pub/annual/1112/stats/csa_month.html . Specific data for violent offenders released on conditional release is included in an email dated January 18, 2013 from the Department of Corrections to the Office of Economic & Demographic Research and is on file with the Senate Criminal Justice Committee and the Senate Judiciary Committee.

[3] Data concerning community supervision are from the Department of Corrections, *Monthly Status Report of Florida's Community Supervision Population* (January 2012) *available at* http://www.dc.state.fl.us/pub/spop/2012/01/index.html.

The bill applies prospectively to offenders who are imprisoned for offenses committed on or after October 1, 2013. As such, the bill will have a gradually increasing effect. The table below indicates the commission's estimate of the number of offenders who will be placed on conditional release as a result of the bill:[4]

Florida Parole Commission Projection: Additional Offenders Admitted to Mandatory Supervision Under Provisions of Senate Bill 540		
Fiscal Year	**Year After Effective Date**	**Number of Offenders Admitted**
2013-2014	1	3
2014-2015	2	41
2015-2016	3	270
2016-2017	4	555
2017-2018	5	893
2022-2023	10	2542
2027-2028	15	2519
2032-2033	20	3265

The department calculates recidivism rates based upon return of an inmate to prison within three years of release. Using this definition, the overall recidivism rate for inmates released from 2003-2010 without supervision was 25 percent.[5] All of these returned as the result of a new felony commitment. During that same period, 19.5 percent of inmates released on conditional release returned to prison as a result of a new felony commitment and another 31.1 percent returned to prison for a technical violation of conditional release (including non-criminal violations and commission of a misdemeanor).[6]

[4] The estimates are included in an email from commission staff dated December 7, 2012, and forwarded to Senate Criminal Justice Committee staff on December 10, 2012, which is on file with the Senate Criminal Justice Committee and the Senate Judiciary Committee.
[5] Florida Department of Corrections, *2011 Florida Prison Recidivism Report: Releases from 2003-2010*, 12 (April 2012).
[6] The data is included in an email from department staff dated January 30, 2013 and forwarded to Senate Criminal Justice Committee staff on February 6, 2013, which is on file with the Senate Criminal Justice Committee and the Senate Judiciary Committee.

At a Criminal Justice Impact Conference held on March 21, 2013, the Office of Economic and Demographic Research projected the following fiscal impact over a five-year period:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2013-2014	0	0	$0	$1,680,168	**$1,680,168**	**$1,680,168**
2014-2015	28	28	$264,152	$2,481,880	**$2,746,032**	**$4,426,200**
2015-2016	68	40	$920,160	$2,054,976	**$2,975,136**	**$7,401,336**
2016-2017	100	32	$1,639,260	$3,051,502	**$4,690,762**	**$12,092,098**
2017-2018	146	46	$2,443,518	$1,494,460	**$3,937,978**	**$16,030,076**
Total	**146**	**146**	**$5,267,090**	**$10,762,986**	**$16,030,076**	**$ 16,030,076**

Prepared by Florida Legislature, Office of Economic and Demographic Research, March 21, 2013

The Office of Economic and Demographic Research (EDR) indicates that even with short periods of additional time served for violations of release conditions, prison bed impact will be significant when fully implemented. Further extrapolation shows a prison bed impact of 246 beds and cumulative cost of $26.3 million by year 10.

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:

Inmates placed on mandatory supervision after release from prison must pay costs of supervision and restitution to victims if they are financially able to do so. Payment of restitution will benefit victims. Payment of cost of supervision will negatively impact the released inmate.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered the impact of this bill on prison bed space. Based upon current recidivism rates, it is possible that fewer released offenders would return to prison for a new offense, but more would return for a technical violation of conditional release.

The commission indicates that the impact of the bill in the first three years will require it to employ an additional Parole Tech II at $47,429. The commission also asserts that the bill will result in the commission of fewer crimes, which will reduce costs for the court system, law enforcement, and jails.[7]

The department indicates that the bill will have a fiscal impact for increased costs both for supervising inmates in the community and for housing them in prisons. The department estimates that this will have a cumulative impact of $1,428,931 over 3 years. Over 5 years, the cumulative impact is estimated at $5,267.311, with $2,443,635 of that amount in the 5th year. In addition, the department estimates that it will incur one-time expenses of $171,000 for computer programming changes that will be required by changing "conditional release" to "mandatory supervision" and $50,000 for programming changes associated with the change in criteria.[8]

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 Criminal Justice on March 11, 2013:

- Converts findings of fact to statement of legislative intent.
- Creates annual requirement to report the rate of mandatory supervision offenders returning to prison.
- Deletes bill section that inadvertently renamed DJJ conditional release program.
- Reinserts "conditional release" into the habitual felony offender and gain time forfeiture statutes to apply to those offenders who are on conditional release prior to the effective date of the bill.

[7] Florida Parole Commission, *Proposal Analysis and Economic Impact of House Bill 829 and Senate Bill 540* (February 13, 2013).
[8] Department of Corrections, *2013 Bill Analysis of Senate Bill 540* (revised).

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Dean

591-02204B-13 2013540c1

A bill to be entitled

An act relating to mandatory supervision of specified offenders by the Department of Corrections; providing legislative intent; amending s. 944.291, F.S.; requiring that persons convicted on or after a specified date of crimes in specified categories be released only under mandatory supervision; amending s. 947.1405, F.S.; renaming the conditional release program as the "mandatory supervision program"; creating a reporting requirement; amending ss. 216.136, 394.926, 394.927, 775.084, 775.16, 775.21, 775.261, 893.11, 943.0435, 943.325, 944.171, 944.28, 944.606, 944.607, 944.608, 944.70, 945.36, 947.071, 947.13, 947.141, 947.16, 947.22, 947.24, 948.09, 948.32, and 957.06, F.S.; revising provisions to conform to changes made by the act; providing an effective date.

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

Section 1. Legislative intent.—It is the intent of the Legislature to require intensive postrelease supervision of offenders who have been convicted of violent offenses, thereby assisting them in successfully transitioning from prison back to the community and reducing their rate of reoffending. It is also the intent of the Legislature that the renaming of conditional release supervision to mandatory supervision does not create a new program, but it is merely a name change to accurately reflect the nature of this non-discretionary release.

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Section 2. Section 944.291, Florida Statutes, is amended to read:

944.291 Prisoner released by reason of gain-time allowances or attainment of provisional release date.—

(1) Notwithstanding any other ~~provision of~~ law ~~to the contrary~~, a prisoner who has served his or her term or terms, less allowable gain-time deductions as provided by law, or who has attained his or her provisional release date shall, upon release, be placed under further supervision and control of the department. A ~~Any~~ released prisoner who is not under further supervision and control of the department or who is not subject to any statute relating to parole is ~~shall be~~ eligible, on a voluntary basis, for any assistance available to him or her through any parole or probation office under the department.

(2) A ~~Any~~ prisoner who is convicted of a crime committed on or after October 1, 1988, which crime is contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional institution, ~~or~~ is sentenced as a habitual or violent habitual offender pursuant to s. 775.084, or is convicted of a crime committed on or after October 1, 2013, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), may ~~only~~ be released only under mandatory ~~conditional release~~ supervision as described in chapter 947. At least ~~Not fewer than~~ 90 days before ~~prior to~~ the tentative release date or provisional release date, whichever is earlier, the department shall provide the commission with the

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name and inmate identification number for each eligible inmate.

Section 3. Section 947.1405, Florida Statutes, is amended to read:

947.1405 Mandatory supervision ~~Conditional release~~ program.—

(1) This section and s. 947.141 may be cited as the "Mandatory Supervision ~~Conditional Release~~ Program Act."

(2) An ~~Any~~ inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;

(b) Is sentenced as a habitual or violent habitual offender or a violent career criminal pursuant to s. 775.084; ~~or~~

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23; or~~,~~

(d) Is convicted of a crime committed on or after October 1, 2013, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993),

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost

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of supervision pursuant to s. 948.09. Such supervision is ~~shall be~~ applicable to all sentences within the overall term of sentences if an inmate's overall term of sentences includes one or more sentences that are eligible for mandatory ~~conditional release~~ supervision as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of mandatory supervision ~~conditional release~~, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If an ~~any~~ inmate placed on mandatory ~~conditional release~~ supervision is also subject to probation or community control, resulting from a probationary or community control split sentence within the overall term of sentences, the Department of Corrections shall supervise such person according to the conditions imposed by the court and the commission shall defer to such supervision. If the court revokes probation or community control and resentences the offender to a term of incarceration, such revocation also constitutes a sufficient basis for the revocation of the mandatory ~~conditional release~~ supervision on any nonprobationary or noncommunity control sentence without further hearing by the

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117 commission. If any such supervision on any nonprobationary or
118 noncommunity control sentence is revoked, such revocation may
119 result in a forfeiture of all gain-time, and the commission may
120 revoke the resulting deferred mandatory ~~conditional release~~
121 supervision or take other action it considers appropriate. If
122 the term of mandatory ~~conditional release~~ supervision exceeds
123 that of the probation or community control, ~~then,~~ upon
124 expiration of the probation or community control, authority for
125 the supervision reverts ~~shall revert~~ to the commission and the
126 supervision is ~~shall be~~ subject to the conditions imposed by the
127 commission. A panel of no fewer than two commissioners shall
128 establish the terms and conditions of any such release. If the
129 offense was a controlled substance violation, the conditions
130 shall include a requirement that the offender submit to random
131 substance abuse testing intermittently throughout the term of
132 mandatory ~~conditional release~~ supervision, upon the direction of
133 the correctional probation officer as defined in s. 943.10(3).
134 The commission shall also determine whether the terms and
135 conditions of the ~~such~~ release have been violated and whether
136 the ~~such~~ violation warrants revocation of the mandatory
137 supervision ~~conditional release~~.
138 (3) As part of the mandatory supervision ~~conditional~~
139 ~~release~~ process, the commission, through review and
140 consideration of information provided by the department, shall
141 determine:
142 (a) The amount of reparation or restitution.
143 (b) The consequences of the offense as reported by the
144 aggrieved party.
145 (c) The aggrieved party's fear of the inmate or concerns

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146 about the release of the inmate.
147 (4) The commission shall provide to the aggrieved party
148 information regarding the manner in which notice of any
149 developments concerning the status of the inmate during the term
150 of mandatory supervision ~~conditional release~~ may be requested.
151 (5) Within 180 days before ~~prior to~~ the tentative release
152 date or provisional release date, whichever is earlier, a
153 representative of the department shall review the inmate's
154 program participation, disciplinary record, psychological and
155 medical records, criminal records, and any other information
156 pertinent to the impending release. The department shall gather
157 and compile information necessary for the commission to make the
158 determinations set forth in subsection (3). A department
159 representative shall conduct a personal interview with the
160 inmate for the purpose of determining the details of the
161 inmate's release plan, including the inmate's planned residence
162 and employment. The department representative shall forward the
163 inmate's release plan to the commission and recommend to the
164 commission the terms and conditions of the mandatory supervision
165 ~~conditional release~~.
166 (6) The commission shall review the recommendations of the
167 department, and such other information as it deems relevant, and
168 may conduct a review of the inmate's record for the purpose of
169 establishing the terms and conditions of the mandatory
170 supervision ~~conditional release~~. The commission may impose any
171 special conditions it considers warranted from its review of the
172 release plan and recommendation. If the commission determines
173 that the inmate is eligible for release under this section, the
174 commission shall enter an order establishing the length of

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175 supervision and the conditions attendant thereto. However, an
176 inmate who has been convicted of a violation of chapter 794 or
177 found by the court to be a sexual predator is subject to the
178 maximum level of supervision provided, with the mandatory
179 conditions as required in subsection (7), and that supervision
180 shall continue through the end of the releasee's original court-
181 imposed sentence. The length of supervision must not exceed the
182 maximum penalty imposed by the court.
183 (7)(a) An ~~Any~~ inmate who is convicted of a crime committed
184 on or after October 1, 1995, or who has been previously
185 convicted of a crime committed on or after October 1, 1995, in
186 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
187 or s. 847.0145, and is subject to mandatory ~~conditional release~~
188 supervision, shall have, in addition to any other conditions
189 imposed, the following special conditions imposed by the
190 commission:
191 1. A mandatory curfew from 10 p.m. to 6 a.m. The commission
192 may designate another 8-hour period if the offender's employment
193 precludes the above specified time, and such alternative is
194 recommended by the Department of Corrections. If the commission
195 determines that imposing a curfew would endanger the victim, the
196 commission may consider alternative sanctions.
197 2. If the victim was under the age of 18, a prohibition on
198 living within 1,000 feet of a school, child care facility, park,
199 playground, designated public school bus stop, or other place
200 where children regularly congregate. A releasee who is subject
201 to this subparagraph may not relocate to a residence that is
202 within 1,000 feet of a public school bus stop. Beginning October
203 1, 2004, the commission or the department may not approve a

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204 residence that is located within 1,000 feet of a school, child
205 care facility, park, playground, designated school bus stop, or
206 other place where children regularly congregate for any releasee
207 who is subject to this subparagraph. On October 1, 2004, the
208 department shall notify each affected school district of the
209 location of the residence of a releasee 30 days before ~~prior to~~
210 release and thereafter, if the releasee relocates to a new
211 residence, shall notify any affected school district of the
212 residence of the releasee within 30 days after relocation. If,
213 on October 1, 2004, any public school bus stop is located within
214 1,000 feet of the existing residence of such releasee, the
215 district school board shall relocate that school bus stop.
216 Beginning October 1, 2004, a district school board may not
217 establish or relocate a public school bus stop within 1,000 feet
218 of the residence of a releasee who is subject to this
219 subparagraph. The failure of the district school board to comply
220 with this subparagraph is not grounds for a finding of ~~shall not~~
221 ~~result in~~ a violation of mandatory ~~conditional release~~
222 supervision. A releasee who is subject to this subparagraph may
223 not be forced to relocate and does not violate his or her
224 mandatory ~~conditional release~~ supervision if he or she is living
225 in a residence that meets the requirements of this subparagraph
226 and a school, child care facility, park, playground, designated
227 public school bus stop, or other place where children regularly
228 congregate is subsequently established within 1,000 feet of his
229 or her residence.
230 3. Active participation in and successful completion of a
231 sex offender treatment program with qualified practitioners
232 specifically trained to treat sex offenders, at the releasee's

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233 own expense. If a qualified practitioner is not available within
234 a 50-mile radius of the releasee's residence, the offender shall
235 participate in other appropriate therapy.
236 4. A prohibition on any contact with the victim, directly
237 or indirectly, including through a third person, unless approved
238 by the victim, a qualified practitioner in the sexual offender
239 treatment program, and the sentencing court.
240 5. If the victim was under the age of 18, a prohibition
241 against contact with children under the age of 18 without review
242 and approval by the commission. The commission may approve
243 supervised contact with a child under the age of 18 if the
244 approval is based upon a recommendation for contact issued by a
245 qualified practitioner who is basing the recommendation on a
246 risk assessment. Further, the sex offender must be currently
247 enrolled in or have successfully completed a sex offender
248 therapy program. The commission may not grant supervised contact
249 with a child if the contact is not recommended by a qualified
250 practitioner and may deny supervised contact with a child at any
251 time. When considering whether to approve supervised contact
252 with a child, the commission must review and consider the
253 following:
254 a. A risk assessment completed by a qualified practitioner.
255 The qualified practitioner must prepare a written report that
256 must include the findings of the assessment and address each of
257 the following components:
258 (I) The sex offender's current legal status;
259 (II) The sex offender's history of adult charges with
260 apparent sexual motivation;
261 (III) The sex offender's history of adult charges without

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262 apparent sexual motivation;
263 (IV) The sex offender's history of juvenile charges,
264 whenever available;
265 (V) The sex offender's offender treatment history,
266 including a consultation from the sex offender's treating, or
267 most recent treating, therapist;
268 (VI) The sex offender's current mental status;
269 (VII) The sex offender's mental health and substance abuse
270 history as provided by the Department of Corrections;
271 (VIII) The sex offender's personal, social, educational,
272 and work history;
273 (IX) The results of current psychological testing of the
274 sex offender if determined necessary by the qualified
275 practitioner;
276 (X) A description of the proposed contact, including the
277 location, frequency, duration, and supervisory arrangement;
278 (XI) The child's preference and relative comfort level with
279 the proposed contact, when age-appropriate;
280 (XII) The parent's or legal guardian's preference regarding
281 the proposed contact; and
282 (XIII) The qualified practitioner's opinion, along with the
283 basis for that opinion, as to whether the proposed contact would
284 likely pose significant risk of emotional or physical harm to
285 the child.
286
287 The written report of the assessment must be given to the
288 commission.
289 b. A recommendation made as a part of the risk-assessment
290 report as to whether supervised contact with the child should be

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291 approved.~~;~~
292 c. A written consent signed by the child's parent or legal
293 guardian, if the parent or legal guardian is not the sex
294 offender, agreeing to the sex offender having supervised contact
295 with the child after receiving full disclosure of the sex
296 offender's present legal status, past criminal history, and the
297 results of the risk assessment. The commission may not approve
298 contact with the child if the parent or legal guardian refuses
299 to give written consent for supervised contact.~~;~~
300 d. A safety plan prepared by the qualified practitioner,
301 who provides treatment to the offender, in collaboration with
302 the sex offender, the child's parent or legal guardian, and the
303 child, when age appropriate, which details the acceptable
304 conditions of contact between the sex offender and the child.
305 The safety plan must be reviewed and approved by the Department
306 of Corrections before being submitted to the commission.~~; and~~
307 e. Evidence that the child's parent or legal guardian, if
308 the parent or legal guardian is not the sex offender,
309 understands the need for and agrees to the safety plan and has
310 agreed to provide, or to designate another adult to provide,
311 constant supervision any time the child is in contact with the
312 offender.
313
314 The commission may not appoint a person to conduct a risk
315 assessment and may not accept a risk assessment from a person
316 who has not demonstrated to the commission that he or she has
317 met the requirements of a qualified practitioner as defined in
318 this section.
319 6. If the victim was under age 18, a prohibition on working

320 for pay or as a volunteer at any school, child care facility,
321 park, playground, or other place where children regularly
322 congregate, as prescribed by the commission.
323 7. Unless otherwise indicated in the treatment plan
324 provided by a qualified practitioner in the sexual offender
325 treatment program, a prohibition on viewing, owning, or
326 possessing any obscene, pornographic, or sexually stimulating
327 visual or auditory material, including telephone, electronic
328 media, computer programs, or computer services that are relevant
329 to the offender's deviant behavior pattern.
330 8. Effective for a releasee whose crime is committed on or
331 after July 1, 2005, a prohibition on accessing the Internet or
332 other computer services until a qualified practitioner in the
333 offender's sex offender treatment program, after a risk
334 assessment is completed, approves and implements a safety plan
335 for the offender's accessing or using the Internet or other
336 computer services.
337 9. A requirement that the releasee ~~must~~ submit two
338 specimens of blood to the Department of Law Enforcement to be
339 registered with the DNA database.
340 10. A requirement that the releasee make restitution to the
341 victim, as determined by the sentencing court or the commission,
342 for all necessary medical and related professional services
343 relating to physical, psychiatric, and psychological care.
344 11. Submission to a warrantless search by the community
345 control or probation officer of the probationer's or community
346 controllee's person, residence, or vehicle.
347 (b) For a releasee whose crime was committed on or after
348 October 1, 1997, in violation of chapter 794, s. 800.04, s.

349 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
350 mandatory ~~conditional release~~ supervision, in addition to any
351 other provision of this subsection, the commission shall impose
352 the following additional conditions of mandatory ~~conditional~~
353 ~~release~~ supervision:
354 1. As part of a treatment program, participation in a
355 minimum of one annual polygraph examination to obtain
356 information necessary for risk management and treatment and to
357 reduce the sex offender's denial mechanisms. The polygraph
358 examination must be conducted by a polygrapher who is a member
359 of a national or state polygraph association and who is
360 certified as a postconviction sex offender polygrapher, where
361 available, and at the expense of the releasee. The results of
362 the examination shall be provided to the releasee's probation
363 officer and qualified practitioner and may not be used as
364 evidence in a hearing to prove that a violation of supervision
365 has occurred.
366 2. Maintenance of a driving log and a prohibition against
367 driving a motor vehicle alone without the prior approval of the
368 supervising officer.
369 3. A prohibition against obtaining or using a post office
370 box without the prior approval of the supervising officer.
371 4. If there was sexual contact, a submission to, at the
372 releasee's expense, an HIV test with the results to be released
373 to the victim or the victim's parent or guardian.
374 5. Electronic monitoring of any form when ordered by the
375 commission. Any person who has been placed under supervision and
376 is electronically monitored by the department must pay the
377 department for the cost of the electronic monitoring service at

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378 a rate that may not exceed the full cost of the monitoring
379 service. Funds collected under this subparagraph shall be
380 deposited into the General Revenue Fund. The department may
381 exempt a person from the payment of all or any part of the
382 electronic monitoring service cost if the department finds that
383 any of the factors listed in s. 948.09(3) exist.
384 (8) It is the finding of the Legislature that the
385 population of offenders released from state prison into the
386 community who meet the mandatory supervision ~~conditional release~~
387 criteria poses the greatest threat to the public safety of the
388 groups of offenders under community supervision. Therefore, the
389 Department of Corrections shall ~~is to~~ provide intensive
390 supervision by experienced correctional probation officers to
391 mandatory supervision ~~conditional release~~ offenders. Subject to
392 specific appropriation by the Legislature, caseloads may be
393 restricted to a maximum of 40 mandatory supervision ~~conditional~~
394 ~~release~~ offenders per officer to provide for enhanced public
395 safety and to effectively monitor conditions of electronic
396 monitoring or curfews, if so ordered by the commission.
397 (9) The commission shall adopt rules pursuant to ss.
398 120.536(1) and 120.54 necessary to administer ~~implement the~~
399 ~~provisions of~~ the Mandatory Supervision ~~Conditional Release~~
400 Program Act.
401 (10) Effective for a releasee whose crime was committed on
402 or after September 1, 2005, in violation of chapter 794, s.
403 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the
404 unlawful activity involved a victim who was 15 years of age or
405 younger and the offender is 18 years of age or older or for a
406 releasee who is designated as a sexual predator pursuant to s.

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407 775.21, in addition to any other provision of this section, the
408 commission must order electronic monitoring for the duration of
409 the releasee's supervision.
410 (11) Effective for a releasee whose crime was committed on
411 or after October 1, 2008, and who has been found to have
412 committed the crime for the purpose of benefiting, promoting, or
413 furthering the interests of a criminal gang, the commission
414 shall, in addition to any other conditions imposed, impose a
415 condition prohibiting the releasee from knowingly associating
416 with other criminal gang members or associates, except as
417 authorized by law enforcement officials, prosecutorial
418 authorities, or the court, for the purpose of aiding in the
419 investigation of criminal activity.
420 (12) In addition to all other conditions imposed, for a
421 releasee who is subject to mandatory supervision ~~conditional~~
422 ~~release~~ for a crime that was committed on or after May 26, 2010,
423 and who has been convicted at any time of committing, or
424 attempting, soliciting, or conspiring to commit, any of the
425 criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a
426 similar offense in another jurisdiction against a victim who was
427 under 18 years of age at the time of the offense, if the
428 releasee has not received a pardon for any felony or similar law
429 of another jurisdiction necessary for the operation of this
430 subsection, if a conviction of a felony or similar law of
431 another jurisdiction necessary for the operation of this
432 subsection has not been set aside in any postconviction
433 proceeding, or if the releasee has not been removed from the
434 requirement to register as a sexual offender or sexual predator
435 pursuant to s. 943.04354, the commission must impose the

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436 following conditions:
437 (a) A prohibition on visiting schools, child care
438 facilities, parks, and playgrounds without prior approval from
439 the releasee's supervising officer. The commission may also
440 designate additional prohibited locations to protect a victim.
441 The prohibition ordered under this paragraph does not prohibit
442 the releasee from visiting a school, child care facility, park,
443 or playground for the sole purpose of attending a religious
444 service as defined in s. 775.0861 or picking up or dropping off
445 the releasee's child or grandchild at a child care facility or
446 school.
447 (b) A prohibition on distributing candy or other items to
448 children on Halloween; wearing a Santa Claus costume, or other
449 costume to appeal to children, on or preceding Christmas;
450 wearing an Easter Bunny costume, or other costume to appeal to
451 children, on or preceding Easter; entertaining at children's
452 parties; or wearing a clown costume without prior approval from
453 the commission.
454 (13) The commission, in conjunction with the Department of
455 Corrections, shall develop a report to track offenders placed on
456 mandatory supervision to determine their rate of return to
457 prison, indicating whether the offender returned to prison for a
458 new crime or for a technical violation of probation. A report
459 providing such information shall be submitted to the Speaker of
460 the House of Representatives and the President of the Senate on
461 or before July 1, 2017, and on or before July 1 every year
462 thereafter.
463 Section 4. Paragraph (c) of subsection (5) of section
464 216.136, Florida Statutes, is amended to read:

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465 216.136 Consensus estimating conferences; duties and
466 principals.—
467 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
468 Justice Estimating Conference shall:
469 (c) Develop official information relating to the number of
470 sexual offenders and sexual predators who are required by law to
471 be placed on community control, probation, or mandatory
472 supervision ~~conditional release~~ who are subject to electronic
473 monitoring.
474 Section 5. Subsection (2) of section 394.926, Florida
475 Statutes, is amended to read:
476 394.926 Notice to victims of release of persons committed
477 as sexually violent predators; notice to Department of
478 Corrections and Parole Commission.—
479 (2) If a sexually violent predator who has an active or
480 pending term of probation, community control, parole, mandatory
481 supervision ~~conditional release~~, or other court-ordered or
482 postprison release supervision is released from custody, the
483 department must immediately notify the Department of
484 Corrections' Office of Community Corrections in Tallahassee. The
485 Parole Commission must also be immediately notified of any
486 releases of a sexually violent predator who has an active or
487 pending term of parole, mandatory supervision ~~conditional~~
488 ~~release~~, or other postprison release supervision that is
489 administered by the Parole Commission.
490 Section 6. Subsection (2) of section 394.927, Florida
491 Statutes, is amended to read:
492 394.927 Escape while in lawful custody; notice to victim;
493 notice to the Department of Corrections and Parole Commission.—

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494 (2) If a person who is held in custody pursuant to a
495 finding of probable cause or commitment as a sexually violent
496 predator escapes while in custody, the department shall
497 immediately notify the victim in accordance with s. 394.926. The
498 state attorney that filed the petition for civil commitment of
499 the escapee must also be immediately notified by the department.
500 If the escapee has an active or pending term of probation,
501 community control, parole, mandatory supervision ~~conditional~~
502 ~~release~~, or other court-ordered or postprison release
503 supervision, the department shall also immediately notify the
504 Department of Corrections' Office of Community Corrections in
505 Tallahassee. The Parole Commission shall also be immediately
506 notified of an escape if the escapee has an active or pending
507 term of parole, mandatory supervision ~~conditional release~~, or
508 other postprison release supervision that is administered by the
509 Parole Commission.
510 Section 7. Paragraphs (a), (b), and (d) of subsection (1)
511 of section 775.084, Florida Statutes, are amended to read:
512 775.084 Violent career criminals; habitual felony offenders
513 and habitual violent felony offenders; three-time violent felony
514 offenders; definitions; procedure; enhanced penalties or
515 mandatory minimum prison terms.—
516 (1) As used in this act:
517 (a) "Habitual felony offender" means a defendant for whom
518 the court may impose an extended term of imprisonment, as
519 provided in paragraph (4)(a), if it finds that:
520 1. The defendant has previously been convicted of any
521 combination of two or more felonies in this state or other
522 qualified offenses.

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523 2. The felony for which the defendant is to be sentenced
524 was committed:
525 a. While the defendant was serving a prison sentence or
526 other sentence, or court-ordered or lawfully imposed supervision
527 that is imposed as a result of a prior conviction for a felony
528 or other qualified offense; or
529 b. Within 5 years of the date of the conviction of the
530 defendant's last prior felony or other qualified offense, or
531 within 5 years of the defendant's release from a prison
532 sentence, probation, community control, control release,
533 mandatory supervision, conditional release, parole or court-
534 ordered or lawfully imposed supervision or other sentence that
535 is imposed as a result of a prior conviction for a felony or
536 other qualified offense, whichever is later.
537 3. The felony for which the defendant is to be sentenced,
538 and one of the two prior felony convictions, is not a violation
539 of s. 893.13 relating to the purchase or the possession of a
540 controlled substance.
541 4. The defendant has not received a pardon for any felony
542 or other qualified offense that is necessary for the operation
543 of this paragraph.
544 5. A conviction of a felony or other qualified offense
545 necessary to the operation of this paragraph has not been set
546 aside in any postconviction proceeding.
547 (b) "Habitual violent felony offender" means a defendant
548 for whom the court may impose an extended term of imprisonment,
549 as provided in paragraph (4)(b), if it finds that:
550 1. The defendant has previously been convicted of a felony
551 or an attempt or conspiracy to commit a felony and one or more

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552 of such convictions was for:
553 a. Arson;
554 b. Sexual battery;
555 c. Robbery;
556 d. Kidnapping;
557 e. Aggravated child abuse;
558 f. Aggravated abuse of an elderly person or disabled adult;
559 g. Aggravated assault with a deadly weapon;
560 h. Murder;
561 i. Manslaughter;
562 j. Aggravated manslaughter of an elderly person or disabled
563 adult;
564 k. Aggravated manslaughter of a child;
565 l. Unlawful throwing, placing, or discharging of a
566 destructive device or bomb;
567 m. Armed burglary;
568 n. Aggravated battery; or
569 o. Aggravated stalking.
570 2. The felony for which the defendant is to be sentenced
571 was committed:
572 a. While the defendant was serving a prison sentence or
573 other sentence, or court-ordered or lawfully imposed supervision
574 that is imposed as a result of a prior conviction for an
575 enumerated felony; or
576 b. Within 5 years of the date of the conviction of the last
577 prior enumerated felony, or within 5 years of the defendant's
578 release from a prison sentence, probation, community control,
579 control release, mandatory supervision, conditional release,
580 parole, or court-ordered or lawfully imposed supervision or

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581 other sentence that is imposed as a result of a prior conviction
582 for an enumerated felony, whichever is later.
583 3. The defendant has not received a pardon on the ground of
584 innocence for any crime that is necessary for the operation of
585 this paragraph.
586 4. A conviction of a crime necessary to the operation of
587 this paragraph has not been set aside in any postconviction
588 proceeding.
589 (d) "Violent career criminal" means a defendant for whom
590 the court must impose imprisonment pursuant to paragraph (4)(d),
591 if it finds that:
592 1. The defendant has previously been convicted as an adult
593 three or more times for an offense in this state or other
594 qualified offense that is:
595 a. Any forcible felony, as described in s. 776.08;
596 b. Aggravated stalking, as described in s. 784.048(3) and
597 (4);
598 c. Aggravated child abuse, as described in s. 827.03(2)(a);
599 d. Aggravated abuse of an elderly person or disabled adult,
600 as described in s. 825.102(2);
601 e. Lewd or lascivious battery, lewd or lascivious
602 molestation, lewd or lascivious conduct, or lewd or lascivious
603 exhibition, as described in s. 800.04 or s. 847.0135(5);
604 f. Escape, as described in s. 944.40; or
605 g. A felony violation of chapter 790 involving the use or
606 possession of a firearm.
607 2. The defendant has been incarcerated in a state prison or
608 a federal prison.
609 3. The primary felony offense for which the defendant is to

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610 be sentenced is a felony enumerated in subparagraph 1. and was
611 committed on or after October 1, 1995, and:
612 a. While the defendant was serving a prison sentence or
613 other sentence, or court-ordered or lawfully imposed supervision
614 that is imposed as a result of a prior conviction for an
615 enumerated felony; or
616 b. Within 5 years after the conviction of the last prior
617 enumerated felony, or within 5 years after the defendant's
618 release from a prison sentence, probation, community control,
619 control release, mandatory supervision ~~conditional release~~,
620 parole, or court-ordered or lawfully imposed supervision or
621 other sentence that is imposed as a result of a prior conviction
622 for an enumerated felony, whichever is later.
623 4. The defendant has not received a pardon for any felony
624 or other qualified offense that is necessary for the operation
625 of this paragraph.
626 5. A conviction of a felony or other qualified offense
627 necessary to the operation of this paragraph has not been set
628 aside in any postconviction proceeding.
629 Section 8. Section 775.16, Florida Statutes, is amended to
630 read:
631 775.16 Drug offenses; additional penalties.—In addition to
632 any other penalty provided by law, a person who has been
633 convicted of sale of or trafficking in, or conspiracy to sell or
634 traffic in, a controlled substance under chapter 893, if such
635 offense is a felony, or who has been convicted of an offense
636 under the laws of any state or country which, if committed in
637 this state, would constitute the felony of selling or
638 trafficking in, or conspiracy to sell or traffic in, a

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639 controlled substance under chapter 893, is:
640 (1) Disqualified from applying for employment by any agency
641 of the state, unless:
642 (a) The person has completed all sentences of imprisonment
643 or supervisory sanctions imposed by the court, by the Parole
644 Commission, or by law; or
645 (b) The person has complied with the conditions of
646 subparagraphs 1. and 2. which shall be monitored by the
647 Department of Corrections while the person is under any
648 supervisory sanctions. The person under supervision may:
649 1. Seek evaluation and enrollment in, and once enrolled
650 maintain enrollment in until completion, a drug treatment and
651 rehabilitation program that ~~which~~ is approved by the Department
652 of Children and Family Services, unless it is deemed by the
653 program that the person does not have a substance abuse problem.
654 The treatment and rehabilitation program may be specified by:
655 a. The court, in the case of court-ordered supervisory
656 sanctions;
657 b. The Parole Commission, in the case of parole, control
658 release, or mandatory supervision ~~conditional release~~; or
659 c. The Department of Corrections, in the case of
660 imprisonment or any other supervision required by law.
661 2. Submit to periodic urine drug testing pursuant to
662 procedures prescribed by the Department of Corrections. If the
663 person is indigent, the costs shall be paid by the Department of
664 Corrections.
665 (2) Disqualified from applying for a license, permit, or
666 certificate required by any agency of the state to practice,
667 pursue, or engage in any occupation, trade, vocation,

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668 profession, or business, unless:
669 (a) The person has completed all sentences of imprisonment
670 or supervisory sanctions imposed by the court, by the Parole
671 Commission, or by law;
672 (b) The person has complied with the conditions of
673 subparagraphs 1. and 2. which shall be monitored by the
674 Department of Corrections while the person is under any
675 supervisory sanction. If the person fails to comply with
676 provisions of these subparagraphs by either failing to maintain
677 treatment or by testing positive for drug use, the department
678 shall notify the licensing, permitting, or certifying agency,
679 which may refuse to reissue or reinstate such license, permit,
680 or certification. The licensee, permittee, or certificateholder
681 under supervision may:
682 1. Seek evaluation and enrollment in, and once enrolled
683 maintain enrollment in until completion, a drug treatment and
684 rehabilitation program which is approved or regulated by the
685 Department of Children and Family Services, unless it is deemed
686 by the program that the person does not have a substance abuse
687 problem. The treatment and rehabilitation program may be
688 specified by:
689 a. The court, in the case of court-ordered supervisory
690 sanctions;
691 b. The Parole Commission, in the case of parole, control
692 release, or mandatory supervision ~~conditional release~~; or
693 c. The Department of Corrections, in the case of
694 imprisonment or any other supervision required by law.
695 2. Submit to periodic urine drug testing pursuant to
696 procedures prescribed by the Department of Corrections. If the

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697 person is indigent, the costs shall be paid by the Department of
698 Corrections; or
699 (c) The person has successfully completed an appropriate
700 program under the Correctional Education Program.
701
702 The provisions of this section do not apply to any of the taxes,
703 fees, or permits regulated, controlled, or administered by the
704 Department of Revenue in accordance with the provisions of s.
705 213.05.
706 Section 9. Paragraph (e) of subsection (2) of section
707 775.21, Florida Statutes, is amended to read:
708 775.21 The Florida Sexual Predators Act.—
709 (2) DEFINITIONS.—As used in this section, the term:
710 (e) "Conviction" means a determination of guilt which is
711 the result of a trial or the entry of a plea of guilty or nolo
712 contendere, regardless of whether adjudication is withheld. A
713 conviction for a similar offense includes, but is not limited
714 to, a conviction by a federal or military tribunal, including
715 courts-martial conducted by the Armed Forces of the United
716 States, and includes a conviction or entry of a plea of guilty
717 or nolo contendere resulting in a sanction in any state of the
718 United States or other jurisdiction. A sanction includes, but is
719 not limited to, a fine, probation, community control, parole,
720 mandatory supervision ~~conditional release~~, control release, or
721 incarceration in a state prison, federal prison, private
722 correctional facility, or local detention facility.
723 Section 10. Paragraph (a) of subsection (3) of section
724 775.261, Florida Statutes, is amended to read:
725 775.261 The Florida Career Offender Registration Act.—

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726 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—
727 (a) A career offender released on or after July 1, 2002,
728 from a sanction imposed in this state must register as required
729 under subsection (4) and is subject to community and public
730 notification as provided under subsection (5). For purposes of
731 this section, a sanction imposed in this state includes, but is
732 not limited to, a fine, probation, community control, parole,
733 mandatory supervision ~~conditional release~~, control release, or
734 incarceration in a state prison, private correctional facility,
735 or local detention facility, and:
736 1. The career offender has not received a pardon for any
737 felony or other qualified offense that is necessary for the
738 operation of this paragraph; or
739 2. A conviction of a felony or other qualified offense
740 necessary to the operation of this paragraph has not been set
741 aside in any postconviction proceeding.
742 Section 11. Section 893.11, Florida Statutes, is amended to
743 read:
744 893.11 Suspension, revocation, and reinstatement of
745 business and professional licenses.—For the purposes of s.
746 120.60(6), any conviction in any court reported to the
747 Comprehensive Case Information System of the Florida Association
748 of Court Clerks and Comptrollers, Inc., for the sale of, or
749 trafficking in, a controlled substance or for conspiracy to
750 sell, or traffic in, a controlled substance constitutes an
751 immediate serious danger to the public health, safety, or
752 welfare, and is grounds for disciplinary action by the licensing
753 state agency. A state agency shall initiate an immediate
754 emergency suspension of an individual professional license

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755 issued by the agency, in compliance with the procedures for
756 summary suspensions in s. 120.60(6), upon the agency's findings
757 of the licensee's conviction in any court reported to the
758 Comprehensive Case Information System of the Florida Association
759 of Court Clerks and Comptrollers, Inc., for the sale of, or
760 trafficking in, a controlled substance, or for conspiracy to
761 sell, or traffic in, a controlled substance. Before renewing any
762 professional license, a state agency that issues a professional
763 license must use the Comprehensive Case Information System of
764 the Florida Association of Court Clerks and Comptrollers, Inc.,
765 to obtain information relating to any conviction for the sale
766 of, or trafficking in, a controlled substance or for conspiracy
767 to sell, or traffic in, a controlled substance. The clerk of
768 court shall provide electronic access to each state agency at no
769 cost and also provide certified copies of the judgment upon
770 request to the agency. Upon a showing by any such convicted
771 defendant whose professional license has been suspended or
772 revoked pursuant to this section that his or her civil rights
773 have been restored or upon a showing that the convicted
774 defendant meets the following criteria, the agency head may
775 reinstate or reactivate such license when:
776 (1) The person has complied with the conditions of
777 paragraphs (a) and (b) which shall be monitored by the
778 Department of Corrections while the person is under any
779 supervisory sanction. If the person fails to comply with
780 provisions of these paragraphs by either failing to maintain
781 treatment or by testing positive for drug use, the department
782 shall notify the licensing agency, which shall revoke the
783 license. The person under supervision may:

784 (a) Seek evaluation and enrollment in, and once enrolled
785 maintain enrollment in until completion, a drug treatment and
786 rehabilitation program that ~~which~~ is approved or regulated by
787 the Department of Children and Family Services. The treatment
788 and rehabilitation program shall be specified by:
789 1. The court, in the case of court-ordered supervisory
790 sanctions;
791 2. The Parole Commission, in the case of parole, control
792 release, or mandatory supervision ~~conditional release~~; or
793 3. The Department of Corrections, in the case of
794 imprisonment or any other supervision required by law.
795 (b) Submit to periodic urine drug testing pursuant to
796 procedures prescribed by the Department of Corrections. If the
797 person is indigent, the costs shall be paid by the Department of
798 Corrections; or
799 (2) The person has successfully completed an appropriate
800 program under the Correctional Education Program.
801 (3) As used in this section, the term "professional
802 license" includes any license, permit, or certificate that
803 authorizes a person to practice his or her profession. However,
804 the term does not include any of the taxes, fees, or permits
805 regulated, controlled, or administered by the Department of
806 Revenue in accordance with s. 213.05.
807 Section 12. Paragraphs (a) and (b) of subsection (1) of
808 section 943.0435, Florida Statutes, are amended to read:
809 943.0435 Sexual offenders required to register with the
810 department; penalty.—
811 (1) As used in this section, the term:
812 (a)1. "Sexual offender" means a person who meets the

813 criteria in sub-subparagraph a., sub-subparagraph b., sub-
814 subparagraph c., or sub-subparagraph d., as follows:
815 a.(I) Has been convicted of committing, or attempting,
816 soliciting, or conspiring to commit, any of the criminal
817 offenses proscribed in the following statutes in this state or
818 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
819 or s. 787.025(2)(c), where the victim is a minor and the
820 defendant is not the victim's parent or guardian; s.
821 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
822 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
823 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
824 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
825 or s. 985.701(1); or any similar offense committed in this state
826 which has been redesignated from a former statute number to one
827 of those listed in this sub-sub-subparagraph; and
828 (II) Has been released on or after October 1, 1997, from
829 the sanction imposed for any conviction of an offense described
830 in sub-sub-subparagraph (I). For purposes of sub-sub-
831 subparagraph (I), a sanction imposed in this state or in any
832 other jurisdiction includes, but is not limited to, a fine,
833 probation, community control, parole, mandatory supervision
834 ~~conditional release~~, control release, or incarceration in a
835 state prison, federal prison, private correctional facility, or
836 local detention facility;
837 b. Establishes or maintains a residence in this state and
838 who has not been designated as a sexual predator by a court of
839 this state but who has been designated as a sexual predator, as
840 a sexually violent predator, or by another sexual offender
841 designation in another state or jurisdiction and was, as a

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842 result of such designation, subjected to registration or
843 community or public notification, or both, or would be if the
844 person were a resident of that state or jurisdiction, without
845 regard to whether the person otherwise meets the criteria for
846 registration as a sexual offender;
847 c. Establishes or maintains a residence in this state who
848 is in the custody or control of, or under the supervision of,
849 any other state or jurisdiction as a result of a conviction for
850 committing, or attempting, soliciting, or conspiring to commit,
851 any of the criminal offenses proscribed in the following
852 statutes or similar offense in another jurisdiction: s. 787.01,
853 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
854 the defendant is not the victim's parent or guardian; s.
855 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
856 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
857 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
858 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
859 or s. 985.701(1); or any similar offense committed in this state
860 which has been redesignated from a former statute number to one
861 of those listed in this sub-subparagraph; or
862 d. On or after July 1, 2007, has been adjudicated
863 delinquent for committing, or attempting, soliciting, or
864 conspiring to commit, any of the criminal offenses proscribed in
865 the following statutes in this state or similar offenses in
866 another jurisdiction when the juvenile was 14 years of age or
867 older at the time of the offense:
868 (I) Section 794.011, excluding s. 794.011(10);
869 (II) Section 800.04(4)(b) where the victim is under 12
870 years of age or where the court finds sexual activity by the use

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871 of force or coercion;
872 (III) Section 800.04(5)(c)1. where the court finds
873 molestation involving unclothed genitals; or
874 (IV) Section 800.04(5)(d) where the court finds the use of
875 force or coercion and unclothed genitals.
876 2. For all qualifying offenses listed in sub-subparagraph
877 (1)(a)1.d., the court shall make a written finding of the age of
878 the offender at the time of the offense.
879
880 For each violation of a qualifying offense listed in this
881 subsection, the court shall make a written finding of the age of
882 the victim at the time of the offense. For a violation of s.
883 800.04(4), the court shall additionally make a written finding
884 indicating that the offense did or did not involve sexual
885 activity and indicating that the offense did or did not involve
886 force or coercion. For a violation of s. 800.04(5), the court
887 shall additionally make a written finding that the offense did
888 or did not involve unclothed genitals or genital area and that
889 the offense did or did not involve the use of force or coercion.
890 (b) "Convicted" means that there has been a determination
891 of guilt as a result of a trial or the entry of a plea of guilty
892 or nolo contendere, regardless of whether adjudication is
893 withheld, and includes an adjudication of delinquency of a
894 juvenile as specified in this section. Conviction of a similar
895 offense includes, but is not limited to, a conviction by a
896 federal or military tribunal, including courts-martial conducted
897 by the Armed Forces of the United States, and includes a
898 conviction or entry of a plea of guilty or nolo contendere
899 resulting in a sanction in any state of the United States or

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900 other jurisdiction. A sanction includes, but is not limited to,
901 a fine, probation, community control, parole, mandatory
902 supervision ~~conditional release~~, control release, or
903 incarceration in a state prison, federal prison, private
904 correctional facility, or local detention facility.
905 Section 13. Paragraph (a) of subsection (7) of section
906 943.325, Florida Statutes, is amended to read:
907 943.325 DNA database.—
908 (7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—
909 (a) Any qualifying offender, who is:
910 1. Arrested in this state;
911 2. Incarcerated in this state; or
912 3. On probation, community control, parole, mandatory
913 supervision ~~conditional release~~, control release, or any other
914 type of court-ordered supervision in this state,
915
916 shall be required to submit a DNA sample to a department-
917 designated facility.
918 Section 14. Paragraph (a) of subsection (2) of section
919 944.171, Florida Statutes, is amended to read:
920 944.171 Housing of inmates.—
921 (2) Notwithstanding s. 944.17, the department may enter
922 into contracts with another state, a political subdivision of
923 another state, or a correctional management services vendor in
924 another state for the transfer and confinement in that state of
925 inmates who have been committed to the custody of the
926 department.
927 (a) Any such contract must include:
928 1. A termination date.

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929 2. Provisions concerning the costs of inmate maintenance,
930 extraordinary medical and dental expenses, and any participation
931 in or receipt by inmates of rehabilitative or correctional
932 services, facilities, programs, or treatment, including those
933 costs not reasonably included as part of normal maintenance.
934 3. Provisions concerning participation in programs of
935 inmate employment, if any, the disposition or crediting of any
936 payments received by inmates on account of employment, and the
937 crediting of proceeds or disposal of any products resulting from
938 employment.
939 4. Provisions for the delivery and retaking of inmates.
940 5. A provision for a waiver of extradition by the parties
941 to the contract.
942 6. Retention of jurisdiction of the inmates transferred by
943 Florida.
944 7. Regular reporting procedures concerning Florida inmates
945 by officials of the state, political subdivision, or
946 correctional management services vendor with which the
947 department is contracting.
948 8. Provisions concerning procedures for community
949 supervision, including probation, parole, mandatory supervision
950 ~~conditional release~~, and discharge.
951 9. The same standards of reasonable and humane care as the
952 inmates would receive in an appropriate institution in this
953 state.
954 10. Any other matters that are necessary and appropriate to
955 establish the obligations, responsibilities, and rights of
956 Florida and the state, political subdivision, or correctional
957 management services vendor with which the department is

958 contracting.
959 Section 15. Subsection (1) of section 944.28, Florida
960 Statutes, is amended to read:
961 944.28 Forfeiture of gain-time and the right to earn gain-
962 time in the future.—
963 (1) If a prisoner is convicted of escape, or if the
964 clemency, mandatory supervision as described in chapter 947,
965 conditional release as described in chapter 947 prior to July 1,
966 2013, probation or community control as described in chapter
967 948, provisional release as described in s. 944.277, parole, or
968 control release as described in s. 947.146 granted to the
969 prisoner is revoked, the department may, without notice or
970 hearing, declare a forfeiture of all gain-time earned according
971 to the provisions of law by such prisoner prior to such escape
972 or his or her release under such clemency, mandatory supervision
973 ~~conditional release~~, probation, community control, provisional
974 release, control release, or parole.
975 Section 16. Paragraph (a) of subsection (1) of section
976 944.606, Florida Statutes, is amended to read:
977 944.606 Sexual offenders; notification upon release.—
978 (1) As used in this section:
979 (a) "Convicted" means there has been a determination of
980 guilt as a result of a trial or the entry of a plea of guilty or
981 nolo contendere, regardless of whether adjudication is withheld.
982 A conviction for a similar offense includes, but is not limited
983 to, a conviction by a federal or military tribunal, including
984 courts-martial conducted by the Armed Forces of the United
985 States, and includes a conviction or entry of a plea of guilty
986 or nolo contendere resulting in a sanction in any state of the

987 United States or other jurisdiction. A sanction includes, but is
988 not limited to, a fine; probation; community control; parole;
989 mandatory supervision ~~conditional release~~; control release; or
990 incarceration in a state prison, federal prison, private
991 correctional facility, or local detention facility.
992 Section 17. Paragraph (b) of subsection (1) and subsection
993 (6) of section 944.607, Florida Statutes, are amended to read:
994 944.607 Notification to Department of Law Enforcement of
995 information on sexual offenders.—
996 (1) As used in this section, the term:
997 (b) "Conviction" means a determination of guilt which is
998 the result of a trial or the entry of a plea of guilty or nolo
999 contendere, regardless of whether adjudication is withheld.
1000 Conviction of a similar offense includes, but is not limited to,
1001 a conviction by a federal or military tribunal, including
1002 courts-martial conducted by the Armed Forces of the United
1003 States, and includes a conviction or entry of a plea of guilty
1004 or nolo contendere resulting in a sanction in any state of the
1005 United States or other jurisdiction. A sanction includes, but is
1006 not limited to, a fine; probation; community control; parole;
1007 mandatory supervision ~~conditional release~~; control release; or
1008 incarceration in a state prison, federal prison, private
1009 correctional facility, or local detention facility.
1010 (6) The information provided to the Department of Law
1011 Enforcement must include:
1012 (a) The information obtained from the sexual offender under
1013 subsection (4);
1014 (b) The sexual offender's most current address, place of
1015 permanent, temporary, or transient residence within the state or

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1016 out of state, and address, location or description, and dates of
1017 any current or known future temporary residence within the state
1018 or out of state, while the sexual offender is under supervision
1019 in this state, including the name of the county or municipality
1020 in which the offender permanently or temporarily resides, or has
1021 a transient residence, and address, location or description, and
1022 dates of any current or known future temporary residence within
1023 the state or out of state, and, if known, the intended place of
1024 permanent, temporary, or transient residence, and address,
1025 location or description, and dates of any current or known
1026 future temporary residence within the state or out of state upon
1027 satisfaction of all sanctions;
1028 (c) The legal status of the sexual offender and the
1029 scheduled termination date of that legal status;
1030 (d) The location of, and local telephone number for, any
1031 Department of Corrections' office that is responsible for
1032 supervising the sexual offender;
1033 (e) An indication of whether the victim of the offense that
1034 resulted in the offender's status as a sexual offender was a
1035 minor;
1036 (f) The offense or offenses at conviction which resulted in
1037 the determination of the offender's status as a sex offender;
1038 and
1039 (g) A digitized photograph of the sexual offender which
1040 must have been taken within 60 days before the offender is
1041 released from the custody of the department or a private
1042 correctional facility by expiration of sentence under s. 944.275
1043 or must have been taken by January 1, 1998, or within 60 days
1044 after the onset of the department's supervision of any sexual

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1045 offender who is on probation, community control, mandatory
1046 supervision ~~conditional release~~, parole, provisional release, or
1047 control release or who is supervised by the department under the
1048 Interstate Compact Agreement for Probationers and Parolees. If
1049 the sexual offender is in the custody of a private correctional
1050 facility, the facility shall take a digitized photograph of the
1051 sexual offender within the time period provided in this
1052 paragraph and shall provide the photograph to the department.
1053
1054 If any information provided by the department changes during the
1055 time the sexual offender is under the department's control,
1056 custody, or supervision, including any change in the offender's
1057 name by reason of marriage or other legal process, the
1058 department shall, in a timely manner, update the information and
1059 provide it to the Department of Law Enforcement in the manner
1060 prescribed in subsection (2).
1061 Section 18. Subsection (5) of section 944.608, Florida
1062 Statutes, is amended to read:
1063 944.608 Notification to Department of Law Enforcement of
1064 information on career offenders.—
1065 (5) The information provided to the Department of Law
1066 Enforcement must include:
1067 (a) The information obtained from the career offender under
1068 subsection (3);
1069 (b) The career offender's most current address and place of
1070 permanent and temporary residence within the state or out of
1071 state while the career offender is under supervision in this
1072 state, including the name of the county or municipality in which
1073 the career offender permanently or temporarily resides and, if

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1074 known, the intended place of permanent or temporary residence
1075 upon satisfaction of all sanctions;
1076 (c) The legal status of the career offender and the
1077 scheduled termination date of that legal status;
1078 (d) The location of, and local telephone number for, any
1079 Department of Corrections' office that is responsible for
1080 supervising the career offender; and
1081 (e) A digitized photograph of the career offender, which
1082 must have been taken within 60 days before the career offender
1083 is released from the custody of the department or a private
1084 correctional facility or within 60 days after the onset of the
1085 department's supervision of any career offender who is on
1086 probation, community control, mandatory supervision ~~conditional~~
1087 ~~release~~, parole, provisional release, or control release. If the
1088 career offender is in the custody or control of, or under the
1089 supervision of, a private correctional facility, the facility
1090 shall take a digitized photograph of the career offender within
1091 the time period provided in this paragraph and shall provide the
1092 photograph to the department.
1093 Section 19. Section 944.70, Florida Statutes, is amended to
1094 read:
1095 944.70 Conditions for release from incarceration.—
1096 (1)(a) A person who is convicted of a crime committed on or
1097 after October 1, 1983, but before January 1, 1994, may be
1098 released from incarceration only:
1099 1. Upon expiration of the person's sentence;
1100 2. Upon expiration of the person's sentence as reduced by
1101 accumulated gain-time;
1102 3. As directed by an executive order granting clemency;

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1103 4. Upon attaining the provisional release date;
1104 5. Upon placement in a mandatory supervision ~~conditional~~
1105 ~~release~~ program pursuant to s. 947.1405; or
1106 6. Upon the granting of control release pursuant to s.
1107 947.146.
1108 (b) A person who is convicted of a crime committed on or
1109 after January 1, 1994, may be released from incarceration only:
1110 1. Upon expiration of the person's sentence;
1111 2. Upon expiration of the person's sentence as reduced by
1112 accumulated meritorious or incentive gain-time;
1113 3. As directed by an executive order granting clemency;
1114 4. Upon placement in a mandatory supervision ~~conditional~~
1115 ~~release~~ program pursuant to s. 947.1405 or a conditional medical
1116 release program pursuant to s. 947.149; or
1117 5. Upon the granting of control release, including
1118 emergency control release, pursuant to s. 947.146.
1119 (2) A person who is convicted of a crime committed on or
1120 after December 1, 1990, and who receives a control release date
1121 may not refuse to accept the terms or conditions of control
1122 release.
1123 Section 20. Section 945.36, Florida Statutes, is amended to
1124 read:
1125 945.36 Exemption from health testing regulations for law
1126 enforcement personnel conducting drug tests on inmates and
1127 releasees.—
1128 (1) Any law enforcement officer, state or county probation
1129 officer, or employee of the Department of Corrections, who is
1130 certified by the Department of Corrections pursuant to
1131 subsection (2), is exempt from part I of chapter 483, for the

1132 limited purpose of administering a urine screen drug test to:
1133 (a) Persons during incarceration;
1134 (b) Persons released as a condition of probation for either
1135 a felony or misdemeanor;
1136 (c) Persons released as a condition of community control;
1137 (d) Persons released as a condition of mandatory
1138 supervision ~~conditional release~~;
1139 (e) Persons released as a condition of parole;
1140 (f) Persons released as a condition of provisional release;
1141 (g) Persons released as a condition of pretrial release; or
1142 (h) Persons released as a condition of control release.
1143 (2) The Department of Corrections shall develop a procedure
1144 for certification of any law enforcement officer, state or
1145 county probation officer, or employee of the Department of
1146 Corrections to perform a urine screen drug test on the persons
1147 specified in subsection (1).
1148 Section 21. Section 947.071, Florida Statutes, is amended
1149 to read:
1150 947.071 Rulemaking procedures; indexing of orders.—
1151 (1) It is the intent of the Legislature that all rulemaking
1152 procedures by the commission be conducted pursuant to the
1153 Administrative Procedure Act, chapter 120.
1154 (2) The only final orders of the commission which must
1155 ~~shall~~ be indexed pursuant to chapter 120 are:
1156 (a) Orders granting parole.
1157 (b) Orders revoking parole.
1158 (c) Orders restoring to supervision.
1159 (d) Orders releasing from custody and further supervision.
1160 (e) Early parole termination orders.

1161 (f) Orders granting mandatory supervision ~~conditional~~
1162 ~~release~~.
1163 (g) Orders revoking mandatory supervision ~~conditional~~
1164 ~~release~~.
1165 Section 22. Paragraph (f) of subsection (1) of section
1166 947.13, Florida Statutes, is amended to read:
1167 947.13 Powers and duties of commission.—
1168 (1) The commission shall have the powers and perform the
1169 duties of:
1170 (f) Establishing the terms and conditions of persons
1171 released on mandatory supervision ~~conditional release~~ under s.
1172 947.1405, and determining subsequent ineligibility for mandatory
1173 supervision ~~conditional release~~ due to a violation of the terms
1174 or conditions of mandatory supervision ~~conditional release~~ and
1175 taking action with respect to such a violation.
1176 Section 23. Section 947.141, Florida Statutes, is amended
1177 to read:
1178 947.141 Violations of mandatory supervision ~~conditional~~
1179 ~~release~~, control release, ~~or~~ conditional medical release, or
1180 addiction-recovery supervision.—
1181 (1) If a member of the commission or a duly authorized
1182 representative of the commission has reasonable grounds to
1183 believe that an offender who is on release supervision under s.
1184 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
1185 the terms and conditions of the release in a material respect,
1186 such member or representative may cause a warrant to be issued
1187 for the arrest of the releasee; if the offender was found to be
1188 a sexual predator, the warrant must be issued.
1189 (2) Upon the arrest on a felony charge of an offender who

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1190 is on release supervision under s. 947.1405, s. 947.146, s.
1191 947.149, or s. 944.4731, the offender must be detained without
1192 bond until the initial appearance of the offender at which a
1193 judicial determination of probable cause is made. If the trial
1194 court judge determines that there was no probable cause for the
1195 arrest, the offender may be released. If the trial court judge
1196 determines that there was probable cause for the arrest, such
1197 determination also constitutes reasonable grounds to believe
1198 that the offender violated the conditions of the release. Within
1199 24 hours after the trial court judge's finding of probable
1200 cause, the detention facility administrator or designee shall
1201 notify the commission and the department of the finding and
1202 transmit to each a facsimile copy of the probable cause
1203 affidavit or the sworn offense report upon which the trial court
1204 judge's probable cause determination is based. The offender must
1205 continue to be detained without bond for a period not exceeding
1206 72 hours excluding weekends and holidays after the date of the
1207 probable cause determination, pending a decision by the
1208 commission whether to issue a warrant charging the offender with
1209 violation of the conditions of release. Upon the issuance of the
1210 commission's warrant, the offender must continue to be held in
1211 custody pending a revocation hearing held in accordance with
1212 this section.
1213 (3) Within 45 days after notice to the Parole Commission of
1214 the arrest of a releasee charged with a violation of the terms
1215 and conditions of mandatory supervision ~~conditional release~~,
1216 control release, conditional medical release, or addiction-
1217 recovery supervision, the releasee must be afforded a hearing
1218 conducted by a commissioner or a duly authorized representative

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1219 thereof. If the releasee elects to proceed with a hearing, the
1220 releasee must be informed orally and in writing of the
1221 following:
1222 (a) The alleged violation with which the releasee is
1223 charged.
1224 (b) The releasee's right to be represented by counsel.
1225 (c) The releasee's right to be heard in person.
1226 (d) The releasee's right to secure, present, and compel the
1227 attendance of witnesses relevant to the proceeding.
1228 (e) The releasee's right to produce documents on the
1229 releasee's own behalf.
1230 (f) The releasee's right of access to all evidence used
1231 against the releasee and to confront and cross-examine adverse
1232 witnesses.
1233 (g) The releasee's right to waive the hearing.
1234 (4) Within a reasonable time following the hearing, the
1235 commissioner or the commissioner's duly authorized
1236 representative who conducted the hearing shall make findings of
1237 fact in regard to the alleged violation. A panel of no fewer
1238 than two commissioners shall enter an order determining whether
1239 the charge of violation of mandatory supervision ~~conditional~~
1240 ~~release~~, control release, conditional medical release, or
1241 addiction-recovery supervision has been sustained based upon the
1242 findings of fact presented by the hearing commissioner or
1243 authorized representative. By such order, the panel may revoke
1244 mandatory supervision ~~conditional release~~, control release,
1245 conditional medical release, or addiction-recovery supervision
1246 and thereby return the releasee to prison to serve the sentence
1247 imposed, reinstate the original order granting the release, or

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1248 enter such other order as it considers proper. Effective for
1249 inmates whose offenses were committed on or after July 1, 1995,
1250 the panel may order the placement of a releasee, upon a finding
1251 of violation pursuant to this subsection, into a local detention
1252 facility as a condition of supervision.
1253 (5) Effective for inmates whose offenses were committed on
1254 or after July 1, 1995, notwithstanding the provisions of ss.
1255 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
1256 951.23, or any other law to the contrary, by such order as
1257 provided in subsection (4), the panel, upon a finding of guilt,
1258 may, as a condition of continued supervision, place the releasee
1259 in a local detention facility for a period of incarceration not
1260 to exceed 22 months. Prior to the expiration of the term of
1261 incarceration, or upon recommendation of the chief correctional
1262 officer of that county, the commission shall cause inquiry into
1263 the inmate's release plan and custody status in the detention
1264 facility and consider whether to restore the inmate to
1265 supervision, modify the conditions of supervision, or enter an
1266 order of revocation, thereby causing the return of the inmate to
1267 prison to serve the sentence imposed. ~~The provisions of~~ This
1268 section does ~~do~~ not prohibit the panel from entering such other
1269 order or conducting any investigation that it deems proper. The
1270 commission may ~~only~~ place a person in a local detention facility
1271 pursuant to this section only if there is a contractual
1272 agreement between the chief correctional officer of that county
1273 and the Department of Corrections. The agreement must provide
1274 for a per diem reimbursement for each person placed under this
1275 section, which is payable by the Department of Corrections for
1276 the duration of the offender's placement in the facility. This

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1277 section does not limit the commission's ability to place a
1278 person in a local detention facility for less than 1 year.
1279 (6) Whenever a mandatory supervision, conditional release,
1280 control release, conditional medical release, or addiction-
1281 recovery supervision is revoked by a panel of no fewer than two
1282 commissioners and the releasee is ordered to be returned to
1283 prison, the releasee, by reason of the misconduct, shall be
1284 deemed to have forfeited all gain-time or commutation of time
1285 for good conduct, as provided for by law, earned up to the date
1286 of release. However, if a conditional medical release is revoked
1287 due to the improved medical or physical condition of the
1288 releasee, the releasee does ~~shall~~ not forfeit gain-time accrued
1289 before the date of conditional medical release. This subsection
1290 does not deprive the prisoner of the right to gain-time or
1291 commutation of time for good conduct, as provided by law, from
1292 the date of return to prison.
1293 (7) If a law enforcement officer has probable cause to
1294 believe that an offender who is on release supervision under s.
1295 947.1405, s. 947.146, s. 947.149, or s. 944.4731 has violated
1296 the terms and conditions of his or her release by committing a
1297 felony offense, the officer shall arrest the offender without a
1298 warrant, and a warrant need not be issued in the case.
1299 Section 24. Paragraphs (a) and (f) of subsection (2) of
1300 section 947.16, Florida Statutes, are amended to read:
1301 947.16 Eligibility for parole; initial parole interviews;
1302 powers and duties of commission.—
1303 (2) The following special types of cases shall have their
1304 initial parole interview as follows:
1305 (a) An initial interview may be postponed for a period not

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1306 to exceed 90 days. Such postponement shall be for good cause,
1307 which includes ~~shall include~~, but need not be limited to, the
1308 need for the department to obtain a presentence or postsentence
1309 investigation report or a probation or parole or mandatory
1310 supervision ~~conditional release~~ violation report. The reason for
1311 postponement shall be noted in writing and included in the
1312 official record. No postponement for good cause shall result in
1313 an initial interview being conducted later than 90 days after
1314 the inmate's initially scheduled initial interview.
1315 (f) An initial interview may be held at the discretion of
1316 the commission after the entry of a commission order to revoke
1317 parole or mandatory supervision ~~conditional release~~.
1318 Section 25. Subsection (2) of section 947.22, Florida
1319 Statutes, is amended to read:
1320 947.22 Authority to arrest parole violators with or without
1321 warrant.—
1322 (2) Any parole and probation officer, when she or he has
1323 reasonable ground to believe that a parolee, control releasee,
1324 or mandatory supervision participant ~~conditional releasee~~ has
1325 violated the terms and conditions of her or his parole, control
1326 release, or mandatory supervision ~~conditional release~~ in a
1327 material respect, has the right to arrest the releasee or
1328 parolee without warrant and bring her or him forthwith before
1329 one or more commissioners or a duly authorized representative of
1330 the Parole Commission or Control Release Authority; and
1331 proceedings shall thereupon be had as provided herein when a
1332 warrant has been issued by a member of the commission or
1333 authority or a duly authorized representative of the commission
1334 or authority.

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1335 Section 26. Section 947.24, Florida Statutes, is amended to
1336 read:
1337 947.24 Discharge from parole supervision or release
1338 supervision.—
1339 (1) When a person is placed on parole, control release, or
1340 mandatory supervision ~~conditional release~~, the commission shall
1341 determine the period of time the person will be under parole
1342 supervision or release supervision in the following manner:
1343 (a) If the person is being paroled or released under
1344 supervision from a single or concurrent sentence, the period of
1345 time the person will be under parole supervision or release
1346 supervision may not exceed 2 years unless the commission
1347 designates a longer period of time, in which case it must advise
1348 the parolee or releasee in writing of the reasons for the
1349 extended period. In any event, the period of parole supervision
1350 or release supervision may not exceed the maximum period for
1351 which the person has been sentenced.
1352 (b) If the person is being paroled or released under
1353 supervision from a consecutive sentence or sentences, the period
1354 of time the person will be under parole supervision or release
1355 supervision will be for the maximum period for which the person
1356 was sentenced.
1357 (2) The commission shall review the progress of each person
1358 who has been placed on parole, control release, or mandatory
1359 supervision ~~conditional release~~ after 2 years of supervision in
1360 the community and biennially thereafter. The department shall
1361 provide to the commission the information necessary to conduct
1362 such a review. Such review must include consideration of whether
1363 to modify the reporting schedule, thereby authorizing the person

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1364 under parole supervision or release supervision to submit
1365 reports quarterly, semiannually, or annually. The commission,
1366 after having retained jurisdiction of a person for a sufficient
1367 length of time to evidence satisfactory rehabilitation and
1368 cooperation, may further modify the terms and conditions of the
1369 person's parole, control release, or mandatory supervision
1370 ~~conditional release~~, may discharge the person from parole
1371 supervision or release supervision, may relieve the person from
1372 making further reports, or may permit the person to leave the
1373 state or country, upon finding that such action is in the best
1374 interests of the person and society.
1375 (3) This section does not affect the rights of a parolee to
1376 request modification of the terms and conditions of parole under
1377 s. 947.19.
1378 Section 27. Paragraph (a) of subsection (1) and subsection
1379 (3) of section 948.09, Florida Statutes, are amended to read:
1380 948.09 Payment for cost of supervision and rehabilitation.—
1381 (1)(a)1. Any person ordered by the court, the Department of
1382 Corrections, or the parole commission to be placed on probation,
1383 drug offender probation, community control, parole, control
1384 release, provisional release supervision, addiction-recovery
1385 supervision, or mandatory supervision ~~conditional release~~
1386 supervision under chapter 944, chapter 945, chapter 947, this
1387 chapter ~~948~~, or chapter 958, or in a pretrial intervention
1388 program, must, as a condition of any placement, pay the
1389 department a total sum of money equal to the total month or
1390 portion of a month of supervision times the court-ordered
1391 amount, but not to exceed the actual per diem cost of the
1392 supervision. The department shall adopt rules by which an

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1393 offender who pays in full and in advance of regular termination
1394 of supervision may receive a reduction in the amount due. The
1395 rules shall incorporate provisions by which the offender's
1396 ability to pay is linked to an established written payment plan.
1397 Funds collected from felony offenders may be used to offset
1398 costs of the Department of Corrections associated with community
1399 supervision programs, subject to appropriation by the
1400 Legislature.
1401 2. In addition to any other contribution or surcharge
1402 imposed by this section, each felony offender assessed under
1403 this paragraph shall pay a $2-per-month surcharge to the
1404 department. The surcharge shall be deemed to be paid only after
1405 the full amount of any monthly payment required by the
1406 established written payment plan has been collected by the
1407 department. These funds shall be used by the department to pay
1408 for correctional probation officers' training and equipment,
1409 including radios, and firearms training, firearms, and attendant
1410 equipment necessary to train and equip officers who choose to
1411 carry a concealed firearm while on duty. ~~Nothing in~~ This
1412 subparagraph does not ~~shall be construed to~~ limit the
1413 department's authority to determine who shall be authorized to
1414 carry a concealed firearm while on duty, or ~~to~~ limit the right
1415 of a correctional probation officer to carry a personal firearm
1416 approved by the department.
1417 (3) Any failure to pay contribution as required under this
1418 section may constitute a ground for the revocation of probation
1419 by the court, the revocation of parole or mandatory supervision
1420 ~~conditional release~~ by the Parole Commission, the revocation of
1421 control release by the Control Release Authority, or removal

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1422 from the pretrial intervention program by the state attorney.
1423 The Department of Corrections may exempt a person from the
1424 payment of all or any part of the contribution if it finds any
1425 of the following factors to exist:
1426 (a) The offender has diligently attempted, but has been
1427 unable, to obtain employment that ~~which~~ provides him or her
1428 sufficient income to make such payments.
1429 (b) The offender is a student in a school, college,
1430 university, or course of career training designed to fit the
1431 student for gainful employment. Certification of such student
1432 status shall be supplied to the Secretary of Corrections by the
1433 educational institution in which the offender is enrolled.
1434 (c) The offender has an employment handicap, as determined
1435 by a physical, psychological, or psychiatric examination
1436 acceptable to, or ordered by, the secretary.
1437 (d) The offender's age prevents him or her from obtaining
1438 employment.
1439 (e) The offender is responsible for the support of
1440 dependents, and the payment of such contribution constitutes an
1441 undue hardship on the offender.
1442 (f) The offender has been transferred outside the state
1443 under an interstate compact adopted pursuant to chapter 949.
1444 (g) There are other extenuating circumstances, as
1445 determined by the secretary.
1446 Section 28. Section 948.32, Florida Statutes, is amended to
1447 read:
1448 948.32 Requirements of law enforcement agency upon arrest
1449 of persons for certain sex offenses.—
1450 (1) When any state or local law enforcement agency

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1451 investigates or arrests a person for committing, or attempting,
1452 soliciting, or conspiring to commit, a violation of s.
1453 787.025(2)(c), chapter 794, s. 796.03, s. 800.04, s. 827.071, s.
1454 847.0133, s. 847.0135, or s. 847.0145, the law enforcement
1455 agency shall contact the Department of Corrections to verify
1456 whether the person under investigation or under arrest is on
1457 probation, community control, parole, mandatory supervision
1458 ~~conditional release~~, or control release.
1459 (2) If the law enforcement agency finds that the person
1460 under investigation or under arrest is on probation, community
1461 control, parole, mandatory supervision ~~conditional release~~, or
1462 control release, the law enforcement agency shall immediately
1463 notify the person's probation officer or release supervisor of
1464 the investigation or the arrest.
1465 Section 29. Subsection (6) of section 957.06, Florida
1466 Statutes, is amended to read:
1467 957.06 Powers and duties not delegable to contractor.—A
1468 contract entered into under this chapter does not authorize,
1469 allow, or imply a delegation of authority to the contractor to:
1470 (6) Make recommendations to the Parole Commission with
1471 respect to the denial or granting of parole, control release,
1472 mandatory supervision ~~conditional release~~, or conditional
1473 medical release. However, the contractor may submit written
1474 reports to the Parole Commission and must respond to a written
1475 request by the Parole Commission for information.
1476 Section 30. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 490

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Landlords and Tenants

DATE: April 3, 2013 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 490 makes numerous changes to the Florida Residential Landlord and Tenant Act. Specifically, the bill makes the following changes:

- Authorizes the eviction procedures under the Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant which describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the presumption to 1-months rent.

- Lessens the duty of landlords of single-family homes and duplexes to maintain screens on windows. A landlord must ensure that screens are installed in reasonable condition at the beginning of the tenancy and repaired once annually thereafter.
- Provides that a right or duty enforced by civil action under the Florida Landlord and Tenant Act does not preclude prosecution for a criminal offense related to a lease or leased property.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Provides that upon the re-occurrence within 12 months after the initial notice of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to nonrenew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that Saturdays, Sundays, and holidays do not stay the applicable notice period.
- Specifies additional grounds for which a landlord may not retaliate against a tenant.

The bill conforms statutory cross-references and makes other editorial changes.

This bill creates one undesignated section of Florida law.

This bill substantially amends the following sections of the Florida Statutes: 83.42, 83.48, 83.49, 83.50, 83.51, 83.54, 83.56, 83.575, 83.58, 83.59, 83.60, 83.62, 83.63, and 83.64.

II. Present Situation:

Applicability of the Florida Residential Landlord and Tenant Act

Part II, ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.[1]

The Act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.[2]
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.[3]
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.[4]
- Occupancy by a holder of a proprietary lease in a cooperative apartment.[5]
- Occupancy by an owner of a condominium unit.[6]

[1] Section 83.41, F.S., provides that part II, chapter 83, F.S., applies to the rental of a dwelling unit.
[2] Section 83.42(1), F.S.
[3] Section 83.42(2), F.S.
[4] Section 83.42(3), F.S.
[5] Section 83.42(4), F.S.
[6] Section 83.42(5), F.S.

Attorney Fees

Under s. 83.48, F.S., in any civil action brought to enforce the provisions of a rental agreement or the Florida Residential Landlord and Tenant Act, the party in whose favor a judgment or decree has been rendered may recover reasonable costs, including attorney fees from the prevailing party. In an interpretation of s. 83.48, F.S., by the Third District Court of Appeal, the court held that the statute did not allow for the award of attorney fees in an action for damages for personal injuries resulting from a landlord's failure to maintain the rental premises.[7]

Advance Rent Payments

Section 83.49, F.S., specifies requirements for the landlord's duty to a tenant for deposit money or advance rent. "[T]he purpose of [s. 83.49(3)(a), F.S.,] is to assure tenants that their security deposits will be returned expeditiously or they will be promptly notified otherwise."[8] Section 83.49(3)(a), F.S., states:

> [u]pon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:
>
> This is a notice of my intention to impose a claim for damages in the amount of ___ upon your security deposit, due to ___. It is sent to you as required by s. 83.49 (3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to _(landlord's address).
>
> If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

Section 83.49(3)(b), F.S., provides that:

> [u]nless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

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[7] *Gilbert v. Jabour*, 527 So. 2d 951 (Fla. 3d DCA 1988).
[8] *See Durene v. Alcime*, 448 So. 2d 1208, 1210 (Fla. 3d DCA 1984).

Disclosure of Fire Protection

The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, must disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.[9]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes.[10] Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[11]

> Unless otherwise agreed in writing, in addition to the requirements [described above], the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:
>
> 1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
> 2. Locks and keys.
> 3. The clean and safe condition of common areas.
> 4. Garbage removal and outside receptacles therefor.
> 5. Functioning facilities for heat during winter, running water, and hot water.[12]
>
> Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.[13]

Enforcement of Rights and Duties under the Landlord and Tenant Act

Any right or duty declared in the Florida Residential Landlord and Tenant Act is enforceable by civil action.[14]

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[9] Section 83.50(2), F.S.
[10] Section 83.51(1)(a), F.S.
[11] Section 83.51(1)(b), F.S.
[12] Section 83.51(2)(a), F.S.
[13] Section 83.51(2)(b), F.S.
[14] Section 83.54, F.S.

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., establishes the circumstances under which the tenant or landlord may terminate a rental agreement. A tenant may be subject to eviction for monetary default or non-monetary default. Section 83.56, F.S., recognizes two different categories of non-monetary default:

Noncurable Default

> (2)(a) If such noncompliance is of a nature that the **tenant should not be given an opportunity to cure** it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises.[15]

Curable Default

> (2)(b) If such noncompliance is of a nature that the **tenant should be given an opportunity to cure** it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.[16]

Termination of Rental Agreement - Waiver of Rent

If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of rent or possession of the premises, the landlord may terminate the rental agreement.[17]

If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with

[15] Section 83.56(2)(a), F.S.
[16] Section 83.56(2)(b), F.S.
[17] Section 83.56(3), F.S.

its provisions, the landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance.[18] The landlord does not waive his or her right to terminate the rental agreement or to bring a civil action for any subsequent or continuing noncompliance. If a landlord accepts a partial payment of rent from a tenant with full knowledge that the payment is not for the full amount, the landlord waives the right to terminate the rental agreement or to bring a civil action.[19]

Termination of a Tenancy with a Specific Duration

A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement.[20] Such a provision may not require more than 60 days' notice before vacating the premises.[21] A rental agreement having a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. To do so, the landlord must provide written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide the written notice within 15 days before the start of the notification period contained in the lease and the written notice must list all fees, penalties, and other charges applicable to the tenant.

Restoration of Possession to Landlord Upon Eviction

In an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises.[22]

Retaliatory Conduct

Section 83.64, F.S., prohibits a landlord from discriminatorily increasing a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. The tenant may raise the defense of retaliatory conduct if the tenant acts in good faith.

Rental Units or Parcels in Condominiums, Cooperatives, and Homeowners' Associations

If a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association.[23] The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues the tenancy in the unit or parcel.

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[18] Section 83.56(5), F.S.
[19] *See In re Sorrento's I, Inc.*, 195 B.R. 502, 504 (Bankruptcy. M.D. Fla. 1996).
[20] Section 83.575(1), F.S.
[21] *Id.*
[22] Section 83.62, F.S.
[23] Sections 718.116(11)(a) and (b), 719.108(10)(a) and (b), and 720.3085(8)(a) and (b), F.S.

III. Effect of Proposed Changes:

Applicability of the Florida Residential Landlord and Tenant Act

The bill makes the Florida Residential Landlord Tenant Act applicable to lease purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the purchase price of the property or at least 12 month's rent.

Attorney Fees

The bill provides that a right to attorney fees may not be waived in a lease agreement. In addition, the bill provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of the landlord's duty to maintain the premises. The limitation on the award of attorney fees in a personal injury action based on the failure of a landlord to maintain the leased premises appears codify the interpretation of s. 83.56, F.S., by the Third District Court of Appeal in *Gilbert v. Jabour*.[24]

Advance Rent Payments/Nonrefundable Deposits

The bill eliminates a requirement under s. 83.49(2), F.S., for a landlord to give to a tenant a copy of the law relating to security deposits and replaces it with another disclosure which, in part, states:

> Your lease requires payment of certain deposits. The landlord may transfer advance rents to the landlord's account as they are due and without notice. rent is due. When you move out, you must give the landlord your new address so that the landlord can send you notices regarding your deposit. The landlord must mail you notice, within 30 days after you move out, of the landlord's intent to impose a claim against the deposit. If you do not reply to the landlord stating your objection to the claim within 15 days after receipt of the landlord's notice, the landlord will collect the claim and must mail you the remaining deposit, if any. If you timely object, the landlord must hold the deposit, and either you or the landlord will have to file a lawsuit so that the court can resolve the dispute.

The bill allows the landlord or the landlord's agent to withdraw advance rents from the deposit account without notice and as the rents become due to the landlord. The changes to the required disclosure regarding security deposits in this bill are conditional for leases entered into between July 1, 2013, and December 31, 2013. During the period between July 1, 2013, and December 31, 2013, the landlord may elect to give notice required under the current disclosure or the disclosure required under the bill. On or after January 1, 2014, the notice of the disclosure regarding security deposits as required by this bill will be required for all leases.

[24] *Gilbert v. Jabour*, *supra* note 7.

Transfer of Deposits to New Owner or Manager (Owner's Agent)

The bill creates a rebuttable presumption that the previous owner or manager of the property of the property has transferred any deposit to the new owner. However, this presumption is limited to 1 month's rent.[25]

Disclosure of Fire Protection

The bill eliminates a disclosure requirement for landlords regarding the availability or lack of availability of fire protection in certain new construction. Current law requires the landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, to disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.[26]

Maintenance of Screens on Windows

The bill relieves landlords of single-family homes and duplexes of the obligation to provide and maintain screens on windows.

Enforcement of Rights and Duties under the Landlord and Tenant Act

Under current law, any right or duty declared in the Florida Residential Landlord and Tenant Act is enforceable by civil action.[27]The bill provides that a right or duty enforced by civil action under the Florida Residential Landlord and Tenant Act does not preclude prosecution for a criminal offense related to the lease or leased property.

Termination of Rental Agreement- Noncompliance

In the event a notice of noncompliance has been previously delivered to a tenant giving the tenant an opportunity to cure a curable lease violation, the bill provides that upon re-occurrence within 12 months after the initial notice of the noncompliance, the landlord is not required to provide an additional notice before instituting an eviction action. However, the bill requires that the complaint in the eviction action specify the date, time, place, and specific facts of the alleged subsequent non-compliance so as to allow the tenant to be able to be aware of the allegations against the tenant and to prepare a defense.

Termination of Rental Agreement- Rent Waiver

The bill provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease. The bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent. The bill revises the calculation of the time period within which a landlord with a tenant who receives rent subsidies waives the right to enforce a rental agreement if action is not timely instituted within 45 days of a noncompliance. Under the bill, a landlord must

[25] The amount could be at variance with the amount actually received from the previous owner or agent.
[26] Section 83.50(2), F.S.
[27] Section 83.54, F.S.

enforce the rental agreement within 45 days after obtaining actual knowledge of a noncompliance.

Termination of a Tenancy with a Specific Duration

The bill provides that if a rental agreement has a requirement for a tenant to provide notice within a specified period to the landlord regarding nonrenewal, the rental agreement must also provide a reciprocal requirement for the landlord to notify the tenant within the same specified period of an intent not to renew. However, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

Landlord's Action for Rent or Possession

The bill provides that, before an action for possession based on nonpayment of rent or seeking recovery of unpaid rent may be dismissed by a court, the court may give the landlord[28] an opportunity to correct a minor procedural deficiency in a notice or in the pleadings. The bill requires a tenant in any action for possession of a dwelling unit by the landlord, if the tenant interposes any defense other than payment, including the defense of a defective 3-day notice, to pay the accrued rent under dispute into a court registry during the pendency of the proceeding.

Restoration of Possession to Landlord

Existing law requires an eviction notice to be posted on a rental property at least 24 hours before a sheriff may restore possession of the property to the landlord. The bill provides that Saturdays, Sundays and holidays do not stay the 24-hour notice period. The bill revises procedures for the restoration of possession of a rental unit to a landlord to provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

The bill specifies two additional grounds for which a landlord may not retaliate against a tenant:

- The tenant has paid the rent to a condominium, cooperative, or homeowners' association after demand from the association.
- The tenant has exercised his or her rights under local, state, or federal fair housing laws.

The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[28] Under ss. 83.60, F.S., a tenant may raise various defenses in opposition to a landlord's action for possession or nonpayment of rent.

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 may make evictions or actions for possession of a residential dwelling unit faster and less costly in some circumstances.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The amendment to s. 83.54, F.S., provides that "[a] right or duty enforced by civil action under *this section* does not preclude prosecution for a criminal offense relating to a lease or leased property." (emphasis added). The reference to "this section" should be changed to "this part."

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 April 1, 2013:
The committee substitute makes the following changes:

- Requires the landlord, at the beginning of the tenancy, to ensure that window screens are installed in a reasonable condition. The landlord must repair damage once annually until the termination of the rental agreement.
- Provides that the Landlord Tenant Act does not preclude prosecution for a criminal offense related to the lease or leased property.
- Requires an eviction complaint which is based on a reoccurring noncompliance with a lease to contain specific information so that the tenant is aware of the allegations and may prepare a defense.

- Authorizes a court to allow a landlord to correct a minor procedural deficiency in a notice or pleading in an action by the landlord for possession of a dwelling.
- Deletes provision in original bill that requires a court to give a mobile home owner the opportunity to cure deficiencies in a notice or pleading in an action by the mobile home owner for possession of a dwelling.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
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The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (2) of section 83.42, Florida
6 Statutes, is amended to read:
7 83.42 Exclusions from application of part.—This part does
8 not apply to:
9 (2) Occupancy under a contract of sale of a dwelling unit
10 or the property of which it is a part in which the buyer has
11 paid at least 12 months' rent or in which the buyer has paid at
12 least 1 month's rent and a deposit of at least 5 percent of the
13 purchase price of the property.

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14 Section 2. Section 83.48, Florida Statutes, is amended to
15 read:
16 83.48 Attorney ~~Attorney's~~ fees.—In any civil action brought
17 to enforce the provisions of the rental agreement or this part,
18 the party in whose favor a judgment or decree has been rendered
19 may recover reasonable attorney fees and court costs~~, including~~
20 ~~attorney's fees,~~ from the nonprevailing party. The right to
21 attorney fees in this section may not be waived in a lease
22 agreement. However, attorney fees may not be awarded under this
23 section in a claim for personal injury damages based on a breach
24 of duty under s. 83.51.
25 Section 3. Subsections (2), (3), and (7) of section 83.49,
26 Florida Statutes, are amended to read:
27 83.49 Deposit money or advance rent; duty of landlord and
28 tenant.—
29 (2) The landlord shall, in the lease agreement or within 30
30 days after ~~of~~ receipt of advance rent or a security deposit,
31 give written notice to ~~notify~~ the tenant which includes
32 disclosure of ~~in writing of the manner in which the landlord is~~
33 ~~holding~~ the advance rent or security deposit ~~and the rate of~~
34 ~~interest, if any, which the tenant is to receive and the time of~~
35 ~~interest payments to the tenant~~. ~~Such written notice shall:~~
36 ~~(a) Be given in person or by mail to the tenant.~~
37 ~~(b) State the name and address of the depository where the~~
38 ~~advance rent or security deposit is being held, whether the~~
39 ~~advance rent or security deposit is being held in a separate~~
40 ~~account for the benefit of the tenant or is commingled with~~
41 ~~other funds of the landlord, and, if commingled, whether such~~
42 ~~funds are deposited in an interest-bearing account in a Florida~~

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43 ~~banking institution.~~
44 ~~(c) Include a copy of the provisions of subsection (3).~~
45 Subsequent to providing such written notice, if the landlord
46 changes the manner or location in which he or she is holding the
47 advance rent or security deposit, he or she must ~~shall~~ notify
48 the tenant within 30 days after ~~of~~ the change as provided in
49 paragraphs (a)-(d). The landlord is not required to give new or
50 additional notice solely because the depository has merged with
51 another financial institution, changed its name, or transferred
52 ownership to a different financial institution ~~according to the~~
53 ~~provisions herein set forth~~. This subsection does not apply to
54 any landlord who rents fewer than five individual dwelling
55 units. Failure to give ~~provide~~ this notice is ~~shall~~ not ~~be~~ a
56 defense to the payment of rent when due. The written notice
57 must:
58 (a) Be given in person or by mail to the tenant.
59 (b) State the name and address of the depository where the
60 advance rent or security deposit is being held or state that the
61 landlord has posted a surety bond as provided by law.
62 (c) State whether the tenant is entitled to interest on the
63 deposit.
64 (d) Contain the following disclosure:
65
66 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
67 LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS
68 THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST
69 GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND
70 YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU
71 NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S

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72 INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT
73 REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN
74 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD
75 WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT,
76 IF ANY.
77
78 IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE
79 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT
80 AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A
81 CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY
82 LATER FILE A LAWSUIT CLAIMING A REFUND.
83
84 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE
85 FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT
86 IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY
87 THE LOSING PARTY.
88
89 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
90 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND
91 OBLIGATIONS.
92
93 (3) The landlord or the landlord's agent may disburse
94 advance rents from the deposit account to the landlord's benefit
95 when the advance rental period commences and without notice to
96 the tenant. For all other deposits:
97 (a) Upon the vacating of the premises for termination of
98 the lease, if the landlord does not intend to impose a claim on
99 the security deposit, the landlord shall have 15 days to return
100 the security deposit together with interest if otherwise

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101 required, or the landlord shall have 30 days to give the tenant
102 written notice by certified mail to the tenant's last known
103 mailing address of his or her intention to impose a claim on the
104 deposit and the reason for imposing the claim. The notice shall
105 contain a statement in substantially the following form:
106
107 This is a notice of my intention to impose a claim for
108 damages in the amount of ....upon your security deposit, due to
109 ..... It is sent to you as required by s. 83.49(3), Florida
110 Statutes. You are hereby notified that you must object in
111 writing to this deduction from your security deposit within 15
112 days from the time you receive this notice or I will be
113 authorized to deduct my claim from your security deposit. Your
114 objection must be sent to ...(landlord's address)....
115
116 If the landlord fails to give the required notice within
117 the 30-day period, he or she forfeits the right to impose a
118 claim upon the security deposit <u>and may not seek a setoff</u>
119 <u>against the deposit but may file an action for damages after</u>
120 <u>return of the deposit</u>.
121 (b) Unless the tenant objects to the imposition of the
122 landlord's claim or the amount thereof within 15 days after
123 receipt of the landlord's notice of intention to impose a claim,
124 the landlord may then deduct the amount of his or her claim and
125 shall remit the balance of the deposit to the tenant within 30
126 days after the date of the notice of intention to impose a claim
127 for damages. <u>The failure of the tenant to make a timely</u>
128 <u>objection does not waive any rights of the tenant to seek</u>
129 <u>damages in a separate action.</u>

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130 (c) If either party institutes an action in a court of
131 competent jurisdiction to adjudicate the party's right to the
132 security deposit, the prevailing party is entitled to receive
133 his or her court costs plus a reasonable fee for his or her
134 attorney. The court shall advance the cause on the calendar.
135 (d) Compliance with this section by an individual or
136 business entity authorized to conduct business in this state,
137 including Florida-licensed real estate brokers and sales
138 associates, constitutes ~~shall constitute~~ compliance with all
139 other relevant Florida Statutes pertaining to security deposits
140 held pursuant to a rental agreement or other landlord-tenant
141 relationship. Enforcement personnel shall look solely to this
142 section to determine compliance. This section prevails over any
143 conflicting provisions in chapter 475 and in other sections of
144 the Florida Statutes, and shall operate to permit licensed real
145 estate brokers to disburse security deposits and deposit money
146 without having to comply with the notice and settlement
147 procedures contained in s. 475.25(1)(d).
148 (7) Upon the sale or transfer of title of the rental
149 property from one owner to another, or upon a change in the
150 designated rental agent, any and all security deposits or
151 advance rents being held for the benefit of the tenants shall be
152 transferred to the new owner or agent, together with any earned
153 interest and with an accurate accounting showing the amounts to
154 be credited to each tenant account. Upon the transfer of such
155 funds and records to the new owner or agent ~~as stated herein~~,
156 and upon transmittal of a written receipt therefor, the
157 transferor is ~~shall be~~ free from the obligation imposed in
158 subsection (1) to hold such moneys on behalf of the tenant.

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159 There is a rebuttable presumption that any new owner or agent
160 received the security deposit from the previous owner or agent;
161 however, this presumption is limited to 1 month's rent. This
162 subsection does not ~~However, nothing herein shall~~ excuse the
163 landlord or agent for a violation of other ~~the~~ provisions of
164 this section while in possession of such deposits.
165 Section 4. The Legislature recognizes that landlords may
166 have stocks of preprinted lease forms that comply with the
167 notice requirements of current law. Accordingly, for leases
168 entered into on or before December 31, 2013, a landlord may give
169 notice that contains the disclosure required in the changes made
170 by this act to s. 83.49, Florida Statutes, or the former notice
171 required in s. 83.49, Florida Statutes 2012. In any event, the
172 disclosure required by this act is only required for all leases
173 entered into under this part on or after January 1, 2014.
174 Section 5. Section 83.50, Florida Statutes, is amended to
175 read:
176 83.50 Disclosure of landlord's address.—
177 ~~(1)~~ In addition to any other disclosure required by law,
178 the landlord, or a person authorized to enter into a rental
179 agreement on the landlord's behalf, shall disclose in writing to
180 the tenant, at or before the commencement of the tenancy, the
181 name and address of the landlord or a person authorized to
182 receive notices and demands in the landlord's behalf. The person
183 so authorized to receive notices and demands retains authority
184 until the tenant is notified otherwise. All notices of such
185 names and addresses or changes thereto shall be delivered to the
186 tenant's residence or, if specified in writing by the tenant, to
187 any other address.

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188 ~~(2) The landlord or the landlord's authorized~~
189 ~~representative, upon completion of construction of a building~~
190 ~~exceeding three stories in height and containing dwelling units,~~
191 ~~shall disclose to the tenants initially moving into the building~~
192 ~~the availability or lack of availability of fire protection.~~
193 Section 6. Subsection (1) and paragraph (a) of subsection
194 (2) of section 83.51, Florida Statutes, are amended to read:
195 83.51 Landlord's obligation to maintain premises.—
196 (1) The landlord at all times during the tenancy shall:
197 (a) Comply with the requirements of applicable building,
198 housing, and health codes; or
199 (b) Where there are no applicable building, housing, or
200 health codes, maintain the roofs, windows, ~~screens,~~ doors,
201 floors, steps, porches, exterior walls, foundations, and all
202 other structural components in good repair and capable of
203 resisting normal forces and loads and the plumbing in reasonable
204 working condition. The landlord, at commencement of the tenancy,
205 must ensure that screens are installed in a reasonable
206 condition. Thereafter, the landlord must repair damage to
207 screens once annually, when necessary, until termination of the
208 rental agreement. ~~However,~~
209
210 The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile
211 home or other structure owned by the tenant. The landlord's
212 obligations under this subsection may be altered or modified in
213 writing with respect to a single-family home or duplex.
214 (2)(a) Unless otherwise agreed in writing, in addition to
215 the requirements of subsection (1), the landlord of a dwelling
216 unit other than a single-family home or duplex shall, at all

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217 times during the tenancy, make reasonable provisions for:
218 1. The extermination of rats, mice, roaches, ants, wood-
219 destroying organisms, and bedbugs. When vacation of the premises
220 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
221 liable for damages but shall abate the rent. The tenant must
222 ~~shall be required to~~ temporarily vacate the premises for a
223 period of time not to exceed 4 days, on 7 days' written notice,
224 if necessary, for extermination pursuant to this subparagraph.
225 2. Locks and keys.
226 3. The clean and safe condition of common areas.
227 4. Garbage removal and outside receptacles therefor.
228 5. Functioning facilities for heat during winter, running
229 water, and hot water.
230 Section 7. Section 83.54, Florida Statutes, is amended to
231 read:
232 83.54 Enforcement of rights and duties; civil action;
233 criminal offenses.—Any right or duty declared in this part is
234 enforceable by civil action. A right or duty enforced by civil
235 action under this section does not preclude prosecution for a
236 criminal offense related to the lease or leased property.
237 Section 8. Subsections (2) through (5) of section 83.56,
238 Florida Statutes, are amended to read:
239 83.56 Termination of rental agreement.—
240 (2) If the tenant materially fails to comply with s. 83.52
241 or material provisions of the rental agreement, other than a
242 failure to pay rent, or reasonable rules or regulations, the
243 landlord may:
244 (a) If such noncompliance is of a nature that the tenant
245 should not be given an opportunity to cure it or if the

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246 noncompliance constitutes a subsequent or continuing
247 noncompliance within 12 months of a written warning by the
248 landlord of a similar violation, deliver a written notice to the
249 tenant specifying the noncompliance and the landlord's intent to
250 terminate the rental agreement by reason thereof. Examples of
251 noncompliance which are of a nature that the tenant should not
252 be given an opportunity to cure include, but are not limited to,
253 destruction, damage, or misuse of the landlord's or other
254 tenants' property by intentional act or a subsequent or
255 continued unreasonable disturbance. In such event, the landlord
256 may terminate the rental agreement, and the tenant shall have 7
257 days from the date that the notice is delivered to vacate the
258 premises. The notice shall be ~~adequate if it is~~ in substantially
259 the following form:
260
261 You are advised that your lease is terminated effective
262 immediately. You shall have 7 days from the delivery of this
263 letter to vacate the premises. This action is taken because
264 ...(cite the noncompliance)....
265
266 (b) If such noncompliance is of a nature that the tenant
267 should be given an opportunity to cure it, deliver a written
268 notice to the tenant specifying the noncompliance, including a
269 notice that, if the noncompliance is not corrected within 7 days
270 from the date <u>that</u> the written notice is delivered, the landlord
271 shall terminate the rental agreement by reason thereof. Examples
272 of such noncompliance include, but are not limited to,
273 activities in contravention of the lease or this <u>part</u> ~~act~~ such
274 as having or permitting unauthorized pets, guests, or vehicles;

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275 parking in an unauthorized manner or permitting such parking; or
276 failing to keep the premises clean and sanitary. If such
277 noncompliance recurs within 12 months after notice, an eviction
278 action may commence without delivering a subsequent notice
279 pursuant to paragraph (a) or this paragraph. The notice shall be
280 ~~adequate if it is~~ in substantially the following form:
281
282 You are hereby notified that ...(cite the
283 noncompliance).... Demand is hereby made that you remedy the
284 noncompliance within 7 days of receipt of this notice or your
285 lease shall be deemed terminated and you shall vacate the
286 premises upon such termination. If this same conduct or conduct
287 of a similar nature is repeated within 12 months, your tenancy
288 is subject to termination without further warning and without
289 your being given an opportunity to cure the noncompliance.
290
291 (3) If the tenant fails to pay rent when due and the
292 default continues for 3 days, excluding Saturday, Sunday, and
293 legal holidays, after delivery of written demand by the landlord
294 for payment of the rent or possession of the premises, the
295 landlord may terminate the rental agreement. Legal holidays for
296 the purpose of this section shall be court-observed holidays
297 only. The 3-day notice shall contain a statement in
298 substantially the following form:
299
300 You are hereby notified that you are indebted to me in the
301 sum of .... dollars for the rent and use of the premises
302 ...(address of leased premises, including county)..., Florida,
303 now occupied by you and that I demand payment of the rent or

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304 possession of the premises within 3 days (excluding Saturday,
305 Sunday, and legal holidays) from the date of delivery of this
306 notice, to wit: on or before the .... day of ....,...(year)....
307 ...(landlord's name, address and phone number)...
308
309 (4) The delivery of the written notices required by
310 subsections (1), (2), and (3) shall be by mailing or delivery of
311 a true copy thereof or, if the tenant is absent from the
312 premises, by leaving a copy thereof at the residence. The notice
313 requirements of subsections (1), (2), and (3) may not be waived
314 in the lease.
315 (5)(a) If the landlord accepts rent with actual knowledge
316 of a noncompliance by the tenant or accepts performance by the
317 tenant of any other provision of the rental agreement that is at
318 variance with its provisions, or if the tenant pays rent with
319 actual knowledge of a noncompliance by the landlord or accepts
320 performance by the landlord of any other provision of the rental
321 agreement that is at variance with its provisions, the landlord
322 or tenant waives his or her right to terminate the rental
323 agreement or to bring a civil action for that noncompliance, but
324 not for any subsequent or continuing noncompliance. However, a
325 landlord does not waive the right to terminate the rental
326 agreement or to bring a civil action for that noncompliance by
327 accepting partial rent for the period.
328 (b) Any tenant who wishes to defend against an action by
329 the landlord for possession of the unit for noncompliance of the
330 rental agreement or of relevant statutes must ~~shall~~ comply with
331 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
332 mediation or trial unless the provisions of s. 83.60(2) have

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333 been met, but must ~~shall~~ enter a default judgment for removal of
334 the tenant with a writ of possession to issue immediately if the
335 tenant fails to comply with s. 83.60(2).
336 (c) This subsection does not apply to that portion of rent
337 subsidies received from a local, state, or national government
338 or an agency of local, state, or national government; however,
339 waiver will occur if an action has not been instituted within 45
340 days after the landlord obtains actual knowledge of the
341 noncompliance.
342 Section 9. Subsection (1) of section 83.575, Florida
343 Statutes, is amended to read:
344 83.575 Termination of tenancy with specific duration.—
345 (1) A rental agreement with a specific duration may contain
346 a provision requiring the tenant to notify the landlord within a
347 specified period before vacating the premises at the end of the
348 rental agreement, if such provision requires the landlord to
349 notify the tenant within such notice period if the rental
350 agreement will not be renewed; however, a rental agreement may
351 not require more than 60 days' notice from either the tenant or
352 the landlord ~~before vacating the premises~~.
353 Section 10. Section 83.58, Florida Statutes, is amended to
354 read:
355 83.58 Remedies; tenant holding over.—If the tenant holds
356 over and continues in possession of the dwelling unit or any
357 part thereof after the expiration of the rental agreement
358 without the permission of the landlord, the landlord may recover
359 possession of the dwelling unit in the manner provided for in s.
360 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
361 amount of rent due on the dwelling unit, or any part thereof,

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362 for the period during which the tenant refuses to surrender
363 possession.
364 Section 11. Subsection (2) of section 83.59, Florida
365 Statutes, is amended to read:
366 83.59 Right of action for possession.—
367 (2) A landlord, the landlord's attorney, or the landlord's
368 agent, applying for the removal of a tenant, shall file in the
369 county court of the county where the premises are situated a
370 complaint describing the dwelling unit and stating the facts
371 that authorize its recovery. A landlord's agent is not permitted
372 to take any action other than the initial filing of the
373 complaint, unless the landlord's agent is an attorney. The
374 landlord is entitled to the summary procedure provided in s.
375 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the
376 calendar.
377 Section 12. Section 83.60, Florida Statutes, is amended to
378 read:
379 83.60 Defenses to action for rent or possession;
380 procedure.—
381 (1)(a) In an action by the landlord for possession of a
382 dwelling unit based upon nonpayment of rent or in an action by
383 the landlord under s. 83.55 seeking to recover unpaid rent, the
384 tenant may defend upon the ground of a material noncompliance
385 with s. 83.51(1) ~~[F.S. 1973]~~, or may raise any other defense,
386 whether legal or equitable, that he or she may have, including
387 the defense of retaliatory conduct in accordance with s. 83.64.
388 The landlord must be given an opportunity to cure a deficiency
389 in a notice or in the pleadings before dismissal of the action.
390 (b) The defense of a material noncompliance with s.

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391 83.51(1) ~~[F.S. 1973]~~ may be raised by the tenant if 7 days have
392 elapsed after the delivery of written notice by the tenant to
393 the landlord, specifying the noncompliance and indicating the
394 intention of the tenant not to pay rent by reason thereof. Such
395 notice by the tenant may be given to the landlord, the
396 landlord's representative as designated pursuant to s. 83.50~~(1)~~,
397 a resident manager, or the person or entity who collects the
398 rent on behalf of the landlord. A material noncompliance with s.
399 83.51(1) ~~[F.S. 1973]~~ by the landlord is a complete defense to an
400 action for possession based upon nonpayment of rent, and, upon
401 hearing, the court or the jury, as the case may be, shall
402 determine the amount, if any, by which the rent is to be reduced
403 to reflect the diminution in value of the dwelling unit during
404 the period of noncompliance with s. 83.51(1) ~~[F.S. 1973]~~. After
405 consideration of all other relevant issues, the court shall
406 enter appropriate judgment.
407 (2) In an action by the landlord for possession of a
408 dwelling unit, if the tenant interposes any defense other than
409 payment, <u>including, but not limited to, the defense of a</u>
410 <u>defective 3-day notice,</u> the tenant shall pay into the registry
411 of the court the accrued rent as alleged in the complaint or as
412 determined by the court and the rent <u>that</u> ~~which~~ accrues during
413 the pendency of the proceeding, when due. The clerk shall notify
414 the tenant of such requirement in the summons. Failure of the
415 tenant to pay the rent into the registry of the court or to file
416 a motion to determine the amount of rent to be paid into the
417 registry within 5 days, excluding Saturdays, Sundays, and legal
418 holidays, after the date of service of process constitutes an
419 absolute waiver of the tenant's defenses other than payment, and

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420 the landlord is entitled to an immediate default judgment for
421 removal of the tenant with a writ of possession to issue without
422 further notice or hearing thereon. If ~~In the event~~ a motion to
423 determine rent is filed, documentation in support of the
424 allegation that the rent as alleged in the complaint is in error
425 is required. Public housing tenants or tenants receiving rent
426 subsidies are ~~shall be~~ required to deposit only that portion of
427 the full rent for which they are ~~the tenant is~~ responsible
428 pursuant to the federal, state, or local program in which they
429 are participating.
430 Section 13. Subsection (1) of section 83.62, Florida
431 Statutes, is amended to read:
432 83.62 Restoration of possession to landlord.—
433 (1) In an action for possession, after entry of judgment in
434 favor of the landlord, the clerk shall issue a writ to the
435 sheriff describing the premises and commanding the sheriff to
436 put the landlord in possession after 24 hours' notice
437 conspicuously posted on the premises. Saturdays, Sundays, and
438 legal holidays do not stay the 24-hour notice period.
439 Section 14. Section 83.63, Florida Statutes, is amended to
440 read:
441 83.63 Casualty damage.—If the premises are damaged or
442 destroyed other than by the wrongful or negligent acts of the
443 tenant so that the enjoyment of the premises is substantially
444 impaired, the tenant may terminate the rental agreement and
445 immediately vacate the premises. The tenant may vacate the part
446 of the premises rendered unusable by the casualty, in which case
447 the tenant's liability for rent shall be reduced by the fair
448 rental value of that part of the premises damaged or destroyed.

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449 If the rental agreement is terminated, the landlord shall comply
450 with s. 83.49(3) ~~[F.S. 1973]~~.
451 Section 15. Subsection (1) of section 83.64, Florida
452 Statutes, is amended to read:
453 83.64 Retaliatory conduct.—
454 (1) It is unlawful for a landlord to discriminatorily
455 increase a tenant's rent or decrease services to a tenant, or to
456 bring or threaten to bring an action for possession or other
457 civil action, primarily because the landlord is retaliating
458 against the tenant. In order for the tenant to raise the defense
459 of retaliatory conduct, the tenant must have acted in good
460 faith. Examples of conduct for which the landlord may not
461 retaliate include, but are not limited to, situations where:
462 (a) The tenant has complained to a governmental agency
463 charged with responsibility for enforcement of a building,
464 housing, or health code of a suspected violation applicable to
465 the premises;
466 (b) The tenant has organized, encouraged, or participated
467 in a tenants' organization;
468 (c) The tenant has complained to the landlord pursuant to
469 s. 83.56(1); ~~or~~
470 (d) The tenant is a servicemember who has terminated a
471 rental agreement pursuant to s. 83.682;
472 (e) The tenant has paid rent to a condominium, cooperative,
473 or homeowners' association after demand from the association in
474 order to pay the landlord's obligation to the association; or
475 (f) The tenant has exercised his or her rights under local,
476 state, or federal fair housing laws.
477 Section 16. This act shall take effect July 1, 2013.

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478
479 ========== T I T L E A M E N D M E N T ==========
480 And the title is amended as follows:
481 Delete everything before the enacting clause
482 and insert:
483 A bill to be entitled
484 An act relating to landlords and tenants; amending s.
485 83.42, F.S.; revising exclusions from applicability of
486 the Florida Residential Landlord and Tenant Act;
487 amending s. 83.48, F.S.; providing that the right to
488 attorney fees may not be waived in a lease agreement;
489 providing that attorney fees may not be awarded in a
490 claim for personal injury damages based on a breach of
491 duty of premises maintenance; amending s. 83.49, F.S.;
492 revising and providing landlord disclosure
493 requirements with respect to security deposits and
494 advance rent; providing requirements for the
495 disbursement of advance rents; providing a limited
496 rebuttable presumption of receipt of security
497 deposits; providing for applicability of changes made
498 by the act to certain disclosure requirements;
499 amending s. 83.50, F.S.; removing certain landlord
500 disclosure requirements relating to fire protection;
501 amending s. 83.51, F.S.; revising a landlord's
502 obligation to maintain a premises with respect to
503 screens; amending s. 83.54, F.S.; providing that
504 enforcement of a right or duty under the Florida
505 Residential Landlord and Tenant Act by civil action
506 does not preclude prosecution of a criminal offense;

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507 amending s. 83.56, F.S.; revising procedures for the
508 termination of a rental agreement by a landlord;
509 revising notice procedures; providing that a landlord
510 does not waive the right to terminate the rental
511 agreement or to bring a civil action for noncompliance
512 by accepting partial rent, subject to certain notice;
513 providing that the period to institute an action
514 before an exemption involving rent subsidies is waived
515 begins upon actual knowledge; amending s. 83.575,
516 F.S.; revising requirements for the termination of a
517 tenancy having a specific duration to provide for
518 reciprocal notice provisions in rental agreements;
519 amending ss. 83.58 and 83.59, F.S.; conforming cross-
520 references; amending s. 83.60, F.S.; providing that a
521 landlord must be given an opportunity to cure a
522 deficiency in any notice or pleadings before dismissal
523 of an eviction action; making technical changes;
524 amending s. 83.62, F.S.; revising procedures for the
525 restoration of possession to a landlord to provide
526 that weekends and holidays do not stay the applicable
527 notice period; amending s. 83.63, F.S.; conforming a
528 cross-reference; amending s. 83.64, F.S.; providing
529 examples of conduct for which the landlord may not
530 retaliate; providing an effective date.

577294

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Joyner) recommended the following:

1 **Senate Amendment to Amendment (761160)**
2
3 Delete line 279
4 and insert:
5
6 pursuant to paragraph (a) or this paragraph, so long as the
7 complaint in the eviction action specifies the date, time,
8 place, and specific facts of the alleged subsequent non-
9 compliance so as to allow the tenant to be able to be aware of
10 the allegations against the tenant and to prepare a defense. The
11 notice shall be

545648

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

1 **Senate Amendment to Amendment (761160) (with title**
2 **amendment)**
3
4 Delete lines 388 - 389
5 and insert:
6
7 The court may allow the landlord the opportunity to correct a
8 minor procedural deficiency in a notice or pleading before
9 dismissal of the action.
10
11 ========== T I T L E A M E N D M E N T ==========
12 And the title is amended as follows:
13 Delete line 521

545648

14 and insert:
15 court may allow the landlord the opportunity to
16 correct a

By Senator Stargel

15-00223-13 2013490__

A bill to be entitled

An act relating to landlords and tenants; amending s. 83.42, F.S.; revising exclusions from application of part II of ch. 83, F.S., relating to residential tenancies; amending s. 83.48, F.S.; providing that the right to attorney fees may not be waived in a lease agreement; providing that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty of premises maintenance; amending s. 83.49, F.S.; revising the requirements of landlord disclosure relating to deposit money and advance rent; authorizing the landlord or the landlord's agent to disburse advance rent under certain circumstances; prohibiting the landlord from seeking a setoff against a security deposit, but authorizing the landlord to file an action, under certain circumstances; providing that a tenant who fails to make a timely objection to a landlord's claim on a security deposit does not waive any right to a separate action; providing a limited rebuttable presumption of receipt of security deposits; providing that certain changes to disclosure requirements made by this act are conditional; amending s. 83.50, F.S.; removing certain landlord disclosure requirements relating to fire protection; amending s. 83.51, F.S.; revising a landlord's obligation to maintain premises with respect to screens and to mobile homes or other structures owned by a tenant; amending s. 83.56, F.S.; authorizing a landlord to commence an eviction action without

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15-00223-13 2013490__

notice, under certain circumstances; providing that a landlord does not waive the right to terminate the rental agreement or to bring a civil action for noncompliance by accepting partial rent, under certain circumstances; providing that the period to institute an action before an exemption involving rent subsidies is waived begins within a specified period after actual knowledge of a noncompliance; amending s. 83.575, F.S.; revising requirements for the termination of a tenancy having a specific duration to provide for reciprocal notice provisions in rental agreements; amending ss. 83.58 and 83.59, F.S.; conforming cross-references; amending s. 83.60, F.S.; requiring that a landlord be given an opportunity to cure a deficiency in any notice or pleading before dismissal of an eviction action, under certain circumstances; requiring that a tenant pay into the registry of the court the accrued rent if the tenant uses certain defenses in an action by a landlord for possession; amending s. 83.62, F.S.; providing that weekends and holidays do not stay the applicable notice period in an action by a landlord for possession, under certain circumstances; amending s. 83.63, F.S.; conforming a cross-reference; amending s. 83.64, F.S.; prohibiting a landlord from retaliating against a tenant for certain conducts; amending s. 723.063, F.S.; requiring that a mobile home park owner be given an opportunity to cure a deficiency in any notice or pleading before dismissal of an eviction

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action, under certain circumstances; providing an effective date.

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

Section 1. Subsection (2) of section 83.42, Florida Statutes, is amended to read:

83.42 Exclusions from application of part.—This part does not apply to:

(2) Occupancy under a contract of sale of a dwelling unit, or the property of which it is a part, in which at least 1 month's rent has been paid and the buyer has paid a deposit of at least 5 percent of the purchase price of the property, or in which the buyer has paid at least 12 months' rent.

Section 2. Section 83.48, Florida Statutes, is amended to read:

83.48 Attorney ~~Attorney's~~ fees.—In a ~~any~~ civil action brought to enforce the ~~provisions of the~~ rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney ~~attorney's~~ fees, from the nonprevailing party. The right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

Section 3. Subsections (2), (3), and (7) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after ~~of~~ receipt of advance rent or a security deposit, furnish a written notice to ~~notify~~ the tenant which includes disclosure of ~~in writing of the manner in which the landlord is holding~~ the advance rent or security deposit ~~and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant~~. ~~Such written notice shall:~~

~~(a) Be given in person or by mail to the tenant.~~

~~(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.~~

~~(c) Include a copy of the provisions of subsection (3).~~

After ~~Subsequent to~~ providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant within 30 days after ~~of~~ the change according to the provisions of paragraphs (a)-(d) ~~herein set forth~~. The landlord is not required to give a new notice or an additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice is ~~shall~~ not ~~be~~ a defense to the payment of rent when due. The written notice must:

117 (a) Be given in person or by mail to the tenant;
118 (b) State the name and address of the depository where the
119 advance rent or security deposit is being held, or state that
120 the landlord has posted a surety bond as provided by law;
121 (c) State whether the tenant is entitled to interest on the
122 deposit; and
123 (d) Include the following disclosure:
124
125 Your lease requires payment of certain deposits. The
126 landlord may transfer, without any notice to you,
127 advance rent from your deposit to the landlord's
128 account as rent is due. When you move out, you must
129 give the landlord your new address so that the
130 landlord can send you notices regarding your deposit.
131 The landlord must mail you notice, within 30 days
132 after you move out, of the landlord's intent to impose
133 a claim against the deposit. If you do not reply to
134 the landlord stating your objection to the claim
135 within 15 days after receipt of the landlord's notice,
136 the landlord will collect the claim and must mail you
137 the remaining deposit, if any. If you timely object,
138 the landlord must hold the deposit, and either you or
139 the landlord will have to file a lawsuit so that the
140 court can resolve the dispute.
141
142 If the landlord fails to timely mail you notice, the
143 landlord must return the deposit but may later file a
144 lawsuit against you for damages. If you fail to timely
145 object to a claim, the landlord may collect from the

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146 deposit, but you may later file a lawsuit claiming a
147 refund.
148
149 You should attempt to informally resolve any dispute
150 before filing a lawsuit. Generally, the party in whose
151 favor a judgment has been rendered will be awarded
152 costs and attorney fees payable by the losing party.
153
154 This disclosure is basic. Please refer to part II of
155 chapter 83, Florida Statutes, to determine your legal
156 rights and obligations.
157
158 (3) The landlord or the landlord's agent may disburse,
159 without notice to the tenant, advance rent from the deposit
160 account to the landlord's benefit when the advance rental period
161 begins. For all other deposits:
162 (a) Upon the vacating of the premises for termination of
163 the lease, if the landlord does not intend to impose a claim on
164 the security deposit, the landlord has ~~shall have~~ 15 days to
165 return the security deposit together with interest if otherwise
166 required, or the landlord has ~~shall have~~ 30 days to give the
167 tenant written notice by certified mail to the tenant's last
168 known mailing address of the landlord's ~~his or her~~ intention to
169 impose a claim on the deposit and the reason for imposing the
170 claim. The notice must ~~shall~~ contain a statement in
171 substantially the following form:
172
173 This is a notice of my intention to impose a claim for
174 damages in the amount of .... upon your security deposit, due to

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

.....It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days after ~~from~~ the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to .....(landlord's address).....

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the ~~imposition of the~~ landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may ~~then~~ deduct the amount of the ~~his or her~~ claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any right of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales

associates, constitutes ~~shall constitute~~ compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and must ~~shall~~ operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, ~~any and~~ all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent ~~as stated herein~~, and upon transmittal of a written receipt therefor, the transferor is ~~shall be~~ free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposits from the previous owner or agent; however, the limit of this presumption is 1 month's rent. This subsection does not ~~However, nothing herein shall~~ excuse the landlord or agent for a violation of other ~~the~~ provisions of this section while in possession of such deposits.

Section 4. The Legislature recognizes that landlords may have stocks of preprinted lease forms that contain disclosures

compliant with current law. Accordingly, changes made by this act to the disclosure required of a landlord in amendments to s. 83.49, Florida Statutes, are conditional for leases entered into between July 1, 2013, and December 31, 2013. During this period, the landlord may elect to give notice required by s. 83.49, Florida Statutes, as the section is before the changes made by this act, or to give notice required under this act. The notice required under this act applies to all leases entered into on or after January 1, 2014.

Section 5. Section 83.50, Florida Statutes, is amended to read:

83.50 Disclosure of landlord's address.—

~~(1)~~ In addition to other disclosures required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands on ~~in~~ the landlord's behalf. The person ~~so~~ authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

~~(2) The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.~~

Section 6. Subsection (1) and paragraph (a) of subsection

(2) of section 83.51, Florida Statutes, are amended to read:

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) If ~~Where~~ there are no applicable building, housing, or health codes, maintain the roofs, windows, ~~screens,~~ doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. ~~However,~~

The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is ~~shall~~ not ~~be~~ liable for damages but shall abate the rent. The tenant must ~~shall be required to~~ temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

291 4. Garbage removal and outside receptacles therefor.
292 5. Functioning facilities for heat during winter, running
293 water, and hot water.
294 Section 7. Subsections (2) through (5) of section 83.56,
295 Florida Statutes, are amended to read:
296 83.56 Termination of rental agreement.—
297 (2) If the tenant materially fails to comply with s. 83.52
298 or material provisions of the rental agreement, other than a
299 failure to pay rent, or reasonable rules or regulations, the
300 landlord may:
301 (a) If such noncompliance is of a nature that the tenant
302 should not be given an opportunity to cure it or if the
303 noncompliance constitutes a subsequent or continuing
304 noncompliance within 12 months of a written warning by the
305 landlord of a similar violation, deliver a written notice to the
306 tenant specifying the noncompliance and the landlord's intent to
307 terminate the rental agreement by reason thereof. Examples of
308 noncompliance which are of a nature that the tenant should not
309 be given an opportunity to cure include, but are not limited to,
310 destruction, damage, or misuse of the landlord's or other
311 tenants' property by intentional act or a subsequent or
312 continued unreasonable disturbance. In such event, the landlord
313 may terminate the rental agreement, and the tenant has ~~shall~~
314 ~~have~~ 7 days after ~~from~~ the date that the notice is delivered to
315 vacate the premises. The notice must ~~shall~~ be ~~adequate if it is~~
316 in substantially the following form:
317
318 You are advised that your lease is terminated effective
319 immediately. You ~~shall~~ have 7 days from the delivery of this

320 letter to vacate the premises. This action is taken because
321 ..... (cite the noncompliance).....
322
323 (b) If such noncompliance is of a nature that the tenant
324 should be given an opportunity to cure it, deliver a written
325 notice to the tenant specifying the noncompliance, including a
326 notice that, if the noncompliance is not corrected within 7 days
327 after ~~from~~ the date the written notice is delivered, the
328 landlord may ~~shall~~ terminate the rental agreement by reason
329 thereof. Examples of such noncompliance include, but are not
330 limited to, activities in contravention of the lease or this
331 part ~~act~~ such as having or permitting unauthorized pets, guests,
332 or vehicles; parking in an unauthorized manner or permitting
333 such parking; or failing to keep the premises clean and
334 sanitary. The notice must ~~shall~~ be ~~adequate if it is~~ in
335 substantially the following form:
336
337 You are hereby notified that .....(cite the
338 noncompliance)..... Demand is hereby made that you remedy the
339 noncompliance within 7 days after ~~of~~ receipt of this notice or
340 your lease is ~~shall be~~ deemed terminated and you shall vacate
341 the premises upon such termination. If this same conduct or
342 conduct of a similar nature is repeated within 12 months, your
343 tenancy is subject to termination without further warning and
344 without your being given an opportunity to cure the
345 noncompliance.
346
347 If the noncompliance recurs within 12 months after the notice is
348 delivered pursuant to this paragraph, an eviction action may

349 commence without the necessity of delivering a subsequent
350 notice.
351 (3) If the tenant fails to pay rent when due and the
352 default continues for 3 days, excluding Saturday, Sunday, and
353 legal holidays, after delivery of written demand by the landlord
354 for payment of the rent or possession of the premises, the
355 landlord may terminate the rental agreement. Legal holidays for
356 the purpose of this section shall be court-observed holidays
357 only. The 3-day notice must ~~shall~~ contain a statement in
358 substantially the following form:
359
360 You are hereby notified that you are indebted to me in the
361 sum of .... dollars for the rent and use of the premises
362 ..... (address of leased premises, including county),
363 Florida, now occupied by you and that I demand payment of the
364 rent or possession of the premises within 3 days (excluding
365 Saturday, Sunday, and legal holidays) from the date of delivery
366 of this notice, to wit: on or before the day of
367 ....,.....(year).(landlord's name, address and phone
368 number)....
369
370 (4) The delivery of the written notices required by
371 subsections (1), (2), and (3) shall be by mailing or delivery of
372 a true copy thereof or, if the tenant is absent from the
373 premises, by leaving a copy thereof at the residence. The notice
374 requirements of subsections (1), (2), and (3) may not be waived
375 in the lease.
376 (5)(a) If the landlord accepts rent with actual knowledge
377 of a noncompliance by the tenant or accepts performance by the

378 tenant of any other provision of the rental agreement that is at
379 variance with its provisions, or if the tenant pays rent with
380 actual knowledge of a noncompliance by the landlord or accepts
381 performance by the landlord of any other provision of the rental
382 agreement that is at variance with its provisions, the landlord
383 or tenant waives his or her right to terminate the rental
384 agreement or to bring a civil action for that noncompliance, but
385 not for any subsequent or continuing noncompliance. However, a
386 landlord does not waive the right to terminate the rental
387 agreement or to bring a civil action for that noncompliance by
388 accepting only partial rent for the rental period.
389 (b) A ~~Any~~ tenant who wishes to defend against an action by
390 the landlord for possession of the unit for noncompliance of the
391 rental agreement or of relevant statutes must ~~shall~~ comply with
392 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
393 mediation or trial unless the provisions of s. 83.60(2) have
394 been met, but must ~~shall~~ enter a default judgment for removal of
395 the tenant with a writ of possession to issue immediately if the
396 tenant fails to comply with s. 83.60(2).
397 (c) This subsection does not apply to that portion of rent
398 subsidies received from a local, state, or national government
399 or an agency of local, state, or national government; however,
400 waiver will occur if an action has not been instituted within 45
401 days after the landlord obtains actual knowledge of the
402 noncompliance.
403 Section 8. Subsection (1) of section 83.575, Florida
404 Statutes, is amended to read:
405 83.575 Termination of tenancy with specific duration.—
406 (1) A rental agreement with a specific duration may contain

407 a provision requiring the tenant to notify the landlord within a
408 specified period before vacating the premises at the end of the
409 rental agreement if the provision also requires the landlord to
410 notify the tenant within the same specified period before
411 terminating the rental agreement at the end of the agreement;
412 however, a rental agreement may not require more than 60 days'
413 notice from the tenant or the landlord ~~before vacating the~~
414 ~~premises~~.
415 Section 9. Section 83.58, Florida Statutes, is amended to
416 read:
417 83.58 Remedies; tenant holding over.—If the tenant holds
418 over and continues in possession of the dwelling unit or any
419 part thereof after the expiration of the rental agreement
420 without the permission of the landlord, the landlord may recover
421 possession of the dwelling unit in the manner provided for in s.
422 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
423 amount of rent due on the dwelling unit, or any part thereof,
424 for the period during which the tenant refuses to surrender
425 possession.
426 Section 10. Subsection (2) of section 83.59, Florida
427 Statutes, is amended to read:
428 83.59 Right of action for possession.—
429 (2) A landlord, the landlord's attorney, or the landlord's
430 agent, applying for the removal of a tenant, shall file in the
431 county court of the county where the premises are situated a
432 complaint describing the dwelling unit and stating the facts
433 that authorize its recovery. A landlord's agent is not permitted
434 to take any action other than the initial filing of the
435 complaint, unless the landlord's agent is an attorney. The

436 landlord is entitled to the summary procedure provided in s.
437 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the
438 calendar.
439 Section 11. Section 83.60, Florida Statutes, is amended to
440 read:
441 83.60 Defenses to action for rent or possession;
442 procedure.—
443 (1)(a) In an action by the landlord for possession of a
444 dwelling unit based upon nonpayment of rent or in an action by
445 the landlord under s. 83.55 seeking to recover unpaid rent, the
446 tenant may defend upon the ground of a material noncompliance
447 with s. 83.51(1) ~~[F.S. 1973]~~, or may raise any other defense,
448 whether legal or equitable, that he or she may have, including
449 the defense of retaliatory conduct in accordance with s. 83.64.
450 The landlord must be given an opportunity to cure a deficiency
451 in a notice or in the pleadings before dismissal of the action.
452 (b) The defense of a material noncompliance with s.
453 83.51(1) ~~[F.S. 1973]~~ may be raised by the tenant if 7 days have
454 elapsed after the delivery of written notice by the tenant to
455 the landlord, specifying the noncompliance and indicating the
456 intention of the tenant not to pay rent by reason thereof. Such
457 notice by the tenant may be given to the landlord, the
458 landlord's representative as designated pursuant to s. 83.50 ~~s.~~
459 ~~83.50(1)~~, a resident manager, or the person or entity who
460 collects the rent on behalf of the landlord. A material
461 noncompliance with s. 83.51(1) ~~[F.S. 1973]~~ by the landlord is a
462 complete defense to an action for possession based upon
463 nonpayment of rent, and, upon hearing, the court or the jury, as
464 the case may be, shall determine the amount, if any, by which

465 the rent is to be reduced to reflect the diminution in value of
466 the dwelling unit during the period of noncompliance with s.
467 83.51(1) ~~[F.S. 1973]~~. After consideration of all other relevant
468 issues, the court shall enter appropriate judgment.
469 (2) In an action by the landlord for possession of a
470 dwelling unit, if the tenant interposes any defense other than
471 payment, including, but not limited to, the defense of a
472 defective 3-day notice, the tenant shall pay into the registry
473 of the court the accrued rent as alleged in the complaint or as
474 determined by the court and the rent that ~~which~~ accrues during
475 the pendency of the proceeding, when due. The clerk shall notify
476 the tenant of such requirement in the summons. Failure of the
477 tenant to pay the rent into the registry of the court or to file
478 a motion to determine the amount of rent to be paid into the
479 registry within 5 days, excluding Saturdays, Sundays, and legal
480 holidays, after the date of service of process constitutes an
481 absolute waiver of the tenant's defenses other than payment, and
482 the landlord is entitled to an immediate default judgment for
483 removal of the tenant with a writ of possession to issue without
484 further notice or hearing thereon. If ~~In the event~~ a motion to
485 determine rent is filed, documentation in support of the
486 allegation that the rent as alleged in the complaint is in error
487 is required. Public housing tenants or tenants receiving rent
488 subsidies shall ~~be required to~~ deposit only that portion of the
489 full rent for which they are ~~the tenant is~~ responsible pursuant
490 to the federal, state, or local program in which they are
491 participating.
492 Section 12. Subsection (1) of section 83.62, Florida
493 Statutes, is amended to read:

494 83.62 Restoration of possession to landlord.—
495 (1) In an action for possession, after entry of judgment in
496 favor of the landlord, the clerk shall issue a writ to the
497 sheriff describing the premises and commanding the sheriff to
498 put the landlord in possession after 24 hours' notice
499 conspicuously posted on the premises. Weekends and legal
500 holidays do not stay the 24-hour notice period.
501 Section 13. Section 83.63, Florida Statutes, is amended to
502 read:
503 83.63 Casualty damage.—If the premises are damaged or
504 destroyed other than by the wrongful or negligent acts of the
505 tenant so that the enjoyment of the premises is substantially
506 impaired, the tenant may terminate the rental agreement and
507 immediately vacate the premises. The tenant may vacate the part
508 of the premises rendered unusable by the casualty, in which case
509 the tenant's liability for rent shall be reduced by the fair
510 rental value of that part of the premises damaged or destroyed.
511 If the rental agreement is terminated, the landlord shall comply
512 with s. 83.49(3) ~~[F.S. 1973]~~.
513 Section 14. Subsection (1) of section 83.64, Florida
514 Statutes, is amended to read:
515 83.64 Retaliatory conduct.—
516 (1) ~~It is unlawful for~~ A landlord may not ~~to~~
517 discriminatorily increase a tenant's rent, ~~or~~ decrease services
518 to a tenant, or ~~to~~ bring or threaten to bring an action for
519 possession or other civil action~~,~~ primarily because the landlord
520 is retaliating against the tenant. In order for the tenant to
521 raise the defense of retaliatory conduct, the tenant must have
522 acted in good faith. Examples of conduct for which the landlord

523 may not retaliate include, but are not limited to, situations in
524 which ~~where~~:
525 (a) The tenant has complained to a governmental agency
526 charged with responsibility for enforcement of a building,
527 housing, or health code of a suspected violation applicable to
528 the premises;
529 (b) The tenant has organized, encouraged, or participated
530 in a tenants' organization;
531 (c) The tenant has complained to the landlord pursuant to
532 s. 83.56(1); ~~or~~
533 (d) The tenant is a servicemember who has terminated a
534 rental agreement pursuant to s. 83.682;
535 (e) The tenant has paid rent to a condominium, cooperative,
536 or homeowners' association after demand from the association in
537 order to pay the landlord's obligation to the association; or
538 (f) The tenant has exercised his or her rights under local,
539 state, or federal fair housing laws.
540 Section 15. Subsection (1) of section 723.063, Florida
541 Statutes, is amended to read:
542 723.063 Defenses to action for rent or possession;
543 procedure.—
544 (1)(a) In any action based upon nonpayment of rent or
545 seeking to recover unpaid rent, or a portion thereof, the mobile
546 home owner may defend upon the ground of a material
547 noncompliance with any portion of this chapter or may raise any
548 other defense, whether legal or equitable, which he or she may
549 have. The park owner must be given an opportunity to cure a
550 deficiency in a notice or in the pleadings before dismissal of
551 the action.

552 (b) The defense of material noncompliance may be raised by
553 the mobile home owner only if 7 days have elapsed after he or
554 she has notified the park owner in writing of his or her
555 intention not to pay rent, or a portion thereof, based upon the
556 park owner's noncompliance with portions of this chapter,
557 specifying in reasonable detail the provisions in default. A
558 material noncompliance with this chapter by the park owner is a
559 complete defense to an action for possession based upon
560 nonpayment of rent, or a portion thereof, and, upon hearing, the
561 court or the jury, as the case may be, shall determine the
562 amount, if any, by which the rent is to be reduced to reflect
563 the diminution in value of the lot during the period of
564 noncompliance with any portion of this chapter. After
565 consideration of all other relevant issues, the court shall
566 enter appropriate judgment.
567 Section 16. This act shall take effect July 1, 2013.

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 528

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Growth Management

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.			CM	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 528 clarifies which local initiative and referendum processes relating to development orders, comprehensive plan amendments, or map amendments were not barred by law. Under the bill, the local initiative and referendum processes that are allowed to continue are limited to those that:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized in a local government charter specifically for matters such as development orders or comprehensive plan or map amendments.

This bill substantially amends section 163.3167, Florida Statutes.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. The Act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. The state land planning agency that administers these provisions is the Department of Economic Opportunity.

Amendments to the Comprehensive Plan

A local government may choose to amend its comprehensive plan for a variety of reasons. A local government may wish to expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. The first step in the process is for the local government to develop a comprehensive plan amendment proposal. Public participation is a critical part of the comprehensive planning process.[2] Citizens often want to be a part of planning their communities and landowners need to be aware of changes that could affect their property. A local government considering a plan amendment must hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment. Notice must be published in a newspaper of general paid circulation in the jurisdiction of interest. The procedure for transmittal of a proposed or adopted comprehensive plan amendment requires the affirmative vote of a majority of the members of the governing body present at the hearing.

Referenda Approval of Amendments to Comprehensive Plans or Development Orders

The 1995 Legislature prohibited all initiative or referendum processes on development orders, local comprehensive plan amendments, or map amendments affecting five or fewer parcels of land.[3]

In November 2010, the voters voted in a statewide election against the citizen initiative known as Amendment 4, otherwise known as "Florida Hometown Democracy." This initiative would have amended the Florida Constitution to require referenda approval by the local electorate before a local government could adopt a new comprehensive land use plan or amend an existing comprehensive land use plan.

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[1] *See* ch. 163, part II, F.S.
[2] Section 163.3181, F.S., setting out the minimum requirements for public participation in the comprehensive planning process.
[3] Chapter 95-322, L.O.F.; s. 163.3167 (12), F.S.

In 2011, the Legislature passed the Community Planning Act.[4] The Act prohibited all voter initiatives or referendums on development orders, comprehensive plan amendments, and map amendments irrespective of the number of parcels of land involved.

The Town of Yankeetown challenged the Community Planning Act through a suit against the Department of Community Affairs and the Administration Commission.[5] The City of St. Petersburg Beach intervened as a defendant on the side of the state. Yankeetown sought a declaratory judgment from the court to allow the city to apply its referenda provision to require voter approval for comprehensive land use changes affecting more than five parcels, as the charter provision pre-dated the Act. The charter provision appears in the section of the charter titled "Comprehensive Plan Amendments," and reads, in part, "Adoption of the amendment may also require voter approval under the Town Charter … ."[6]

To settle the lawsuit, DCA, the Administration Commission, St. Petersburg Beach and Yankeetown agreed to ask the Legislature to amend the statutory prohibition on an initiative or referendum process to allow charter provisions that authorized voter approval of comprehensive plans and comprehensive plan amendments if the charter provision was in effect as of June 1, 2011. The agreement, detailed in a letter, provides, in part:

> The Department of Community Affairs ("DCA") and Yankeetown will seek a legislative amendment to s. 163.3167(8), F.S., (2011) which, if it becomes law, will allow the Town to continue to require voter approval for comprehensive plan amendments pursuant to Section 11 of the Town of Yankeetown Charter, while retaining the ban on referenda for local governments which did not have a charter provision authorizing referenda on June 2, 2011 … .[7]

During the 2012 Florida legislative session, the Legislature passed House Bill 7081 (ch. 2012-99, L.O.F.) which included a section amending the referenda approval of amendments provision. The bill contained a grandfathering clause, which saved from repeal any local government charter provision, in effect as of June 1, 2011, for an initiative or referendum process on development orders, local comprehensive plan amendments, or map amendments. Satisfied with the savings clause, Yankeetown dismissed its case with prejudice upon HB 7081 becoming law.

Court Interpretation of s. 163.3167(8), F.S. (2012)

Subsequent to passage of ch. 2012-99, L.O.F., the City of Boca Raton challenged a local attempt to initiate a referendum on a development order, pursuant to a general charter referenda provision.[8] The language in the City's charter was not specific to development orders or comprehensive plan amendments. The charter provision at issue reads, in part:

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[4] Section 7, Chapter 2011-139, L.O.F.
[5] *Yankeetown v. Dept. of Community Affairs*, Case. No. 37 2011 CA 002036 (Fla. 2nd Jud. Cir. 2011).
[6] Charter of Yankeetown, Article II, *Comprehensive Plan Amendments*.
[7] Letter dated Sept. 28, 2011, from David L. Jordan, Assistant General Counsel, DCA to Ralf Brookes, Town of Yankeetown and Suzanne Van Wyk, City of St. Pete Beach, signed by all parties and also signed by Jonathan Glogau, Administration Commission.
[8] *City of Boca Raton vs. Kathleen Kennedy*, Case No. 2012-CA-009962MB (Fla. 15th Jud. Cir. 2012).

> The qualified voters of the city shall have the power by petition to require reconsideration by the council of any adopted ordinance or resolution, and if the council fails to repeal an ordinance or resolution, to approve or reject it at a city election … .[9]

The City argued that the 2012 Legislature intended to limit application of the law to city charters that previously contained express language for a referendum process on a comprehensive plan amendment affecting more than five parcels.[10] The trial court denied the City's motion for summary judgment, indicating that the current version of s. 163.3167 (8), F.S., applies to all ordinances and resolutions, including those addressing development orders.[11]

III. Effect of Proposed Changes:

This bill clarifies which local initiative and referendum processes relating to development orders, comprehensive plan amendments, or map amendments are not barred by law. Under the bill, the local initiative and referendum processes that are not barred by are limited to those that:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized in a local government charter specifically for matters such as development orders or comprehensive plan or map amendments.

The bill applies retroactively to any initiative or referendum process on local growth management issues initiated after June 1, 2011, and takes effect upon becoming law.

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.

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[9] Section 6.02, City of Boca Raton Charter.
[10] *Id*. at 5.
[11] *Id*. at 6.

B. Private Sector Impact:

This bill may promote private development projects and reduce the time required for implementation.

C. Government Sector Impact:

This bill may lead to fewer local referenda on growth management issues.

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 Community Affairs on March 7, 2013:
The CS made technical and clarifying changes.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Simpson

578-02027-13 2013528c1

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; clarifying the prohibition on an initiative or referendum process in regard to development orders; clarifying the prohibition on an initiative or referendum process in regard to comprehensive plan amendments and map amendments; clarifying that the exception to the prohibition on an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is limited to a local government charter provision in effect on June 1, 2011, that specifically authorized an initiative or referendum process for local comprehensive plan or map amendments that affect more than five parcels of land; providing legislative intent; providing for retroactive application; providing an effective date.

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

Section 1. Subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8)(a) An initiative or referendum process in regard to any development order ~~or in regard to any local comprehensive plan amendment or map amendment~~ is prohibited. ~~However, any local government charter provision that was in effect as of June 1, 2011, for an initiative or referendum process in regard to development orders or in regard to local comprehensive plan amendments or map amendments may be retained and implemented.~~

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited. However, an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment that affects more than five parcels of land is allowed if it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011; a general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan or map amendment, except as specifically and narrowly permitted in subsection (b) with regard to local comprehensive plan or map amendments that affect more than five parcels of land. Therefore, the prohibition on initiative and referendum stated in subsections (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process that has been commenced or completed thereafter is hereby deemed null and void and of no legal force and effect.

Section 2. This act shall take effect upon becoming a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 646

INTRODUCER: Health Policy Committee; and Children, Families, and Elder Affairs Committee

SUBJECT: Assisted Living Facilities

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Shankle	Cibula	JU	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 646 strengthens the enforcement of current regulations for Assisted Living Facilities (ALF or facility) by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for facilities with significant violations. Specifically, the bill:

- Specifies who is responsible for assuring that mental health residents in an ALF receive necessary services.
- Clarifies the duties of the state Long-Term Care Ombudsman Program.
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specify when the Agency for Health Care Administration (AHCA) may deny or revoke a facility's ECC license.
- Reduces by half the number of monitoring visits the AHCA must conduct for ALFs with Limited Nursing Services (LNS) licenses and ECC licenses.
- Requires that facilities having one or more, rather than three or more, state supported mental health residents obtain a limited mental health (LMH) license.
- Allows the AHCA to revoke the license of a facility with a controlling interest that has or had a 25 percent or greater financial or ownership interest in a second facility that closed due to

financial inability to operate or that was the subject of other specified administrative sanctions.
- Clarifies the criteria under which the AHCA must revoke or deny a facility's license.
- Specifies circumstances under which the AHCA must impose an immediate moratorium[1] on a facility.
- Sets fines for all classes of violations[2] to a fixed amount at the midpoint of the current range and multiplies these new fine amounts for facilities licensed for 100 or more beds by 1.5 times.
- Allows the AHCA to impose a fine for a class I violation even if it is corrected before the AHCA inspects a facility.
- Doubles fines for repeated serious violations.
- Requires that fines be imposed for repeat minor violations[3] regardless of correction.
- Doubles the fines for minor violations if a facility is cited for the same minor violation three or more times over the course of three licensure inspections.
- Specifies a fine amount of $500 for ALFs that are not in compliance with background screening requirements.[4]
- Adds certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families' (the DCF) central abuse hotline.
- Requires an additional inspection, within 6 months, of a facility cited for specified serious violations.
- Requires new facility staff, who have not previously completed core training, to attend a 2 hour pre-service orientation before interacting with residents.
- Requires the AHCA to conduct a study of inter-surveyor reliability in order to determine the consistency with which regulations are applied to facilities and requires the AHCA to report its findings and recommendations by November 1, 2013.
- Requires the AHCA to propose a plan for an ALF rating system by November 1, 2013.
- Requires the AHCA to revise its website used by consumers to select ALFs by January 1, 2014.

The bill substantially amends sections 394.4574, 400.0074, 400.0078, 429.07, 429.075, 429.14, 429.178, 429.19, 429.28, 429.34, and 429.52 of the Florida Statutes.

The bill creates two new unnumbered sections of the Florida Statutes.

II. Present Situation:

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[5] A personal service is direct physical assistance with, or supervision of, the activities of daily living

[1] "Moratorium" means a prohibition on the acceptance of new clients. Section 408.803(10), F.S.
[2] The classes of violations can be found in s. 408.813, F.S.
[3] Class III and class IV violations.
[4] Background screening requirements are found in s. 408.809, F.S.
[5] Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

and the self-administration of medication.[6] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[7]

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.[8] The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.[9] If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.[10]

There are currently 3,036 licensed ALFs in Florida with 85,413 beds.[11] An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,[12] limited mental health services,[13] and extended congregate care services.[14] There are 1,073 facilities having limited nursing services specialty licenses (LNS licenses), 279 having extended congregate care (ECC licenses), and 1,084 having limited mental health specialty licenses (LMH licenses).[15]

Limited Nursing Services Specialty License

A LNS specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. The nursing services are limited to acts specified in administrative rules, may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community.

Extended Congregate Care Specialty License

The primary purpose of ECC services is to allow residents to remain in a familiar setting as they become more impaired with physical or mental limitations. An ECC specialty license enables a facility to provide, directly or through contract, services performed by licensed nurses and supportive services[16] to persons who otherwise would be disqualified from continued residence

[6] Section 429.02(16), F.S.
[7] Section 429.02(1), F.S.
[8] For specific minimum standards see Rule 58A-5.0182, F.A.C.
[9] Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.
[10] Section 429.28, F.S.
[11] Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.
[12] Section 429.07(3)(c), F.S.
[13] Section 429.075, F.S.
[14] Section 429.07(3)(b), F.S.
[15] Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.
[16] Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. *See* Rule 58A-5.030(8)(a), F.A.C.

in an ALF.[17] A facility licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, a facility with an ECC license still may not serve residents who require 24-hour nursing supervision.[18]

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain an LMH specialty license.[19] A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS).[20] The Department of Children and Families (DCF) must ensure that a mental health resident is assessed and determined able to live in an ALF with an LMH license.[21]

The administrator in a LMH facility must consult with a mental health resident and the resident's case manager to develop and help execute a community living support plan for the resident detailing the specific needs and services the resident requires.[22] The LMH licensee must also execute a cooperative agreement with the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident.

Department of Elder Affairs Rules

In addition to ch. 429, F.S., ALFs are also subject to regulation under Rule 58A-5, of the Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with the AHCA, the DCF, and the Department of Health (DOH).[23] In June 2012, the DOEA initiated a process of negotiated rulemaking to revise many of its rules regarding ALFs. After multiple meetings, a committee that consisted of agency staff, consumer advocates, and industry representatives voted on numerous changes to Rule 58A-5, F.A.C. On November 28, 2012, the DOEA issued a proposed rule and held three public hearings on the

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[17] An ECC program may provide additional services, such as the following: total help with bathing, dressing, grooming, and toileting; nursing assessments conducted more frequently than monthly; measuring and recording basic vital functions and weight; dietary management; assisting with self-administered medications or administering medications and treatments pursuant to a health care provider's order; supervising residents with dementia and cognitive impairments; health education, counseling, and implementing health-promoting programs; rehabilitative services; and escort services related to health-related appointments. Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.
[18] Section 429.07(3)(b), F.S.
[19] Section 429.075, F.S.
[20] Section 429.02(15), F.S. Optional State Supplementation is a cash assistance program. Its purpose is to supplement a person's income to help pay for costs in an assisted living facility, mental health residential treatment facility, or adult family care home, but it is not a Medicaid program. Department of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, http://elderaffairs.state.fl.us/faal/operator/statesupp.html (Last visited March 22, 2013).
[21] Section 394.4574, F.S., requires a mental health resident to be assessed by a psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, or an individual who is supervised by one of these professionals to determine whether it is appropriate for the person to reside in an ALF.
[22] Rule 58A-5.029(2)(c)3., F.A.C.
[23] Section 429.41(1), F.S.

proposed rule. The public comment period for the proposed rule ended on December 21, 2012, and the DOEA has not yet issued a final rule.[24]

ALF Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.[25] This training and education is intended to assist facilities to appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.[26]

The current ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators and managers must successfully complete the core training requirements within 3 months after becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.[27]

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, must retake the ALF core training and retake the competency test.[28]

Staff with Direct Care Responsibilities

Facility administrators or managers are required to provide or arrange for 6 hours of in-service training for facility staff who provide direct care to residents which covers various topics as mandated in rule.[29] Staff training requirements must generally be met within 30 days after staff begin employment at the facility. However, staff must have at least 1 hour of infection control training before providing direct care to residents. Also, nurses, certified nursing assistants, and home health aides who are on staff with an ALF are exempt from many of the training requirements. In addition to the standard 6 hours of in-service training, staff must complete 1 hour of elopement training and 1 hour of training on do not resuscitate orders. The staff may be required to complete training on special topics such as self administration of medication and Alzheimer's disease, if applicable.

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[24]The DOEA rule, documents, and dates for the negotiated rulemaking can be found at: Department of Elderly Affairs, *Assisted Living Facility (ALF) Negotiated Rulemaking*, http://elderaffairs.state.fl.us/doea/alf_rulemaking.php (Last visited March 22, 2013).
[25] Rule 58A-5.0191, F.A.C. Many of the training requirements in rule may be subject to change due to the recent the DOEA negotiated rulemaking process.
[26] Section 429.52(1), F.S.
[27]Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with part II of chapter 468, F.S., are exempt from this requirement.
[28] Rule 58A-5.0191, F.A.C.
[29] See note 24.

ECC Specific Training

The administrator and ECC supervisor, if different from the administrator, must complete 4 hours of initial training in extended congregate care prior to the facility receiving its ECC license or within 3 months after beginning employment in the facility as an administrator or ECC supervisor. The administrator and ECC supervisor must also complete a minimum of 4 hours of continuing education every 2 years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.[30]

All direct care staff providing care to residents in an ECC program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months after beginning employment in the facility. The training must address ECC concepts and requirements, including statutory and rule requirements and the delivery of personal care and supportive services in an ECC facility.[31]

LMH Specific Training

Administrators, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility must receive a minimum of 6 hours of specialized training in working with individuals having mental health diagnoses and a minimum of 3 hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.[32]

Inspections and Surveys

The AHCA is required to conduct a survey, investigation, or monitoring visit of an ALF:

- Prior to the issuance of a license.
- Prior to biennial renewal of a license.
- When there is a change of ownership.
- To monitor facilities licensed to provide LNS or ECC services, or facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations.[33]
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If the AHCA has reason to believe a facility is violating a provision of part III of ch. 429, F.S., relating to adult day care centers, or an administrative rule.
- To determine if cited deficiencies have been corrected.
- To determine if a facility is operating without a license.[34]

[30] Rule 58A-5.0191(7)(b), F.A.C.
[31] Rule 58A-5.0191(7)(c), F.A.C.
[32] Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.
[33] *See below* information under subheading "Violations and Penalties" for a description of each class of violation.
[34] *See* s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

Abbreviated Surveys

An applicant for licensure renewal is eligible for an abbreviated biennial survey by the AHCA if the applicant does not have any:

- Class I or class II violations or uncorrected class III violations.
- Confirmed long-term care ombudsman council complaints reported to the AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.[35]

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the agency must inspect.[36] The AHCA must expand an abbreviated survey or conduct a full survey if violations that threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.[37]

Monitoring Visits

Facilities with LNS or ECC licenses are subject to monitoring visits by the AHCA in which the agency inspects the facility for compliance with the requirements of the specialty license type. A LNS licensee is subject to monitoring inspections at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.[38] An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately and there are no serious violations or substantiated complaints about the quality of service or care.[39]

Violations and Penalties

Part II of ch. 408, F.S., provides general licensure standards for all facilities regulated by the AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by the AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on residents.

- Class I violations are those conditions that the AHCA determines present an imminent danger to residents or a substantial probability of death or serious physical or emotional harm. Examples include resident death due to medical neglect, risk of resident death due to inability to exit in an emergency, and the suicide of a mental health resident in an ALF

[35] Rule 58A-5.033(2), F.A.C.
[36] Rule 58A-5.033(2)(b).
[37] *Id.*
[38] Section 429.07(3)(c), F.S.
[39] Section 429.07(3)(b), F.S.

licensed for limited mental health. The AHCA must fine a facility between $5,000 and $10,000 for each violation.

- Class II violations are those conditions that the AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. Examples include no qualified staff in the facility, the failure to call 911 in a timely manner for resident in a semi-comatose state, and rodents in a food storage area. The AHCA must fine a facility between $1,000 and $5,000 for each violation.
- Class III violations are those conditions that the AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients. Examples include missing or incomplete resident assessments, erroneous documentation of medication administration, and failure to correct unsatisfactory DOH Food Service inspection findings in a timely manner. The AHCA must fine a facility between $500 and $1,000 for each violation, but no fine may be imposed if the facility corrects the violation.
- Class IV violations are those conditions that do not have the potential of negatively affecting clients. Examples include failure to file an adverse incident report, incorrect phone numbers posted for advocacy resources, and failure to post current menus. The AHCA can only fine a facility (between $100 and $200 for each violation) if the problem is not corrected. [40,41]

In addition to financial penalties, AHCA can take other actions against a facility. The AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. The AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.[42] The AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition that presents a threat to the health, safety, or welfare of a client.[43] The AHCA is required to publicly post notification of a license suspension, revocation, or denial of a license renewal, at the facility.[44] Finally, Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons[45] and disabled adults.[46]

Central Abuse Hotline

The DCF is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or

[40] When fixing the amount of the fine, the AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. Section 429.19(3), F.S.
[41] Section 429.19(2), F.S.
[42] Section 429.14(4), F.S.
[43] Section 408.814, F.S.
[44] Section 429.14(7), F.S.
[45] "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. Section 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. Section 825.104, F.S.
[46] "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.101(4), F.S.

suspected abuse, neglect, or exploitation of a vulnerable adult[47] at any hour of the day or night, any day of the week.[48] Persons listed in s. 415.1034, F.S., who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline.[49]

Florida's Long-Term Care Ombudsman Program

The Federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.[50] In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The ombudsman program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the Secretary of Elderly Affairs.[51] The ombudsman program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.[52] The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure, or the disclosure is required by court order.[53] In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.

The Miami Herald Articles and the Governor's Assisted Living Workgroup

Beginning on April 30, 2011, the Miami Herald published a four-part series, titled "Neglected to Death," which detailed abuses occurring in ALFs and the state regulatory responses to such cases. The paper spent a year examining thousands of state inspections, police reports, court cases, autopsy files, e-mails, and death certificates and conducting dozens of interviews with operators and residents throughout Florida. The series detailed examples of abuses, neglect, and even death that took place in facilities.[54] The series also criticized the state's regulatory and law

[47] "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.
[48] The central abuse hotline is operated by the DCF to accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline; Section 415.103(1), F.S.
[49] Section 415.1034, F.S.
[50] 42 U.S.C. 3058. *See also* s. 400.0061(1), F.S.
[51] Section 400.0063, F.S.
[52] Section 400.0078, F.S.
[53] Section 400.0077(1)(b), F.S.
[54] Rob Barry, Michael Sallah and Carol Marbin Miller, *Neglected to Death, Parts 1-3*, THE MIAMI HERALD, April 30, 2011

enforcement agencies' responses to the problems. The paper concluded that the state's agencies, and in particular the AHCA, failed to enforce existing laws designed to protect Florida's citizens who reside in ALFs.[55]

Soon after the Miami Herald series, Governor Rick Scott vetoed HB 4045,[56] which reduced requirements relating to ALFs. The Governor then directed the AHCA to form a task force for the purpose of examining current assisted living regulations and oversight.[57] The task force referred to as the Assisted Living Workgroup, held meetings and produced two reports, one in August of 2011 and one in October of 2012. In addition to public testimony and presentations, the Assisted Living Workgroup focused on assisted living regulation, consumer information and choice, and long term care services and access.[58] The workgroup made numerous recommendations in its two reports.[59]

III. Effect of Proposed Changes:

Section 1:

The bill amends s. 394.4574, F.S., to specify that Medicaid prepaid behavioral health plans are responsible for enrolled state supported mental health residents and that managing entities under contract with the DCF are responsible for such residents who are not enrolled with a Medicaid prepaid behavioral health plan. Section 394.4574, F.S., requires a mental health resident's community living support plan be completed and provided to the administrator of the facility when the facility admits a mental health resident and be updated when there is a significant change to the resident's behavioral health status. The resident's case manager must keep a 2-year record of any face-to-face interaction with the resident. Finally, this section charges the entity responsible for a mental health resident to ensure that there is adequate and consistent monitoring of the community living support plan. The entity must also report to the appropriate regulatory oversight organization any concerns about a regulated provider acting in a manner with the potential to cause harm to the resident.

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available at http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html and http://www.miamiherald.com/2011/05/03/2199747/key-medical-logs-doctored-missing.html (see left side of article to access weblinks to the three-part series).

[55] *Id.*

[56] HB 4045 (2011) repealed a requirement for the annual dissemination of a list of ALFs that had been sanctioned or fined, a requirement for an ALF to report monthly any liability claims filed against it, a requirement to disseminate the results of the inspection of each ALF, provisions concerning rule promulgation for ALFs by the DOEA, provisions concerning the collection of information regarding the cost of care in ALFs, and the authority for local governments or organizations to contribute to the cost of care of local facility residents.

[57] The task force is now referred to as the "Assisted Living Workgroup." Membership details of the task force are available at Florida Agency for Health Care Administration, *Assisted Living Workgroup Members*, http://ahca.myflorida.com/SCHS/CommiteesCouncils/ALWG/wgmembers.shtml, (Last visited Mar. 22, 2013).

[58] Agency For Health Care Administration, Assisted Living Workgroup, *Final Report And Recommendations*, http://ahca.myflorida.com/SCHS/ALWG2011/alwg2011.shtml (Last visited Mar. 22, 2013).

[59] *Id.*

Section 2:

The bill amends s. 400.0074, F.S., to require the Long-Term Care Ombudsman Program's administrative assessments of ALFs be comprehensive in nature. This section also requires ombudsmen to conduct an exit interview with the facility to discuss issues and concerns from the visit in areas affecting the rights, health, safety, and welfare of residents, and recommend improvements.

Section 3:

The Bill amends s. 400.0078, F.S., to require that ALFs provide information to new residents that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right.

Section 4:

The bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with ECC and LNS specialty licenses. These changes include:

- Requiring that an ALF be licensed for 2 or more years before being issued a ECC license that is not provisional.
- Creating a provisional ECC license for ALFs that have been licensed for less than 2 years. The provisional license lasts for a period of 6 months. The facility must inform the AHCA when it has admitted one or more residents requiring ECC services. After the facility admits one or more ECC residents, the AHCA must inspect the facility for compliance with the requirements of the ECC license. If the licensee demonstrates compliance, the AHCA must grant the facility an ECC license that is not provisional. If the licensee fails to demonstrate compliance with the requirements of an ECC license, the licensee must immediately suspend ECC services and the provisional ECC license expires.
- Reducing monitoring visits for facilities with ECC licenses from quarterly to twice a year, and for facilities with LNS licenses from twice a year to once a year.
- Clarifying under what circumstances the AHCA may waive one of the required monitoring visits for facilities with ECC licenses and also allowing the AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.
- Clarifying under what circumstances the AHCA may deny or revoke a facility's ECC license.

Section 5:

The bill amends s. 429.075, F.S., to change the requirement that facilities with three or more state supported mentally ill residents obtain a LMH license. Under the bill facilities with one or more state supported mentally ill residents must obtain a LMH license. This will expand the protections and services to all state supported mentally ill residents in ALFs.

Section 6:

The bill amends s. 429.14, F.S., to strengthen the administrative penalties available to the AHCA by:

- Allowing the AHCA to revoke, rather than just deny, a license for a facility with a controlling interest that has, or had, a 25 percent or greater financial or ownership interest in a second facility that closed due to financial inability to operate or that was the subject of other specified administrative sanctions.
- Adding additional criteria under which the AHCA must deny or revoke a facility's license.
- Requiring the AHCA to impose an immediate moratorium on a facility that fails to provide the AHCA with access to the facility, prohibits a regulatory inspection, denies access to records, or prohibits the confidential interview of facility staff or residents.
- Exempting a facility from the 45-day notice requirement in s. 429.28(k), F.S., if that facility is required to relocate all or some of its residents due to action by the AHCA.

Section 7:

The bill amends s. 429.178, F.S., to make technical changes and to conform this section to other parts of the bill.

Section 8:

The bill amends s. 429.19, F.S., to reduce the discretion of the AHCA when imposing fines to make such penalties more predictable. Specifically, the bill:

- Fixes the dollar amount for fines at $7,500 for class I violations, $3,000 for class II violations, $750 for class III violations, and $150 for class IV violations for facilities licensed for fewer than 100 beds at the time of the violation. This is the midpoint of the current ranges for fines in current law.
- Multiplies fine amounts by 1.5 times for facilities licensed for 100 or more beds, so that the fine is $11,250 for class I violations, $4,500 for class II violations, $1,125 for class IV violations, and $225 for class IV violations.
- Allows the AHCA to impose a fine on a facility for a class I violation, even if the facility corrects the violation before the AHCA conducts an investigation. Facilities may still challenge such fines through an administrative hearing pursuant to ch. 120, F.S.
- Doubles the fines for facilities with repeat class I and class II violations.
- Imposes a fine on facilities with repeat class III and class IV violations, regardless of correction. Current law prohibiting the AHCA from assessing fines for corrected class III and IV violations continues for the first survey finding such violations.
- Doubles the fines for class III or class IV violations if a facility is cited for two or more such violations, stemming from the same regulation, during the AHCA's last two licensure inspections.
- Fines a facility $500 for failure to comply with background screening requirements. This fine will take the place of fines based on the class of the violation.

Section 9:

The bill amends s. 429.28, F.S., to require the notice of a resident's rights, obligations, and prohibitions specify that complaints to the ombudsman program, as well as the names and identities of the complainant and any residents involved, are confidential. The notice must also contain information that retaliatory action cannot be taken against a resident for presenting

grievances or for exercising any other resident right. This section also creates a fine of $2,500 which is imposed if a facility cannot show good cause in state court for terminating the residency of an individual. Section 429.28, F.S., is updated to reflect the most recent name of Disability Rights Florida.

Section 10:

The bill amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators, staff from the Attorney General's Office, and state or local fire marshals report to the DCF central abuse hotline any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited. The bill provides that a facility with one or more class I violations, two or more class II violations cited within 60 days, or two or more unrelated class II violations cited during one survey is subject to an additional inspection within 6 months. The licensee must pay a fee to the AHCA to cover the cost of the additional inspection.

Section 11:

The bill amends s. 429.52, F.S., to require that, effective October 1, 2013, a facility provide a 2 hour pre-service orientation for new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help the employee provide responsible care and respond to the needs of the residents. The employee and the facility's administrator must sign an affidavit that the employee completed the orientation, and the facility must keep the affidavit in the employee's work file.

Section 12:

The bill creates a new, unnumbered section of the Florida Statutes which requires the AHCA to conduct a study of inter-surveyor reliability to determine if different surveyors consistently apply licensure standards. The AHCA must report its findings and make recommendations to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2013.

Section 13:

The bill creates a new, unnumbered section of the Florida Statutes which finds that consumers need additional information in order to select an ALF. To facilitate this, the bill requires the AHCA to propose a rating system for ALFs. The AHCA must submit the proposal to the Governor, the President of the Senate, and the Speaker of the House by November 1, 2013. This section also requires the AHCA to create a consumer guide website by January 1, 2014. The website must contain information on ALFs and include a monitored comment section.

Section 14:

The bill provides that it 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:

CS/SB 646 requires the Agency for Health Care Administration (AHCA) to conduct a new survey of facilities within 6 months after finding a class I or two or more class II violations. The AHCA must assess a fee on the facility for the cost of the survey as is the case in other surveys. Facilities with serious violations which require this additional survey will pay this additional fee. It should be noted that according to the AHCA, current fees and fines from ALFs do not cover the cost of regulating such facilities statewide.

B. Private Sector Impact:

Facilities will see more consistent regulation and more predictable penalties under the bill. The bill revises fines used to sanction facilities with violations, but such fines can still be challenged and settled through ch. 120, F.S. Facilities having fewer than 100 beds that commit class I violations will now be assessed a fine of $7,500 (current law allows the fine to be between $5,000 and $10,000). Some facilities will see a reduction in fines, while other will see an increase. The range for fines for class II, III, and IV violations are replaced with an amount equal to the midpoint of the range. Fines for facilities having 100 beds or more will see higher fines. This will help resolve an inequity in penalties whereby small facilities must pay the same fine amount as larger facilities.

Facilities that remove residents without cause, as determined by a state court, will be assessed a fine of $2,500. Facilities will also be assessed a fine for class I violations even if they are corrected when the AHCA visits the facility. Facilities violating the background screening requirements will be fined $500. Currently, facilities are cited for a class II or III violation for not screening the background of facility staff, so the fine amount can vary. All fines are subject to challenge through an administrative hearing under ch. 120, F.S. This due process is retained under the bill.

Facilities will be required to provide new employees that have not already gone through the ALF core training program with a 2 hour pre-service training session before they work with residents. The cost of this training is not expected to be significant and in many cases is already provided.

Facilities having specialty licenses which meet licensure standards will see fewer monitoring visits from the AHCA. This will positively impact the facilities as they will have less interruption of staff time due to such visits.

Facilities having any state supported mentally ill residents must meet limited mental health licensure requirements. Facilities with one or two state supported mentally ill residents which do not meet these requirements may see increased costs to comply. Some facilities with one or two such residents however, may already meet the requirements for a limited mental health license.

Facilities having significant uncorrected violations will be more likely to see their licenses suspended or revoked under the bill. Closing facilities that have significant problems will improve the public's assessment of ALFs and may improve the financial success of those facilities that meet licensure standards.

C. Government Sector Impact:

CS/SB 646 will have an insignificant fiscal impact on the AHCA. Specifically, the bill rearranges the regulatory efforts of the agency. The additional 6 month survey for problem facilities will increase the work of the AHCA surveyors, while the reduction in monitoring visits for facilities with specialty licenses will reduce the workload. The bill requires the agency to redesign its existing website for health care facilities. The redesigned website must provide regulatory information in an understandable way and allow for the posting of comments from the public on assisted living facilities. The agency will have to monitor comments for profanity prior to posting to the redesigned website. The costs of these requirements will be insignificant.

The AHCA and the DOEA may need to revise their rules regulating assisted living facilities. The bill requires the AHCA to study the extent to which surveyors are consistent. The bill requires the AHCA to propose a rating system for assisted living facilities that would help consumers in selecting a facility. The cost of these requirements would be insignificant.

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 the Health Policy Committee on March 7, 2013:
This CS makes substantial changes to SB 646 to:

- Require a community living support plan for a mental health resident to be completed and submitted to the administrator of an ALF upon admission of that resident.
- Clarify that the Ombudsman must conduct an exit consultation with a facility's administrator only in the areas affecting the rights, health, safety, and welfare of the residents.
- Clarify that residents must receive information that retaliatory action cannot be taken against a resident for presenting grievances to the Ombudsman program or for exercising any other resident right.
- Return provisions regarding the revocation of a facility's license for intentional acts of facility staff to current law.
- Remove provisions that require the AHCA to deny or revoke the license of a facility that has been conditionally licensed for 180 or more consecutive days.
- Exempt facilities from the 45-day notice requirement in s. 429.28(k), F.S., if the facility is required to relocate some or all of its residents due to action by the AHCA.
- Specify that certain provisions that deal with repeat class III and IV violations are exempt from ss. 408.813(2)(c) and (d) and 408.832, F.S. in order to avoid conflicts with those sections.
- Clarify that the $500 fine for not complying with background screening requirements is instead of the fines listed for class I through class IV violations.
- Mandate the AHCA post to its ALF website a list of an ALF's violations with, for each violation, an understandable summary, any sanction imposed by final order, and a summary of any corrective action taken.

B. Amendments:

None.

By the Committees on Health Policy; and Children, Families, and Elder Affairs

A bill to be entitled

An act relating to assisted living facilities; amending s. 394.4574, F.S.; providing that Medicaid prepaid behavioral health plans are responsible for enrolled mental health residents; providing that managing entities under contract with the Department of Children and Families are responsible for mental health residents who are not enrolled with a Medicaid prepaid behavioral health plan; deleting a provision to conform to changes made by the act; requiring that the community living support plan be completed and provided to the administrator of a facility upon the mental health resident's admission; requiring the community living support plan to be updated when there is a significant change to the mental health resident's behavioral health; requiring the case manager assigned to a mental health resident of an assisted living facility that holds a limited mental health license to keep a record of the date and time of face-to-face interactions with the resident and to make the record available to the responsible entity for inspection; requiring that the record be maintained for a specified time; requiring the responsible entity to ensure that there is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements and that concerns are reported to the appropriate regulatory oversight organization under certain circumstances; amending s. 400.0074, F.S.; providing

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that an administrative assessment conducted by a local council be comprehensive in nature and focus on factors affecting the rights, health, safety, and welfare of the residents of a nursing home; requiring a local council to conduct an exit consultation with the facility administrator or administrator designee to discuss issues and concerns in areas affecting rights, health, safety, and welfare of residents and make recommendations for improvement; amending s. 400.0078, F.S.; requiring that residents of long-term care facilities be informed that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right; amending s. 429.07, F.S.; providing that an extended congregate care license is issued to certain facilities that have been licensed as assisted living facilities under certain circumstances; providing the purpose of an extended congregate care license; providing that the initial extended congregate care license of an assisted living facility is provisional under certain circumstances; requiring the licensee to notify the Agency for Health Care Administration whenever it accepts a resident who qualifies for extended congregate care services; requiring the agency to inspect the facility for compliance with the requirements of an extended congregate care license; authorizing the agency to waive one of the required yearly monitoring visits under certain circumstances; authorizing the agency to deny or revoke a facility's

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59 extended congregate care license for certain reasons
60 or on certain grounds; requiring a registered nurse
61 representing the agency to visit the facility at least
62 annually, rather than twice a year, to monitor
63 residents who are receiving limited nursing services;
64 providing that the agency's monitoring visits may be
65 in conjunction with other agency inspections;
66 authorizing the agency to waive one of the required
67 yearly monitoring visits for certain facilities;
68 amending s. 429.075, F.S.; requiring an assisted
69 living facility that serves one or more mental health
70 residents to obtain a limited mental health license;
71 amending s. 429.14, F.S.; revising the actions in
72 which the agency may deny, revoke, or suspend the
73 license of an assisted living facility and impose an
74 administrative fine; revising the criteria upon which
75 the agency must deny or revoke the license of an
76 assisted living facility; requiring the agency to
77 impose an immediate moratorium on the license of an
78 assisted living facility under certain circumstances;
79 deleting a provision requiring the agency to provide a
80 list of facilities with denied, suspended, or revoked
81 licenses to the Department of Business and
82 Professional Regulation; exempting a facility from the
83 45-day notice requirement if it is required to
84 relocate some or all of its residents; amending s.
85 429.178, F.S.; conforming cross-references; amending
86 s. 429.19, F.S.; revising the amounts and uses of
87 administrative fines; requiring the agency to levy a

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88 fine for violations that are corrected before an
89 inspection if noncompliance occurred within a
90 specified period of time; deleting factors that the
91 agency is required to consider to determine penalties
92 and fines; amending s. 429.28, F.S.; requiring that
93 residents of facilities be informed that the identity
94 of the resident and complainant in a complaint made to
95 the State Long-Term Care Ombudsman Program is
96 confidential and that retaliatory action cannot be
97 taken against a resident for presenting grievances or
98 for exercising any other resident right; providing
99 that a facility that terminates an individual's
100 residency is fined if good cause is not shown in
101 court; amending s. 429.34, F.S.; requiring certain
102 persons to report elder abuse in assisted living
103 facilities; requiring the agency to regularly inspect
104 every licensed assisted living facility; requiring the
105 agency to conduct more frequent inspections under
106 certain circumstances; requiring the licensee to pay a
107 fee for the cost of additional inspections; requiring
108 the agency to adjust the fee; amending s. 429.52,
109 F.S.; requiring each newly hired employee of an
110 assisted living facility to attend a preservice
111 orientation provided by the assisted living facility;
112 requiring the employee and administrator to sign an
113 affidavit upon completion of the preservice
114 orientation; requiring the assisted living facility to
115 maintain the signed affidavit in each employee's work
116 file; conforming a cross-reference; requiring the

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117 Agency for Health Care Administration to study the
118 reliability of facility surveys and submit to the
119 Governor and the Legislature its findings and
120 recommendations; requiring the agency to propose a
121 rating system of assisted living facilities for
122 consumers and create content for the agency's website
123 that makes available to consumers information
124 regarding assisted living facilities; providing
125 criteria for the content; providing an effective date.
126
127 Be It Enacted by the Legislature of the State of Florida:
128
129 Section 1. Section 394.4574, Florida Statutes, is amended
130 to read:
131 394.4574 ~~Department~~ Responsibilities for coordination of
132 services for a mental health resident who resides in an assisted
133 living facility that holds a limited mental health license.—
134 (1) As used in this section, the term "mental health
135 resident" ~~"mental health resident," for purposes of this~~
136 ~~section,~~ means an individual who receives social security
137 disability income due to a mental disorder as determined by the
138 Social Security Administration or receives supplemental security
139 income due to a mental disorder as determined by the Social
140 Security Administration and receives optional state
141 supplementation.
142 (2) Medicaid prepaid behavioral health plans are
143 responsible for enrolled mental health residents, and managing
144 entities under contract with the department are responsible for
145 mental health residents who are not enrolled with a Medicaid

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146 prepaid behavioral health plan. Each responsible entity shall
147 ~~The department must~~ ensure that:
148 (a) A mental health resident has been assessed by a
149 psychiatrist, clinical psychologist, clinical social worker, or
150 psychiatric nurse, or an individual who is supervised by one of
151 these professionals, and determined to be appropriate to reside
152 in an assisted living facility. The documentation must be
153 provided to the administrator of the facility within 30 days
154 after the mental health resident has been admitted to the
155 facility. An evaluation completed upon discharge from a state
156 mental hospital meets the requirements of this subsection
157 related to appropriateness for placement as a mental health
158 resident if it was completed within 90 days before ~~prior to~~
159 admission to the facility.
160 (b) A cooperative agreement, as required in s. 429.075, is
161 developed between the mental health care services provider that
162 serves a mental health resident and the administrator of the
163 assisted living facility with a limited mental health license in
164 which the mental health resident is living. ~~Any entity that~~
165 ~~provides Medicaid prepaid health plan services shall ensure the~~
166 ~~appropriate coordination of health care services with an~~
167 ~~assisted living facility in cases where a Medicaid recipient is~~
168 ~~both a member of the entity's prepaid health plan and a resident~~
169 ~~of the assisted living facility. If the entity is at risk for~~
170 ~~Medicaid targeted case management and behavioral health~~
171 ~~services, the entity shall inform the assisted living facility~~
172 ~~of the procedures to follow should an emergent condition arise.~~
173 (c) The community living support plan, as defined in s.
174 429.02, has been prepared by a mental health resident and a

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175 mental health case manager of that resident in consultation with
176 the administrator of the facility or the administrator's
177 designee. The plan must be completed and provided to the
178 administrator of the assisted living facility with a limited
179 mental health license in which the mental health resident lives
180 upon the resident's admission. The support plan and the
181 agreement may be in one document.
182 (d) The assisted living facility with a limited mental
183 health license is provided with documentation that the
184 individual meets the definition of a mental health resident.
185 (e) The mental health services provider assigns a case
186 manager to each mental health resident for whom the entity is
187 responsible ~~who lives in an assisted living facility with a~~
188 ~~limited mental health license~~. The case manager is responsible
189 for coordinating the development of and implementation of the
190 community living support plan defined in s. 429.02. The plan
191 must be updated at least annually, or when there is a
192 significant change to the resident's behavioral health status,
193 such as an inpatient admission or a change in behavioral status,
194 medications, level of service, or residence. Each case manager
195 shall keep a record of the date and time of any face-to-face
196 interaction with the resident and make the record available to
197 the responsible entity for inspection. The record must be
198 retained for at least 2 years after the date of the most recent
199 interaction.
200 (f) Adequate and consistent monitoring and enforcement of
201 community living support plans and cooperative agreements are
202 conducted by the resident's case manager.
203 (g) Concerns are reported to the appropriate regulatory

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204 oversight organization if a regulated provider fails to deliver
205 appropriate services or otherwise acts in a manner that has the
206 potential to result in harm to the resident.
207 (3) The Secretary of Children and Family Services, in
208 consultation with the Agency for Health Care Administration,
209 shall ~~annually~~ require each district administrator to develop,
210 with community input, a detailed annual plan that demonstrates
211 ~~detailed plans that demonstrate~~ how the district will ensure the
212 provision of state-funded mental health and substance abuse
213 treatment services to residents of assisted living facilities
214 that hold a limited mental health license. These plans must be
215 consistent with the substance abuse and mental health district
216 plan developed pursuant to s. 394.75 and must address case
217 management services; access to consumer-operated drop-in
218 centers; access to services during evenings, weekends, and
219 holidays; supervision of the clinical needs of the residents;
220 and access to emergency psychiatric care.
221 Section 2. Subsection (1) of section 400.0074, Florida
222 Statutes, is amended, and paragraph (h) is added to subsection
223 (2) of that section, to read:
224 400.0074 Local ombudsman council onsite administrative
225 assessments.—
226 (1) In addition to any specific investigation conducted
227 pursuant to a complaint, the local council shall conduct, at
228 least annually, an onsite administrative assessment of each
229 nursing home, assisted living facility, and adult family-care
230 home within its jurisdiction. This administrative assessment
231 must be comprehensive in nature and must ~~shall~~ focus on factors
232 affecting the rights, health, safety, and welfare of the

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233 residents. Each local council is encouraged to conduct a similar
234 onsite administrative assessment of each additional long-term
235 care facility within its jurisdiction.
236 (2) An onsite administrative assessment conducted by a
237 local council shall be subject to the following conditions:
238 (h) The local council shall conduct an exit consultation
239 with the facility administrator or administrator designee to
240 discuss issues and concerns in areas affecting the rights,
241 health, safety, and welfare of the residents and make
242 recommendations for improvement, if any.
243 Section 3. Subsection (2) of section 400.0078, Florida
244 Statutes, is amended to read:
245 400.0078 Citizen access to State Long-Term Care Ombudsman
246 Program services.—
247 (2) ~~Every resident or representative of a resident shall~~
248 ~~receive,~~ Upon admission to a long-term care facility, each
249 resident or representative of a resident must receive
250 information regarding the purpose of the State Long-Term Care
251 Ombudsman Program, the statewide toll-free telephone number for
252 receiving complaints, information that retaliatory action cannot
253 be taken against a resident for presenting grievances or for
254 exercising any other resident right, and other relevant
255 information regarding how to contact the program. Residents or
256 their representatives must be furnished additional copies of
257 this information upon request.
258 Section 4. Paragraphs (b) and (c) of subsection (3) of
259 section 429.07, Florida Statutes, are amended to read:
260 429.07 License required; fee.—
261 (3) In addition to the requirements of s. 408.806, each

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262 license granted by the agency must state the type of care for
263 which the license is granted. Licenses shall be issued for one
264 or more of the following categories of care: standard, extended
265 congregate care, limited nursing services, or limited mental
266 health.
267 (b) An extended congregate care license shall be issued to
268 facilities that have been licensed as assisted living facilities
269 for 2 or more years and that provide ~~providing~~, directly or
270 through contract, services beyond those authorized in paragraph
271 (a), including services performed by persons licensed under part
272 I of chapter 464 and supportive services, as defined by rule, to
273 persons who would otherwise be disqualified from continued
274 residence in a facility licensed under this part. An extended
275 congregate care license may also be issued to those facilities
276 that have provisional extended congregate care licenses and meet
277 the requirements for licensure under subparagraph 2. The primary
278 purpose of extended congregate care services is to allow
279 residents, as they become more impaired, the option of remaining
280 in a familiar setting from which they would otherwise be
281 disqualified for continued residency. A facility licensed to
282 provide extended congregate care services may also admit an
283 individual who exceeds the admission criteria for a facility
284 with a standard license, if the individual is determined
285 appropriate for admission to the extended congregate care
286 facility.
287 1. In order for extended congregate care services to be
288 provided, the agency must first determine that all requirements
289 established in law and rule are met and must specifically
290 designate, on the facility's license, that such services may be

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291 provided and whether the designation applies to all or part of
292 the facility. Such designation may be made at the time of
293 initial licensure or relicensure, or upon request in writing by
294 a licensee under this part and part II of chapter 408. The
295 notification of approval or the denial of the request shall be
296 made in accordance with part II of chapter 408. Existing
297 facilities qualifying to provide extended congregate care
298 services must have maintained a standard license and may not
299 have been subject to administrative sanctions during the
300 previous 2 years, or since initial licensure if the facility has
301 been licensed for less than 2 years, for any of the following
302 reasons:
303 a. A class I or class II violation;
304 b. Three or more repeat or recurring class III violations
305 of identical or similar resident care standards from which a
306 pattern of noncompliance is found by the agency;
307 c. Three or more class III violations that were not
308 corrected in accordance with the corrective action plan approved
309 by the agency;
310 d. Violation of resident care standards which results in
311 requiring the facility to employ the services of a consultant
312 pharmacist or consultant dietitian;
313 e. Denial, suspension, or revocation of a license for
314 another facility licensed under this part in which the applicant
315 for an extended congregate care license has at least 25 percent
316 ownership interest; or
317 f. Imposition of a moratorium pursuant to this part or part
318 II of chapter 408 or initiation of injunctive proceedings.
319 2. If an assisted living facility has been licensed for

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320 less than 2 years but meets all other licensure requirements for
321 an extended congregate care license, it shall be issued a
322 provisional extended congregate care license for a period of 6
323 months. Within the first 3 months after the provisional license
324 is issued, the licensee shall notify the agency when it has
325 admitted an extended congregate care resident, after which an
326 unannounced inspection shall be made to determine compliance
327 with requirements of an extended congregate care license. If the
328 licensee demonstrates compliance with all of the requirements of
329 an extended congregate care license during the inspection, the
330 licensee shall be issued an extended congregate care license. In
331 addition to sanctions authorized under this part, if violations
332 are found during the inspection and the licensee fails to
333 demonstrate compliance with all assisted living requirements
334 during a followup inspection, the licensee shall immediately
335 suspend extended congregate care services, and the provisional
336 extended congregate care license expires.
337 3.~~2.~~ A facility that is licensed to provide extended
338 congregate care services shall maintain a written progress
339 report on each person who receives services which describes the
340 type, amount, duration, scope, and outcome of services that are
341 rendered and the general status of the resident's health. A
342 registered nurse, or appropriate designee, representing the
343 agency shall visit the facility at least twice a year ~~quarterly~~
344 to monitor residents who are receiving extended congregate care
345 services and to determine if the facility is in compliance with
346 this part, part II of chapter 408, and relevant rules. One of
347 the visits may be in conjunction with the regular survey. The
348 monitoring visits may be provided through contractual

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349 arrangements with appropriate community agencies. A registered
350 nurse shall serve as part of the team that inspects the
351 facility. The agency may waive one of the required yearly
352 monitoring visits for a facility ~~that has been licensed for at~~
353 ~~least 24 months to provide extended congregate care services,~~
354 ~~if, during the inspection, the registered nurse determines that~~
355 ~~extended congregate care services are being provided~~
356 ~~appropriately, and~~ if the facility has held an extended
357 congregate care license during the last 24 months, has had no
358 class I or class II violations, has had ~~and~~ no uncorrected class
359 III violations, and has had no confirmed ombudsman council
360 complaints that resulted in a citation for licensure. ~~The agency~~
361 ~~must first consult with the long-term care ombudsman council for~~
362 ~~the area in which the facility is located to determine if any~~
363 ~~complaints have been made and substantiated about the quality of~~
364 ~~services or care. The agency may not waive one of the required~~
365 ~~yearly monitoring visits if complaints have been made and~~
366 ~~substantiated.~~
367 4.~~3.~~ A facility that is licensed to provide extended
368 congregate care services must:
369 a. Demonstrate the capability to meet unanticipated
370 resident service needs.
371 b. Offer a physical environment that promotes a homelike
372 setting, provides for resident privacy, promotes resident
373 independence, and allows sufficient congregate space as defined
374 by rule.
375 c. Have sufficient staff available, taking into account the
376 physical plant and firesafety features of the building, to
377 assist with the evacuation of residents in an emergency.

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378 d. Adopt and follow policies and procedures that maximize
379 resident independence, dignity, choice, and decisionmaking to
380 permit residents to age in place, so that moves due to changes
381 in functional status are minimized or avoided.
382 e. Allow residents or, if applicable, a resident's
383 representative, designee, surrogate, guardian, or attorney in
384 fact to make a variety of personal choices, participate in
385 developing service plans, and share responsibility in
386 decisionmaking.
387 f. Implement the concept of managed risk.
388 g. Provide, directly or through contract, the services of a
389 person licensed under part I of chapter 464.
390 h. In addition to the training mandated in s. 429.52,
391 provide specialized training as defined by rule for facility
392 staff.
393 5.~~4.~~ A facility that is licensed to provide extended
394 congregate care services is exempt from the criteria for
395 continued residency set forth in rules adopted under s. 429.41.
396 A licensed facility must adopt its own requirements within
397 guidelines for continued residency set forth by rule. However,
398 the facility may not serve residents who require 24-hour nursing
399 supervision. A licensed facility that provides extended
400 congregate care services must also provide each resident with a
401 written copy of facility policies governing admission and
402 retention.
403 ~~5. The primary purpose of extended congregate care services~~
404 ~~is to allow residents, as they become more impaired, the option~~
405 ~~of remaining in a familiar setting from which they would~~
406 ~~otherwise be disqualified for continued residency. A facility~~

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~~licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.~~

6. Before the admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 429.26(4) and the facility must develop a preliminary service plan for the individual.

7. If ~~When~~ a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility must ~~shall~~ make arrangements for relocating the person in accordance with s. 429.28(1)(k).

~~8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.~~

The agency may deny or revoke a facility's extended congregate care license for not meeting the standards of an extended congregate care license or for any of the grounds listed in this subsection.

(c) A limited nursing services license shall be issued to a facility that provides services beyond those authorized in paragraph (a) and as specified in this paragraph.

1. In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license,

that such services may be provided. Such designation may be made at the time of initial licensure or licensure renewal ~~relicensure~~, or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with part II of chapter 408. An existing facility that qualifies ~~facilities qualifying~~ to provide limited nursing services must ~~shall~~ have maintained a standard license and may not have been subject to administrative sanctions that affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

2. A facility ~~Facilities~~ that is ~~are~~ licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services. The~~,~~ ~~which~~ report must describe ~~describes~~ the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit the facility ~~such facilities~~ at least annually ~~twice a year~~ to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part, part II of chapter 408, and related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that inspects such facility. Visits may be in conjunction with other agency inspections. The agency may waive one of the required yearly monitoring visits for a facility that has:

465 a. A limited nursing services license for at least 24
466 months;
467 b. No class I or class II violations and no uncorrected
468 class III violations; and
469 c. No confirmed ombudsman council complaints that resulted
470 in a citation for licensure.
471 3. A person who receives limited nursing services under
472 this part must meet the admission criteria established by the
473 agency for assisted living facilities. When a resident no longer
474 meets the admission criteria for a facility licensed under this
475 part, arrangements for relocating the person shall be made in
476 accordance with s. 429.28(1)(k), unless the facility is licensed
477 to provide extended congregate care services.
478 Section 5. Section 429.075, Florida Statutes, is amended to
479 read:
480 429.075 Limited mental health license.—An assisted living
481 facility that serves one ~~three~~ or more mental health residents
482 must obtain a limited mental health license.
483 (1) To obtain a limited mental health license, a facility
484 must hold a standard license as an assisted living facility,
485 must not have any current uncorrected ~~deficiencies or~~
486 violations, and must ensure that, within 6 months after
487 receiving a limited mental health license, the facility
488 administrator and the staff of the facility who are in direct
489 contact with mental health residents must complete training of
490 no less than 6 hours related to their duties. Such designation
491 may be made at the time of initial licensure or relicensure or
492 upon request in writing by a licensee under this part and part
493 II of chapter 408. Notification of approval or denial of such

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494 request shall be made in accordance with this part, part II of
495 chapter 408, and applicable rules. This training must ~~will~~ be
496 provided by or approved by the Department of Children and Family
497 Services.
498 (2) A facility that is ~~Facilities~~ licensed to provide
499 services to mental health residents must ~~shall~~ provide
500 appropriate supervision and staffing to provide for the health,
501 safety, and welfare of such residents.
502 (3) A facility that has a limited mental health license
503 must:
504 (a) Have a copy of each mental health resident's community
505 living support plan and the cooperative agreement with the
506 mental health care services provider. The support plan and the
507 agreement may be combined.
508 (b) Have documentation that is provided by the Department
509 of Children and Family Services that each mental health resident
510 has been assessed and determined to be able to live in the
511 community in an assisted living facility that has ~~with~~ a limited
512 mental health license.
513 (c) Make the community living support plan available for
514 inspection by the resident, the resident's legal guardian, the
515 resident's health care surrogate, and other individuals who have
516 a lawful basis for reviewing this document.
517 (d) Assist the mental health resident in carrying out the
518 activities identified in the individual's community living
519 support plan.
520 (4) A facility that has ~~with~~ a limited mental health
521 license may enter into a cooperative agreement with a private
522 mental health provider. For purposes of the limited mental

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523 health license, the private mental health provider may act as
524 the case manager.
525 Section 6. Section 429.14, Florida Statutes, is amended to
526 read:
527 429.14 Administrative penalties.—
528 (1) In addition to the requirements of part II of chapter
529 408, the agency may deny, revoke, and suspend any license issued
530 under this part and impose an administrative fine in the manner
531 provided in chapter 120 against a licensee for a violation of
532 any provision of this part, part II of chapter 408, or
533 applicable rules, or for any of the following actions by a
534 licensee, for the actions of any person subject to level 2
535 background screening under s. 408.809, or for the actions of any
536 facility staff ~~employee~~:
537 (a) An intentional or negligent act seriously affecting the
538 health, safety, or welfare of a resident of the facility.
539 (b) A ~~The~~ determination by the agency that the owner lacks
540 the financial ability to provide continuing adequate care to
541 residents.
542 (c) Misappropriation or conversion of the property of a
543 resident of the facility.
544 (d) Failure to follow the criteria and procedures provided
545 under part I of chapter 394 relating to the transportation,
546 voluntary admission, and involuntary examination of a facility
547 resident.
548 (e) A citation of any of the following violations
549 ~~deficiencies~~ as specified in s. 429.19:
550 1. One or more cited class I violations ~~deficiencies~~.
551 2. Three or more cited class II violations ~~deficiencies~~.

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552 3. Five or more cited class III violations ~~deficiencies~~
553 that have been cited on a single survey and have not been
554 corrected within the times specified.
555 (f) Failure to comply with the background screening
556 standards of this part, s. 408.809(1), or chapter 435.
557 (g) Violation of a moratorium.
558 (h) Failure of the license applicant, the licensee during
559 relicensure, or a licensee that holds a provisional license to
560 meet the minimum license requirements of this part, or related
561 rules, at the time of license application or renewal.
562 (i) An intentional or negligent life-threatening act in
563 violation of the uniform firesafety standards for assisted
564 living facilities or other firesafety standards which ~~that~~
565 threatens the health, safety, or welfare of a resident of a
566 facility, as communicated to the agency by the local authority
567 having jurisdiction or the State Fire Marshal.
568 (j) Knowingly operating any unlicensed facility or
569 providing without a license any service that must be licensed
570 under this chapter or chapter 400.
571 (k) Any act constituting a ground upon which application
572 for a license may be denied.
573 (2) Upon notification by the local authority having
574 jurisdiction or by the State Fire Marshal, the agency may deny
575 or revoke the license of an assisted living facility that fails
576 to correct cited fire code violations that affect or threaten
577 the health, safety, or welfare of a resident of a facility.
578 (3) The agency may deny or revoke a license of an ~~to any~~
579 applicant or controlling interest as defined in part II of
580 chapter 408 which has or had a 25-percent or greater financial

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581 or ownership interest in any other facility that is licensed
582 under this part, or in any entity licensed by this state or
583 another state to provide health or residential care, if that
584 ~~which~~ facility or entity during the 5 years prior to the
585 application for a license closed due to financial inability to
586 operate; had a receiver appointed or a license denied,
587 suspended, or revoked; was subject to a moratorium; or had an
588 injunctive proceeding initiated against it.
589 (4) The agency shall deny or revoke the license of an
590 assisted living facility if:
591 (a) There are two moratoria, issued pursuant to this part
592 or part II of chapter 408, within a 2-year period which are
593 imposed by final order;
594 (b) The facility is cited for two or more class I
595 violations arising from unrelated circumstances during the same
596 survey or investigation; or
597 (c) The facility is cited for two or more class I
598 violations arising from separate surveys or investigations
599 within a 2-year period ~~that has two or more class I violations~~
600 ~~that are similar or identical to violations identified by the~~
601 ~~agency during a survey, inspection, monitoring visit, or~~
602 ~~complaint investigation occurring within the previous 2 years~~.
603 (5) An action taken by the agency to suspend, deny, or
604 revoke a facility's license under this part or part II of
605 chapter 408, in which the agency claims that the facility owner
606 or an employee of the facility has threatened the health,
607 safety, or welfare of a resident of the facility must be heard
608 by the Division of Administrative Hearings of the Department of
609 Management Services within 120 days after receipt of the

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610 facility's request for a hearing, unless that time limitation is
611 waived by both parties. The administrative law judge shall ~~must~~
612 render a decision within 30 days after receipt of a proposed
613 recommended order.
614 (6) The agency shall impose an immediate moratorium, as
615 provided under s. 408.814, on an assisted living facility that
616 fails to provide the agency access to the facility or prohibits
617 the agency from conducting a regulatory inspection. The licensee
618 may not restrict agency staff in accessing and copying records
619 or in conducting confidential interviews with facility staff or
620 any individual who receives services from the facility ~~provide~~
621 ~~to the Division of Hotels and Restaurants of the Department of~~
622 ~~Business and Professional Regulation, on a monthly basis, a list~~
623 ~~of those assisted living facilities that have had their licenses~~
624 ~~denied, suspended, or revoked or that are involved in an~~
625 ~~appellate proceeding pursuant to s. 120.60 related to the~~
626 ~~denial, suspension, or revocation of a license~~.
627 (7) Agency notification of a license suspension or
628 revocation, or denial of a license renewal, shall be posted and
629 visible to the public at the facility.
630 (8) If a facility is required to relocate some or all of
631 its residents due to agency action, that facility is exempt from
632 the 45 days' notice requirement in s. 429.28(1)(k). This
633 provision does not exempt the facility from any deadlines for
634 corrective action set by the agency.
635 Section 7. Paragraphs (a) and (b) of subsection (2) of
636 section 429.178, Florida Statutes, are amended to read:
637 429.178 Special care for persons with Alzheimer's disease
638 or other related disorders.—

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(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training must ~~shall~~ be completed within 3 months after beginning employment and satisfy ~~shall satisfy~~ the core training requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training must ~~shall~~ be completed within 9 months after beginning employment and satisfy ~~shall satisfy~~ the core training requirements of s. 429.52(3)(g) ~~s. 429.52(2)(g)~~.

Section 8. Section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2) Each violation of this part and adopted rules must ~~shall~~ be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:

(a) Class "I" violations are defined in s. 408.813. The agency shall impose an administrative fine of $7,500 for each ~~a~~ cited class I violation in a facility that is licensed for fewer than 100 beds at the time of the violation ~~in an amount not less than $5,000 and not exceeding $10,000 for each violation~~. The agency shall impose an administrative fine of $11,250 for each cited class I violation in a facility that is licensed for 100 or more beds at the time of the violation. If the noncompliance occurs within the prior 12 months, the fine must be levied for violations that are corrected before an inspection.

(b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of $3,000 for each ~~a~~ cited class II violation in a facility that is licensed for fewer than 100 beds at the time of the violation ~~in an amount not less than $1,000 and not exceeding $5,000 for each violation~~. The agency shall impose an administrative fine of $4,500 for each cited class II violation in a facility that is licensed for 100 or more beds at the time of the violation.

(c) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine of $750 for each ~~a~~ cited class III violation in a facility that is licensed for fewer than 100 beds at the time of the violation ~~in an amount not less than $500 and not exceeding $1,000 for each violation~~. The agency shall impose an administrative fine of $1,125 for

each cited class III violation in a facility that is licensed for 100 or more beds at the time of the violation.

(d) Class "IV" violations are defined in s. 408.813. The agency shall impose an administrative fine of $150 for each ~~a~~ cited class IV violation in a facility that is licensed for fewer than 100 beds at the time of the violation ~~in an amount not less than $100 and not exceeding $200 for each violation~~. The agency shall impose an administrative fine of $225 for each cited class IV violation in a facility that is licensed for 100 or more beds at the time of the violation.

(e) Any fine imposed for class I and class II violations must be doubled if a facility was previously cited for one or more class I or class II violations during the agency's last licensure inspection or any inspection or complaint investigation since the last licensure inspection.

(f) Notwithstanding s. 408.813(2)(c) and (d) and s. 408.832, a fine must be imposed for each class III and class IV violation, regardless of correction, if a facility was previously cited for one or more class III or class IV violations during the agency's last licensure inspection or any inspection or complaint investigation since the last licensure inspection, for the same regulatory violation. A fine imposed for class III or class IV violations must be doubled if a facility was previously cited for one or more class III or class IV violations during the agency's last two licensure inspections for the same regulatory violation.

(g) Regardless of the class of violation cited, instead of the fine amounts listed in paragraphs (a)-(d), the agency shall impose an administrative fine of $500 if a facility is found not

to be in compliance with the background screening requirements as provided in s. 408.809.

~~(3) For purposes of this section, in determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:~~

~~(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.~~

~~(b) Actions taken by the owner or administrator to correct violations.~~

~~(c) Any previous violations.~~

~~(d) The financial benefit to the facility of committing or continuing the violation.~~

~~(e) The licensed capacity of the facility.~~

(3)~~(4)~~ Each day of continuing violation after the date established by the agency ~~fixed~~ for correction ~~termination~~ of the violation~~, as ordered by the agency,~~ constitutes an additional, separate, and distinct violation.

(4)~~(5)~~ An ~~Any~~ action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

(5)~~(6)~~ A ~~Any~~ facility whose owner fails to apply for a change-of-ownership license in accordance with part II of

755 chapter 408 and operates the facility under the new ownership is
756 subject to a fine of $5,000.
757 (6) ~~(7)~~ In addition to any administrative fines imposed, the
758 agency may assess a survey fee, equal to the lesser of one half
759 of the facility's biennial license and bed fee or $500, to cover
760 the cost of conducting initial complaint investigations that
761 result in the finding of a violation that was the subject of the
762 complaint or monitoring visits conducted under s. 429.28(3)(c)
763 to verify the correction of the violations.
764 (7) ~~(8)~~ During an inspection, the agency shall make a
765 reasonable attempt to discuss each violation with the owner or
766 administrator of the facility, prior to written notification.
767 (8) ~~(9)~~ The agency shall develop and disseminate an annual
768 list of all facilities sanctioned or fined for violations of
769 state standards, the number and class of violations involved,
770 the penalties imposed, and the current status of cases. The list
771 shall be disseminated, at no charge, to the Department of
772 Elderly Affairs, the Department of Health, the Department of
773 Children and Family Services, the Agency for Persons with
774 Disabilities, the area agencies on aging, the Florida Statewide
775 Advocacy Council, and the state and local ombudsman councils.
776 The Department of Children and Family Services shall disseminate
777 the list to service providers under contract to the department
778 who are responsible for referring persons to a facility for
779 residency. The agency may charge a fee commensurate with the
780 cost of printing and postage to other interested parties
781 requesting a copy of this list. This information may be provided
782 electronically or through the agency's Internet site.
783 Section 9. Subsections (2) and (6) of section 429.28,

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784 Florida Statutes, are amended to read:
785 429.28 Resident bill of rights.—
786 (2) The administrator of a facility shall ensure that a
787 written notice of the rights, obligations, and prohibitions set
788 forth in this part is posted in a prominent place in each
789 facility and read or explained to residents who cannot read. The
790 ~~This~~ notice must ~~shall~~ include the name, address, and telephone
791 numbers of the local ombudsman council and central abuse hotline
792 and, if ~~when~~ applicable, Disability Rights Florida ~~the Advocacy~~
793 ~~Center for Persons with Disabilities, Inc., and the Florida~~
794 ~~local advocacy council~~, where complaints may be lodged. The
795 notice must state that a complaint made to the Office of State
796 Long-Term Care Ombudsman or a local long-term care ombudsman
797 council, the names and identities of the residents involved in
798 the complaint, and the identity of complainants are kept
799 confidential pursuant to s. 400.0077 and that retaliatory action
800 cannot be taken against a resident for presenting grievances or
801 for exercising any other resident right. The facility must
802 ensure a resident's access to a telephone to call the local
803 ombudsman council, central abuse hotline, and Disability Rights
804 Florida ~~Advocacy Center for Persons with Disabilities, Inc., and~~
805 ~~the Florida local advocacy council~~.
806 (6) A ~~Any~~ facility that ~~which~~ terminates the residency of
807 an individual who participated in activities specified in
808 subsection (5) must ~~shall~~ show good cause in a court of
809 competent jurisdiction. If good cause is not shown, the agency
810 shall impose a fine of $2,500 in addition to any other penalty
811 assessed against the facility.
812 Section 10. Section 429.34, Florida Statutes, is amended to

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813 read:
814 429.34 Right of entry and inspection.—
815 (1) In addition to the requirements of s. 408.811, any duly
816 designated officer or employee of the department, the Department
817 of Children and Family Services, the Medicaid Fraud Control Unit
818 of the Office of the Attorney General, the state or local fire
819 marshal, or a member of the state or local long-term care
820 ombudsman council has ~~shall have~~ the right to enter unannounced
821 upon and into the premises of any facility licensed pursuant to
822 this part in order to determine the state of compliance with the
823 provisions of this part, part II of chapter 408, and applicable
824 rules. Data collected by the state or local long-term care
825 ombudsman councils or the state or local advocacy councils may
826 be used by the agency in investigations involving violations of
827 regulatory standards. A person specified in this section who
828 knows or has reasonable cause to suspect that a vulnerable adult
829 has been or is being abused, neglected, or exploited shall
830 immediately report such knowledge or suspicion to the central
831 abuse hotline pursuant to chapter 415.
832 (2) Each licensed assisted living facility must be
833 inspected by the agency at least once every 24 months to
834 determine compliance with this chapter and related rules. If an
835 assisted living facility is cited for one or more class I
836 violations or two or more class II violations arising from
837 separate surveys within a 60-day period or due to unrelated
838 circumstances during the same survey, the agency must conduct an
839 additional licensure inspection within 6 months. In addition to
840 any fines imposed on the facility under s. 429.19, the licensee
841 must pay a fee for the cost of the additional inspection

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842 equivalent to the standard assisted living facility license and
843 per-bed fees, without exception for beds designated for
844 recipients of optional state supplementation. The agency shall
845 adjust the fee in accordance with s. 408.805.
846 Section 11. Present subsections (1) through (11) of section
847 429.52, Florida Statutes, are redesignated as subsections (2)
848 through (12), respectively, a new subsection (1) is added to
849 that section, and present subsection (9) of that section is
850 amended, to read:
851 429.52 Staff training and educational programs; core
852 educational requirement.—
853 (1) Effective October 1, 2013, each new assisted living
854 facility employee who has not previously completed core training
855 must attend a preservice orientation provided by the facility
856 before interacting with residents. The preservice orientation
857 must be at least 2 hours in duration and cover topics that help
858 the employee provide responsible care and respond to the needs
859 of residents of the facility. Upon completion, the employee and
860 the administrator of the facility must sign an affidavit stating
861 that the employee completed the required preservice orientation.
862 The facility must keep the affidavit in the employee's work
863 file.
864 (10) ~~(9)~~ The training required by this section must ~~shall~~ be
865 conducted by persons registered with the department as having
866 the requisite experience and credentials to conduct the
867 training. A person seeking to register as a trainer must provide
868 the department with proof of completion of the minimum core
869 training education requirements, successful passage of the
870 competency test established under this section, and proof of

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871 compliance with the continuing education requirement in
872 subsection (5)~~(4)~~.
873 Section 12. The Legislature finds that consistent
874 regulation of assisted living facilities benefits residents and
875 operators of such facilities. To determine whether surveys are
876 consistent between surveys and surveyors, the Agency for Health
877 Care Administration shall conduct a study of intersurveyor
878 reliability for assisted living facilities. By November 1, 2013,
879 the agency shall report to the Governor, the President of the
880 Senate, and the Speaker of the House of Representatives its
881 findings and make any recommendations to improve intersurveyor
882 reliability.
883 Section 13. The Legislature finds that consumers need
884 additional information on the quality of care and service in
885 assisted living facilities in order to select the best facility
886 for themselves or their loved ones. Therefore, the Agency for
887 Health Care Administration shall:
888 (1) Propose a rating system for assisted living facilities.
889 The proposal must include, but is not limited to, the data
890 elements to be used, the method of collecting the data, the
891 method of determining the rating, an estimate of the initial and
892 ongoing costs of a rating system to both the agency and assisted
893 living facilities, and a timetable for the implementation of the
894 rating system for assisted living facilities. The agency shall
895 submit its proposal to the Governor, the President of the
896 Senate, and the Speaker of the House of Representatives by
897 November 1, 2013.
898 (2) By January 1, 2014, create a content that is easily
899 accessible through the front page of the agency's website. At a

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900 minimum, the content must include:
901 (a) Information on each licensed assisted living facility,
902 including, but not limited to:
903 1. The name and address of the facility.
904 2. The number and type of licensed beds in the facility.
905 3. The types of licenses held by the facility.
906 4. The facility's license expiration date and status.
907 5. Other relevant information that the agency currently
908 collects.
909 (b) A list of the facility's violations, including, for
910 each violation:
911 1. A summary of the violation which is presented in a
912 manner understandable by the general public;
913 2. Any sanctions imposed by final order; and
914 3. A summary of any corrective action taken by the
915 facility.
916 (c) Links to inspection reports that the agency has on
917 file.
918 (d) A monitored comment page, maintained by the agency,
919 which allows members of the public to anonymously comment on
920 assisted living facilities that are licensed to operate in the
921 state. This comment page must, at a minimum, allow members of
922 the public to post comments on their experiences with, or
923 observations of, an assisted living facility and to review other
924 people's comments. Comments posted to the agency's comment page
925 may not contain profanity and are intended to provide meaningful
926 feedback about the assisted living facility. The agency shall
927 provide for a webpage moderator to review comments for profane
928 content before the comments are posted to the page. An employee,

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929 owner, or controlling interest in an assisted living facility is
930 prohibited from posting comments on the page.
931 Section 14. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 706

INTRODUCER: Senator Montford

SUBJECT: Uninsured Motorist Insurance Coverage

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 706 deals with the rejection of stackable Uninsured Motorist (UM) benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting UM coverage, a conclusive presumption arises that "there was an informed knowing acceptance of such limitations" of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made "on behalf of all insureds." The bill addresses the decision of the Florida First District Court of Appeal in *Travelers Commercial Insurance Company v. Harrington.*[1]

This bill substantially amends section 627.727, Florida Statutes.

II. Present Situation:

Uninsured Motorist Coverage

Uninsured Motorist or UM coverage provides a basis for persons to directly insure themselves against the effects of bodily injuries caused by others who are legally liable but uninsured or underinsured. Such coverage pays for medical expenses and lost wages, after personal injury protection coverage is exhausted and includes payment for pain and suffering.[2] Uninsured Motorist also provides "excess coverage" which means that when a motorist is injured because of the negligence of another, the injured party is able to collect from the liability insurance of the

[1] *Travelers Commercial Insurance Company v. Harrington* , 86 So. 3d 1274 (Fla. 1st DCA 1012).

[2] The insurer providing UM coverage has liability for damages in tort for pain and suffering only if the injury or disease is described in s. 627.737(2), F.S.

negligent motorist and from his or her own uninsured motorist insurance if the negligent motorist is unable to provide full reimbursement.

Bodily injury liability policies must include UM coverage at limits equal to those for Bodily Injury (BI) liability insurance, unless the coverage is rejected or lower limits are elected by the insured. The rejection or selection of lower UM coverage limits must be made in writing on a form approved by the Office of Insurance Regulation. If a named insured signs the form, "it will be conclusively presumed that there was an informed knowing rejection of coverage or election of lower limits on behalf of all insureds."[3]

Uninsured Motorist coverage is available in "stackable" and "non-stackable" coverages. Stackable UM coverage means that the coverage limits for each car insured under a motorist's policy may be added together. Non-stackable UM coverage only pays up to the limits for one insured vehicle. Section 627.727(9), F.S., states that, "[i]nsurers may offer policies of uninsured motorist coverage…establishing that if the insured accepts the offer…coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident…." If the insured elects non-stackable coverage, the insurer must provide at least a 20 percent coverage premium discount to the policyholder to account for the reduced coverage available under the policy.[4] Under s. 627.727(9), F.S., UM coverage is stackable unless the insured waives stackable coverage in writing. The written waiver establishes a conclusive presumption that "there was an informed, knowing acceptance of such limitations."[5]

In *Travelers Commercial Insurance Company v. Harrington*, the First District Court of Appeal affirmed a trial court decision determining that stackable coverage benefits are available to an insured claimant under an insurance policy where the purchaser executed a signed waiver of stacking benefits, but the insured claimant did not waive such benefits.[6] In *Harrington*, the daughter of an insured was injured in a car accident and sought recovery under an insurance policy purchased by her father who had purchased UM benefits but rejected stackable benefits in writing. The Court ruled that Ms. Harrington could recover stackable coverage benefits because the statutory language for a waiver of stackable UM coverage does not apply to other insureds under the policy who do not execute the rejection of stacking coverage.[7]

The Court compared the provision governing written rejection[8] of coverage in subsection (1) of s. 627.727, F.S., with the provision in subsection (9) governing written rejection of stackable coverage. The court noted that the conclusive presumption in subsection (1) that is created when the insured executes a signed, written form declining UM coverage or electing limits of such coverage that are lower than the BI coverage is "on behalf of all insureds." The Court reasoned

[3] See s. 627.727(1), F.S. The conclusive presumption related to the insured's rejection of UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in CS/HB 319 by the 1984 Legislature. *See* chapter 84-41, s. 1, Laws of Fla.
[4] Section 627.727(9), F.S.
[5] The conclusive presumption related to the insured's rejection of stackable UM Coverage or election to obtain UM Coverage with lower limits than BI coverage was enacted in HB 1029 by the 1987 Legislature. *See* chapter 87-213, s. 1, Laws of Fla.
[6] *Harrington*, 86 So. 3d at 1278.
[7] *Id*. at 1277-1278.
[8] Or election of UM Coverage limits that are less than Bodily Injury coverage limits under the policy.

that the conclusive presumption in subsection (9) that is created when the insured executes a signed, written form declining stackable coverage only applies to the named insured because the statute does not specify that it is made on behalf of all insureds under the policy.[9] The District Court of Appeal certified the stacking issue to the Florida Supreme Court, which has accepted jurisdiction.[10]

III. Effect of Proposed Changes:

The bill amends s. 627.727, F.S., regarding the rejection of stackable Uninsured Motorist benefits. Current law states that when the named insured, applicant, or lessee signs a form rejecting coverage, a conclusive presumption arises that "there was an informed knowing acceptance of such limitations" of coverage. The bill specifies that the signed form gives rise to a conclusive presumption that the rejection of stackable coverage benefits was made "on behalf of all insureds."

The bill takes effect upon becoming a law.

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 *Harrington* decision of the First District Court of Appeals may reduce the availability of non-stackable coverage. If the named insured or an applicant for an insurance policy cannot waive stackable UM coverage on behalf of other insureds under the policy, the loss costs associated with unstacked UM coverage are likely to rise. Florida law requires that insurers provide at least a 20 percent UM coverage premium discount if stackable benefits are waived. If the difference in loss costs between stacked and unstacked UM coverage loss costs is less than 20 percent, insurers may cease

[9] *Id*.
[10] Florida Supreme Court Case Number SC12–1257.

offering unstacked UM coverage. Consumers who want to purchase UM coverage would then be deprived of the choice of selecting the less expensive unstacked version of such coverage.

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.)

None.

B. Amendments:

None.

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

By Senator Montford

3-00902A-13 2013706__

A bill to be entitled

An act relating to uninsured motorist insurance coverage; amending s. 627.727, F.S.; providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds; providing an effective date.

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

Section 1. Subsection (9) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office, establishing that if the insured accepts this offer:

(a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident, except as provided in paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing

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3-00902A-13 2013706__

with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations on behalf of all insureds. When the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, changes, supersedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the

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

59 appropriate premium for such coverage. Any insurer who provides
60 coverage which includes the limitations provided in this
61 subsection shall file revised premium rates with the office for
62 such uninsured motorist coverage to take effect prior to
63 initially providing such coverage. The revised rates shall
64 reflect the anticipated reduction in loss costs attributable to
65 such limitations but shall in any event reflect a reduction in
66 the uninsured motorist coverage premium of at least 20 percent
67 for policies with such limitations. Such filing shall not
68 increase the rates for coverage which does not contain the
69 limitations authorized by this subsection, and such rates shall
70 remain in effect until the insurer demonstrates the need for a
71 change in uninsured motorist rates pursuant to s. 627.0651.
72 Section 2. This act shall take effect upon becoming a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 742

INTRODUCER: Senator Evers

SUBJECT: Parole Interview Dates for Certain Inmates

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Favorable**
2.	Shankle	Cibula	JU	**Favorable**
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 742 permits the Florida Parole Commission to increase the interval between parole interviews to 7 years for offenders convicted of kidnapping or attempted kidnapping, or a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering when a human being is present and a sexual act is completed or attempted, whose interviews are currently every 2 years.

This bill substantially amends the following sections of the Florida Statutes: 947.16, 947.174, and 947.1745.

This bill reenacts section 947.165(1), Florida Statutes.

II. Present Situation:

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission ("the commission"). The only inmates who are eligible for parole consideration are those who committed capital sexual battery prior to October 1, 1995, capital sexual murder prior to October 1, 1994, or another crime prior to October 1, 1983.[1] Approximately 5,200 Florida

[1] See s. 921.002(1)(e), F.S., requiring a person convicted of a crime that occurred on or after October 1, 1988, to serve at least 85 percent of the sentence and excluding such persons from eligibility for parole under chapter 947, F.S. This section is a revision of ch. 83-87, s. 2, Laws of Fla. (1983), which mandated that all criminals convicted of non-capitol offenses occurring after October 1, 1983, are ineligible for parole.

inmates are still eligible for parole consideration because parole applied to their offense at the time it was committed.[2]

An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections. As of December 31, 2012, 350 offenders were actively supervised on parole from Florida sentences.[3]

The parole process begins with an initial interview that is the first step in setting the inmate's presumptive parole release date (PPRD). The date of the initial interview depends upon the length and character of the parole-eligible sentence. The PPRD is set by the commission after a parole examiner reviews the inmate's file, interviews the inmate, and makes an initial recommendation.[4]

In many cases, the commission will establish a PPRD that does not result in release of the inmate within a short period of time. A release order by the commission may also be altered in two other ways before it is implemented: (1) it may be vacated pursuant to s. 947.16(4), F.S., by a sentencing court that has retained jurisdiction over the offender; or (2) it may be modified by the commission after considering the objections of a sentencing court that has not retained jurisdiction pursuant to s. 947.1745(6), F.S. In all three situations, the inmate is entitled to a subsequent reinterview. The time frame for holding a reinterview (and any further reinterviews) is determined by the inmate's criminal history:

- An inmate who was not convicted of murder or attempted murder, sexual battery or attempted sexual battery, or serving a 25-year minimum mandatory sentence under s. 775.082, F.S., must be reinterviewed within 2 years after the initial interview and every 2 years thereafter.[5]
- An inmate who was convicted of one of the above offenses may have a reinterview scheduled within 7 years after the initial interview and every 7 years thereafter if the commission makes a written finding that it is not reasonable to expect that parole will be granted during the following years.[6]

The commission considers the PPRD recommendation in a public hearing held after the initial interview and each reinterview. At this hearing, the commission considers the written recommendation of the parole examiner, documentary evidence, and any testimony presented on behalf of the victim or the inmate. Although the inmate is not entitled to appear at the hearing, he or she may be represented by an attorney. It is also common for the victim or victim's representative and law enforcement representatives to appear.

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[2] Florida Parole Commission, *Annual Report: 2011-2012*, p. 21, *available at* https://fpc.state.fl.us/PDFs/FPCannualreport201112.pdf.
[3] Florida Department of Corrections, *Community Supervision Population Monthly Status Report*, p. 2, http://www.dc.state.fl.us/pub/spop/2012/12/tab01.html (last visited Mar. 28, 2013).
[4] Section 947.172, F.S.
[5] Section 947.16(g), F.S.
[6] *Id*.

III. Effect of Proposed Changes:

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to extend the commission's authority to increase the interval between parole consideration re-interviews to include cases in which the offender was convicted of: (1) kidnapping or attempted kidnapping; or (2) a completed or attempted offense of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, when a human being is present and a sexual act is completed or attempted. The interval may be increased from the standard 2 years to 7 years if the commission makes a written finding that it is unlikely to grant parole to the offender.

The groups that would be most affected by this bill are victims and their families, parole-eligible inmates and their families, and the commission itself. For victims, reduction of the frequency of an opportunity for parole can be expected to lessen the stress associated with potential release of the offender. Because victims and families often attend the parole hearings, there is also a potential financial savings. For offenders, the normally-scheduled interviews would be reduced if their record indicates that granting of parole is not likely. For the commission, there would be some reduction in workload and the opportunity to focus on the cases that are more frequently reviewed.

The bill has an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Although parole is a matter of grace and is not a right, alteration of parole-consideration procedures must be considered in light of the constitutional prohibition against ex post facto punishment. In *California Department of Corrections v. Morales*, 514 U.S. 499 (1995), the United States Supreme Court held that a California statute increasing the interval between parole interviews did not violate the ex post facto clause. Subsequent cases have relied on *Morales* to uphold the constitutionality of current s. 947.174(1)(b), F.S., which permitted an increase of the interview interval from two to five years.[7] Because there is no legal distinction between increasing the interval from two

[7] See *Tuff v. State*, 732 So. 2d 461 (Fla. 3d DCA 1999) and *Pennoyer v. Briggs*, 206 Fed.Appx. 962 (11th Cir. 2006).

to five years and increasing it from five to seven years, the bill's provisions do not violate the ex post facto clauses of the United States and Florida constitutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Holding parole hearings less frequently would reduce the costs incurred by persons who would attend the hearings. This could include victims and their families and representatives, victims' advocacy groups, law enforcement agencies, and the families and representatives of inmates. The amount of reduction cannot be quantified because a reduction of frequency would depend upon the individual merits of the inmate's case and the cost to attend hearings is variable depending upon individual circumstances.

C. Government Sector Impact:

Authorization to reduce the frequency of parole hearings has the potential to reduce the number of hearings conducted by the commission, which may result in cost savings or reallocation of resources to other cases. If the interview interval for an inmate is changed from two years to seven years, there would be five fewer hearings over a fourteen year period. The total amount of any savings cannot be determined until the commission considers individual cases and makes a decision on whether to apply its new authority to the case. The commission indicates that in Fiscal Year 2015-2016 the bill could result in 44 inmates having their next interview date set within seven years rather than within two years.[8] However, the bill can have no fiscal impact before Fiscal Year 2015-2016 because it does not alter interview dates that are already scheduled at the time of the effective date.

There would be additional cost to incarcerate an inmate whose interview schedule is extended from two years to seven years if he or she is paroled at the seven year interview interval and would also have been paroled if the interview had been conducted earlier. The cost of incarcerating such an inmate would be approximately $15,500 for each extra year of incarceration.[9] However, it is anticipated that few inmates would fall into this category because the expanded interview interval applies only to those inmates whom the commission finds are unlikely to be granted parole.

VI. Technical Deficiencies:

None.

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[8] Florida Parole Commission Proposal Analysis and Economic Impact of HB 685 and SB 742 (February 18, 2013), on file with the Senate Committee on Criminal Justice.

[9] The average annual cost per inmate for adult male custody DOC facilities, except private facilities, is approximately $15,500. Department of Corrections Budget Summary (Fiscal Year 2010-2011), available at http://www.dc.state.fl.us/pub/annual/1011/budget.html (last viewed on February 22, 2013).

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 Evers

2-00741-13 2013742__

A bill to be entitled

An act relating to parole interview dates for certain inmates; amending ss. 947.16, 947.174, and 947.1745, F.S.; extending from 2 years to 7 years the period between parole interview dates for inmates convicted of committing certain specified crimes; reenacting s. 947.165(1), F.S., relating to the development and implementation by the Parole Commission of objective parole guidelines to serve as the criteria upon which parole decisions are to be made, to incorporate the amendments made to s. 947.1745, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 947.16, Florida Statutes, is amended to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.—

(4) A person who has become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act,

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lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, ~~then~~ the jurisdiction of the trial court judge ~~as provided herein~~ applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge ~~as provided herein~~ applies to one-third of the total consecutive sentences imposed.

(g) The decision of the original sentencing judge or, in her or his absence, the chief judge of the circuit, to vacate any parole release order as provided in this section is not appealable. An ~~Each~~ inmate whose parole release order has been vacated by the court must ~~shall~~ be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, or earlier by order of the court retaining jurisdiction. However, an ~~each~~ inmate whose parole release order has been vacated by the court and who has been:

1. Convicted of murder or attempted murder;

2. Convicted of sexual battery or attempted sexual battery; ~~or~~

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3. Convicted of kidnapping or attempted kidnapping;

4. Convicted of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering, or the attempt of any of these crimes, in which a human being is present and a sexual act is attempted or completed; or

5.~~3.~~ Sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082,

shall be reinterviewed once within 7 years after the date of receipt of the vacated release order and once every 7 years thereafter, if the commission finds that it is not reasonable to expect that parole would be granted during the following years and states the bases for the finding in writing. For an ~~any~~ inmate who is within 7 years of his or her tentative release date, the commission may establish a reinterview date before ~~prior to~~ the 7-year schedule.

Section 2. Paragraph (b) of subsection (1) of section 947.174, Florida Statutes, is amended to read:

947.174 Subsequent interviews.—

(1)

(b) For an ~~any~~ inmate convicted of murder, attempted murder, sexual battery, or attempted sexual battery, kidnapping or attempted kidnapping; or of robbery, burglary of a dwelling, burglary of a structure or conveyance, or breaking and entering or the attempt of any of these crimes, in which a human being is present and a sexual act is attempted or completed, or for an ~~any~~ inmate who has been sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082, and whose presumptive parole release date is more than 7 years after the

date of the initial interview, a hearing examiner shall schedule an interview for review of the presumptive parole release date. The interview must ~~shall~~ take place once within 7 years after the initial interview and once every 7 years thereafter if the commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years and states the bases for the finding in writing. For an ~~any~~ inmate who is within 7 years of his or her tentative release date, the commission may establish an interview date before the 7-year schedule.

Section 3. Subsection (6) of section 947.1745, Florida Statutes, is amended to read:

947.1745 Establishment of effective parole release date.—If the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:

(6) Within 90 days before the effective parole release date interview, the commission shall send written notice to the sentencing judge of an ~~any~~ inmate who has been scheduled for an effective parole release date interview. If the sentencing judge is no longer serving, the notice must be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge may designate any circuit judge within the circuit to act in the place of the sentencing judge. Within 30 days after receipt of the commission's notice, the sentencing judge, or the designee, shall send to the commission notice of objection to parole release, if the judge objects to the ~~such~~ release. If there is an objection by the judge, the ~~such~~ objection may constitute good cause in exceptional circumstances as described

117 in s. 947.173, and the commission may schedule a subsequent
118 review within 2 years, extending the presumptive parole release
119 date beyond that time. However, for an inmate who has been:
120 (a) Convicted of murder or attempted murder;
121 (b) Convicted of sexual battery or attempted sexual
122 battery; ~~or~~
123 (c) Convicted of kidnapping or attempted kidnapping;
124 (d) Convicted of robbery, burglary of a dwelling, burglary
125 of a structure or conveyance, or breaking and entering, or the
126 attempt of any of these crimes, in which a human being is
127 present and a sexual act is attempted or completed; or
128 (e) ~~(c)~~ Sentenced to a 25-year minimum mandatory sentence
129 previously provided in s. 775.082,
130
131 the commission may schedule a subsequent review under this
132 subsection once every 7 years, extending the presumptive parole
133 release date beyond that time if the commission finds that it is
134 not reasonable to expect that parole would be granted at a
135 review during the following years and states the bases for the
136 finding in writing. For an ~~any~~ inmate who is within 7 years of
137 his or her release date, the commission may schedule a
138 subsequent review before ~~prior to~~ the 7-year schedule. With any
139 subsequent review the same procedure outlined above will be
140 followed. If the judge remains silent with respect to parole
141 release, the commission may authorize an effective parole
142 release date. This subsection applies if the commission desires
143 to consider the establishment of an effective release date
144 without delivery of the effective parole release date interview.
145 Notice of the effective release date must be sent to the

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146 sentencing judge, and either the judge's response to the notice
147 must be received or the time period allowed for such response
148 must elapse before the commission may authorize an effective
149 release date.
150 Section 4. For the purpose of incorporating the amendment
151 made by this act to section 947.1745, Florida Statutes, in a
152 reference thereto, subsection (1) of section 947.165, Florida
153 Statutes, is reenacted to read:
154 947.165 Objective parole guidelines.—
155 (1) The commission shall develop and implement objective
156 parole guidelines which shall be the criteria upon which parole
157 decisions are made. The objective parole guidelines shall be
158 developed according to an acceptable research method and shall
159 be based on the seriousness of offense and the likelihood of
160 favorable parole outcome. The guidelines shall require the
161 commission to aggravate or aggregate each consecutive sentence
162 in establishing the presumptive parole release date. Factors
163 used in arriving at the salient factor score and the severity of
164 offense behavior category shall not be applied as aggravating
165 circumstances. If the sentencing judge files a written objection
166 to the parole release of an inmate as provided for in s.
167 947.1745(6), such objection may be used by the commission as a
168 basis to extend the presumptive parole release date.
169 Section 5. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1016

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Sovereign Immunity for Dentists and Dental Hygienist

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Pre-meeting**
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1016 authorizes a dentist, who is a government contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees, it is not considered compensation for services so that sovereign immunity protection is not lost.

This bill substantially amends section 766.1115, Florida Statutes.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[2]

- A birth center licensed under chapter 383, F.S.[3]
- An ambulatory surgical center licensed under chapter 395, F.S.[4]
- A hospital licensed under chapter 395, F.S.[5]
- A physician or physician assistant licensed under chapter 458, F.S.[6]
- An osteopathic physician or osteopathic physician assistant licensed under chapter 459, F.S.[7]
- A chiropractic physician licensed under chapter 460, F.S.[8]
- A podiatric physician licensed under chapter 461, F.S.[9]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464, F.S., or any facility which employs nurses licensed or registered under part I of chapter 464, F.S., to supply all or part of the care delivered under this section.[10]
- A dentist or dental hygienist licensed under chapter 466, F.S.[11]
- A midwife licensed under chapter 467, F.S.[12]
- A health maintenance organization certificated under part I of chapter 641, F.S.[13]
- A health care professional association and its employees or a corporate medical group and its employees.[14]

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[1] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.
[2] Section 766.1115(3)(d), F.S.
[3] Section 766.1115(3)(d)1., F.S.
[4] Section 766.1115(3)(d)2., F.S.
[5] Section 766.1115(3)(d)3., F.S.
[6] Section 766.1115(3)(d)4., F.S.
[7] Section 766.1115(3)(d)5., F.S.
[8] Section 766.1115(3)(d)6., F.S.
[9] Section 766.1115(3)(d)7., F.S.
[10] Section 766.1115(3)(d)8., F.S.
[11] Section 766.1115(3)(d)9., F.S.
[12] Section 766.1115(3)(d)10., F.S.
[13] Section 766.1115(3)(d)11., F.S.
[14] Section 766.1115(3)(d)12., F.S.

- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.[15]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[16]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 766.1115(3)(d)4-9, F.S.[17]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the Act as the Department of Health (DOH or department), a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[18]

The definition of contract under the Act provides that the contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.[19]

The Act further specifies contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor must make patient selection and initial referrals.
- The health care provider must accept all referred patients, however the contract may specify limits on the number of patients to be referred.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

[15] Section 766.1115(3)(d)13., F.S.
[16] Section 766.1115(3)(d)14., F.S.
[17] Section 766.1115(3)(d)15., F.S.
[18] Section 766.1115(3)(c), F.S.
[19] Section 766.1115(3)(a), F.S.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.

The individual accepting services through this contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[20] The services not covered under this program include experimental procedures and clinically unproven procedures. The governmental contractor shall determine whether or not a procedure is covered.

The health care provider may not subcontract for the provision of services under this chapter.[21]

Currently, s. 766.1115, F.S., is interpreted differently across the state. In certain parts of the state one medical director interprets this law to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, a medical director suggests that if any monetary amount is accepted then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that the provider incurs to pay outside providers for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.[22]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to $200,000 for one incidence and limits all recovery related to one incidence to a total of $300,000. The sovereign immunity recovery caps do not prevent a

[20] Rule 64I-2.002, F.A.C.
[21] *Id.*
[22] Staff of Committee on Health Policy's discussion with representatives from the Florida Dental Association on March 8, 2013.

plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[23]

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[24] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.25

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[26] The court explained:

> Whether the [Children's Medical Services(CMS)] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. *National Sur. Corp. v. Windham*, 74 So. 2d 549, 550 (Fla. 1954) ("The [principal's] right to control depends upon the terms of the contract of employment…") The CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[27] Manual and CMS Consultants Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[28]

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[23] Section 768.28(5), F.S.
[24] *Stoll v. Noel*, 694 So. 2d 701, 703(Fla. 1997).
[25] *Id.* (quoting The Restatement of Agency).
[26] *Stoll v. Noel*, 694 So. 2d 701 at 703.
[27] Florida Department of Health and Rehabilitative Services.
[28] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997).

III. Effect of Proposed Changes:

The bill authorizes a dentist, who is a government contracted health care provider under the Access to Health Care Act, to allow a patient, or a parent or guardian of a patient to voluntarily contribute a fee to cover costs of dental laboratory work. The contribution may not exceed the actual cost of the laboratory fee. When the voluntary contribution is accepted from the patient for dental laboratory fees it is not considered compensation for services so that sovereign immunity protection is not lost.

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 fiscal impact is expected to be minimal since many areas in the state already allow voluntary contributions.[29]

C. Government Sector Impact:

Additional documentation and billing may be required to avoid the appearance that voluntary contributions are compensation to the practitioner. It could be unclear whether the activities of the dentist's staff to coordinate lab services may be characterized as paid work to the extent a fee or partial fee was provided for these services. This can be problematic if the dentist is volunteering through a professional association. Mistakes could result in litigation on the issue of compensation to the health care provider.[30]

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[29] *See* Department of Health Bill Analysis for SB 1016 (dated March 11, 2013) on file with the Senate Health Policy Committee and notes from telephone call with staff on March 12, 2013.
[30] *See* Department of Health Bill Analysis for SB 1016(dated March 11, 2013) on file with the Senate Health Policy Committee.

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 Health Policy on March 14, 2013:
The CS removes the definition for the term "uncompensated services." The CS authorizes a dentist, who is a government contracted health care provider, to allow a patient, parent, or guardian to voluntarily contribute a fee to cover costs of dental laboratory work.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(1) A health insurer may ~~shall~~ not require a contracted health care practitioner as defined in s. 456.001(4) to accept the terms of other health care practitioner contracts with the insurer or any other insurer, or health maintenance organization, under common management and control with the insurer, including Medicare and Medicaid practitioner contracts

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14 and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or
15 s. 641.315, except for a practitioner in a group practice as
16 defined in s. 456.053 who must accept the terms of a contract
17 negotiated for the practitioner by the group, as a condition of
18 continuation or renewal of the contract. Any contract provision
19 that violates this section is void. A violation of this
20 subsection ~~section~~ is not subject to the criminal penalty
21 specified in s. 624.15.
22 (2)(a) A contract between a health insurer and a dentist
23 licensed under chapter 466 for the provision of services to an
24 insured may not contain any provision that requires the dentist
25 to provide services to the insured under such contract at a fee
26 set by the health insurer unless such services are covered
27 services under the applicable contract.
28 (b) Covered services are those services that are listed as
29 a benefit that the insured is entitled to receive under the
30 contract. An insurer may not provide merely de minimis
31 reimbursement or coverage in order to avoid the requirements of
32 this section. Fees for covered services shall be set in good
33 faith and must not be nominal.
34 (c) A health insurer may not require as a condition of the
35 contract that the dentist participate in a discount medical plan
36 under part II of chapter 636.
37 Section 2. Subsection (13) is added to section 636.035,
38 Florida Statutes, to read:
39 636.035 Provider arrangements.—
40 (13)(a) A contract between a prepaid limited health service
41 organization and a dentist licensed under chapter 466 for the
42 provision of services to a subscriber of the prepaid limited

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43 health service organization may not contain any provision that
44 requires the dentist to provide services to the subscriber of
45 the prepaid limited health service organization at a fee set by
46 the prepaid limited health service organization unless such
47 services are covered services under the applicable contract.
48 (b) Covered services are those services that are listed as
49 a benefit that the subscriber is entitled to receive under the
50 contract. A prepaid limited health service organization may not
51 provide merely de minimis reimbursement or coverage in order to
52 avoid the requirements of this section. Fees for covered
53 services shall be set in good faith and must not be nominal.
54 (c) A prepaid limited health service organization may not
55 require as a condition of the contract that the dentist
56 participate in a discount medical plan under part II of this
57 chapter.
58 Section 3. Subsection (11) is added to section 641.315,
59 Florida Statutes, to read:
60 641.315 Provider contracts.—
61 (11)(a) A contract between a health maintenance
62 organization and a dentist licensed under chapter 466 for the
63 provision of services to a subscriber of the health maintenance
64 organization may not contain any provision that requires the
65 dentist to provide services to the subscriber of the health
66 maintenance organization at a fee set by the health maintenance
67 organization unless such services are covered services under the
68 applicable contract.
69 (b) Covered services are those services that are listed as
70 a benefit that the subscriber is entitled to receive under the
71 contract. A health maintenance organization may not provide

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72 merely de minimis reimbursement or coverage in order to avoid
73 the requirements of this section. Fees for covered services
74 shall be set in good faith and must not be nominal.
75 (c) A health maintenance organization may not require as a
76 condition of the contract that the dentist participate in a
77 discount medical plan under part II of chapter 636.
78 Section 4. Paragraph (a) of subsection (3) of section
79 766.1115, Florida Statutes, is amended, and paragraph (h) is
80 added to subsection (4) of that section, to read:
81 766.1115 Health care providers; creation of agency
82 relationship with governmental contractors.—
83 (3) DEFINITIONS.—As used in this section, the term:
84 (a) "Contract" means an agreement executed in compliance
85 with this section between a health care provider and a
86 governmental contractor which allows~~. This contract shall allow~~
87 the health care provider to deliver health care services to low-
88 income recipients as an agent of the governmental contractor.
89 The contract must be for volunteer, uncompensated services. For
90 services to qualify as volunteer, uncompensated services under
91 this section, the health care provider must receive no
92 compensation from the governmental contractor for ~~any~~ services
93 provided under the contract and must not bill or accept
94 compensation from the recipient, or a ~~any~~ public or private
95 third-party payor, for the specific services provided to the
96 low-income recipients covered by the contract.
97 (4) CONTRACT REQUIREMENTS.—A health care provider that
98 executes a contract with a governmental contractor to deliver
99 health care services on or after April 17, 1992, as an agent of
100 the governmental contractor is an agent for purposes of s.

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101 768.28(9), while acting within the scope of duties under the
102 contract, if the contract complies with the requirements of this
103 section and regardless of whether the individual treated is
104 later found to be ineligible. A health care provider under
105 contract with the state may not be named as a defendant in any
106 action arising out of medical care or treatment provided on or
107 after April 17, 1992, under contracts entered into under this
108 section. The contract must provide that:
109 (h) As an agent of the governmental contractor for purposes
110 of s. 768.28(9), while acting within the scope of duties under
111 the contract, a health care provider licensed under chapter 466
112 may allow a patient or a parent or guardian of the patient to
113 voluntarily contribute a fee to cover costs of dental laboratory
114 work related to the services provided to the patient. This
115 contribution may not exceed the actual cost of the dental
116 laboratory charges and is deemed in compliance with this
117 section.
118
119 A governmental contractor that is also a health care provider is
120 not required to enter into a contract under this section with
121 respect to the health care services delivered by its employees.
122 Section 5. The amendments to ss. 627.6474, 636.035, and
123 641.315, Florida Statutes, apply to contracts entered into or
124 renewed on or after July 1, 2013.
125 Section 6. This act shall take effect July 1, 2013.
126
127 ========== T I T L E A M E N D M E N T ==========
128 And the title is amended as follows:
129 Delete everything before the enacting clause

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130 and insert:
131 A bill to be entitled
132 An act relating to dentistry; amending s. 627.6474,
133 F.S.; prohibiting a contract between a health insurer
134 and a dentist from requiring the dentist to provide
135 services at a fee set by the insurer under certain
136 circumstances; providing that covered services are
137 those services listed as a benefit that the insured is
138 entitled to receive under a contract; prohibiting an
139 insurer from providing merely de minimis reimbursement
140 or coverage; requiring that fees for covered services
141 be set in good faith and not be nominal; prohibiting a
142 health insurer from requiring as a condition of a
143 contract that a dentist participate in a discount
144 medical plan; amending s. 636.035, F.S.; prohibiting a
145 contract between a prepaid limited health service
146 organization and a dentist from requiring the dentist
147 to provide services at a fee set by the organization
148 under certain circumstances; providing that covered
149 services are those services listed as a benefit that a
150 subscriber of a prepaid limited health service
151 organization is entitled to receive under a contract;
152 prohibiting a prepaid limited health service
153 organization from providing merely de minimis
154 reimbursement or coverage; requiring that fees for
155 covered services be set in good faith and not be
156 nominal; prohibiting the prepaid limited health
157 service organization from requiring as a condition of
158 a contract that a dentist participate in a discount

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159 medical plan; amending s. 641.315, F.S.; prohibiting a
160 contract between a health maintenance organization and
161 a dentist from requiring the dentist to provide
162 services at a fee set by the organization under
163 certain circumstances; providing that covered services
164 are those services listed as a benefit that a
165 subscriber of a health maintenance organization is
166 entitled to receive under a contract; prohibiting a
167 health maintenance organization from providing merely
168 de minimis reimbursement or coverage; requiring that
169 fees for covered services be set in good faith and not
170 be nominal; prohibiting the health maintenance
171 organization from requiring as a condition of a
172 contract that a dentist participate in a discount
173 medical plan; providing for application of the act;
174 amending s. 766.1115, F.S.; revising a definition;
175 requiring a contract with a governmental contractor
176 for health care services to include a provision for a
177 health care provider licensed under ch. 466, F.S., as
178 an agent of the governmental contractor, to allow a
179 patient or a parent or guardian of the patient to
180 voluntarily contribute a fee to cover costs of dental
181 laboratory work related to the services provided to
182 the patient without forfeiting sovereign immunity;
183 prohibiting the contribution from exceeding the actual
184 amount of the dental laboratory charges; providing
185 that the contribution complies with the requirements
186 of s. 766.1115, F.S.; providing for applicability;
187 providing an effective date.

By the Committee on Health Policy; and Senator Hays

A bill to be entitled

An act relating to sovereign immunity for dentists and dental hygienists; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-

income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for ~~any~~ services provided under the contract and must not bill or accept compensation from the recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(h) As an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is deemed in compliance with this

59 section.
60
61 A governmental contractor that is also a health care provider is
62 not required to enter into a contract under this section with
63 respect to the health care services delivered by its employees.
64 Section 2. This act shall take effect July 1, 2013.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1036

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Independent Living

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1036 authorizes young adults in foster care who did not reach permanency before 18 years of age to remain in care until 21 years of age. The bill also provides eligibility criteria to remain in care, allows a young adult to leave and reenter care anytime before reaching 21 years of age, and requires young adults who are in care to reside in supervised living arrangements. The bill requires the Department of Children and Families and community-based providers to develop a transition plan. The bill also requires continuation of case management, service delivery, and judicial review for young adults remaining in care.

The bill provides requirements and expectations for foster parents, group home parents and providers, the department, the community-based care lead agencies and their providers. The bill also requires adequate training and support for foster parents and inclusion in a full and equal respectful partnership with other participants in the child welfare system. Under this bill, group home staff must meet the same training, background and other screening requirements as foster parents. The bill codifies the board rate for foster parents and provides for an annual cost of living increase. The bill also transfers the responsibility of providing independent living skills for children 13-17 years of age to foster and group home parents, eliminates the need to contract for those services, and relieves caseworkers from some responsibilities associated with independent living services for 13-17 year olds. Provisions related to normalcy and the reasonable and prudent parent standard are also contained in the bill.

The bill restructures the Road-to-Independence (RTI) Program, providing financial assistance to young adults attending eligible postsecondary institutions. The bill provides for aftercare services for young adults who leave care and for an appeals process. The bill enables young adults currently receiving independent living transition services to continue in the existing program

until eligibility expires. The bill provides for portability of services and support for children and young adults who relocate within the state, provides collaboration between the Department of Children and Families (DCF or department) and colleges and universities for an educational support program, and creates a new budget category for independent living expenditures.

This bill substantially amends the following sections of the Florida Statutes: 39.013, 39.701, 409.145, 409.1451, 409.175, and 409.903. This bill creates sections 39.6035 and 39.6251, Florida Statutes.

II. Present Situation:

Independent Living (IL) Program

Background

Each year, thousands of children leave state dependency care systems because they turn 18 years of age and are no longer eligible for care. Since the early 1980's, research and anecdotal evidence indicates that many of these young adults experience numerous difficulties in their attempts to achieve self-sufficiency. When compared to young adults with no exposure to the child welfare system, young adults who were formerly in care are less likely to earn a high school diploma or GED and subsequently, have lower rates of college attendance.[1] They suffer more from mental health problems; have a higher rate of involvement with the criminal justice system; and are more likely to have a difficult time achieving financial independence. These young adults have a higher need for public assistance and are more likely to experience housing instability, including homelessness.[2]

As of December 2012, in Florida, 5,288 youth ages 13 through 17 in licensed foster care were eligible for independent living services and 1,386, 1,304 and 1,181 children aged out of care in FY 2009/2010, 2010/2011, and 2011/2012, respectively.[3] While attention to their needs has increased significantly in the last decade, services intended to help prepare them to live independently upon aging out of the system remain inadequate.

Federal Law

John H. Chafee Foster Care Independence Program

The federal government responded to the needs of children who age out of care by enacting the Foster Care Independence Act of 1999 (Chafee Act).[4] The Chafee Act provides states with flexible funding to design and conduct programs to serve children who are likely to remain in foster care until age 18, children who have reached 16 years of age and have left foster care for

[1] Courtney, M.A. and D. H. Heuring, ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS, 33-34 (2007).
[2] *Id*. at 36-40.
[3] Information supplied by the Department of Children and Families. Dec. 21, 2013.
[4] Pub. Law No. 106-169, 113 Stat. 1822 (1999). Federal funds for independent living initiatives were first made available under the Consolidated Omnibus Budget Reconciliation Act of 1985.

kinship guardianship or adoption and young adults ages 18-21 who have "aged out" of the foster care system.[5]

The Chafee Act eliminated age restrictions, allowing states to offer independent living services to children younger than age 16.[6] The Chafee Act grants wide discretion to the states, allowing them to set their own criteria for children in care to receive services.[7] However, states must use objective criteria in determining eligibility for benefits and services under the programs and ensuring fair and equitable treatment to benefit recipients.[8]

Each state is allotted an amount of funds which has the same ratio as the number of children in foster care in that state to the total number of children in foster care in all states in the most recent fiscal year for which such information is available. The Chafee Act requires a 20 percent state match.[9]

Education and Training Vouchers

The Educational and Training Vouchers Program (ETV) for children aging out of care was added to the Chafee Act in 2002. ETV provides resources specifically to meet the education and training needs of youth aging out of care. Funding is provided for postsecondary educational and training vouchers for children and young adults likely to experience difficulty as they transition to adulthood after reaching 18 years of age. The program makes available vouchers of up to $5,000 per year per young adult.[10]

National Youth in Transition Database (NYTD)

The Chafee Act also required the Administration for Children and Families (ACF) to develop a data collection system to track the independent living services that states provide to children and young adults and to develop outcome measures that may be used to assess states' performance in operating their independent living programs.[11] Subsequent regulation established NYTD and requires states to engage in two data collection activities:

- States must collect information on each youth who receives independent living services paid for or provided by the state agency that administers the Chafee Act; and
- States must collect demographic and outcome information on certain youth in foster care who will be followed over time to collect additional outcome information. This information

[5] 42 U.S.C. § 677(2002).
[6] 42 U.S.C. § 677(b)(2)(C) (2002).
[7] 42 U.S.C. § 677(b)(2).
[8] 42 U.S.C. § 677(b)(2)(E).
[9] In FY 2012, Florida's Chafee allocation was $6,130,927 and the ETV allocation was $2,044,377. U.S. Department of Health and Family Services, Administration on Children, Youth and Families, Children's Bureau. Program Instruction. ACYF-CB-PI-12-05. (April 11, 2012), *available at* http://www.acf.hhs.gov/sites/default/files/cb/pi1205.pdf.
[10] U.S. Department of Health and Human Services, Administration for Children and Families, *The John H. Chafee Foster Care Independence Program. available at* http://www.acf.hhs.gov/programs/cb/programs_fund/state_tribal/jh_chafee.htm (last visited March 27, 2013).
[11] U.S. Department of Health and Human Services, Administration for Children and Families, *The John H. Chafee Foster Care Independence Program. available at* http://www.acf.hhs.gov/programs/cb/resource/about-nytd?page=all (last visited March 27, 2013).

allows ACF to track which independent living services are provided by states and assess collective outcomes of youth.

Pursuant to regulation, states began collecting data for NYTD on October 1, 2010, and are required to report data to ACF semiannually.

Florida Law

With the enactment of federal legislation and increased available funding, the 2002 Florida Legislature established a new framework for the state's independent living transition services. Florida law requires the department and community-based care lead agencies to provide services and financial assistance to older children in care and young adults who leave the foster care system at age 18 to help them transition to self-sufficiency.[12] Service categories include:[13]

Table 1.

PROGRAM COMPONENTS	SERVICES PROVIDED	AGE GROUP
PRE-INDEPENDENT LIVING	Life skills training, educational field trips and conferences.	13 to 15 years
LIFE SKILLS	Independent living skills training, including training to develop banking and budgeting skills, interviewing skills, parenting skills, and time management or organizational skills, educational support, employment training, and counseling.	15 to 18 years
SUBSIDIZED INDEPENDENT LIVING (SIL)[14]	Financial assistance for living arrangements that allow the child to live independently of the daily care and supervision of an adult.	16 to 18 years
AFTERCARE SUPPORT	Housing, electric, water, gas, sewer service, food, mentoring, tutoring, mental health services, substance abuse counseling, life skills classes, parenting classes, job and career skills training, counselor consultations, temporary financial assistance, and financial literacy skills training.	18 to 23 years
PROGRAM COMPONENTS	**SERVICES PROVIDED**	**AGE GROUP**
ROAD-TO-INDEPENDENCE PROGRAM	Financial assistance for education.	18 to 23 years
TRANSITIONAL SUPPORT	Financial, housing, counseling, employment, education, mental health, disability, and other services.	18 to 23 years

Outcome measures and minimum standards

The Legislature added requirements for outcome measures and standards for the program that would allow to measure effectiveness of IL services:

[12] The department provided independent living services to older youth in foster care prior to the creation of s. 409.1451, F.S., with provisions for those services appearing in a number of sections of the Florida Statutes, including s. 409.145, F.S., relating to care of children (2001), and s. 409.165, F.S., relating to alternative care of children (2001).
[13] Section 409.1451, F.S.
[14] Subsidized independent living provides an opportunity for youth ages 16-17 to receive a cash subsidy and other services from the department, and placement in a living arrangement not required to be licensed and not under the daily care and supervision of an adult. Subsidized independent living arrangements established for a youth must be part of an overall plan leading to total independence from the department's supervision.

- In 2002, the Legislature required the department to establish outcome measures for the independent living program.[15]
- In response to the department's failure to adopt standards or measures, in 2004 the Legislature directed the Office of Program Policy and Government Accountability (OPPAGA) to recommend minimum standards for the independent living transition services.[16] OPPAGA provided those recommended minimum standards to the department in November 2004.[17] The OPPAGA report also emphasized that at a minimum, the success of a provider's program should be based on how well children in care progress on three major variables: education,[18] life skills,[19] and employment.[20] Without minimum skills in these three areas, children in care cannot hope to live self-sufficiently.[21]
- A subsequent report issued by OPPAGA in 2005 noted that standards had still not been developed and recommended that the department develop minimum standards of performance for IL programs and include those standards in contracts with providers.[22]
- In 2006 the Legislature again required the department to:
  - Establish minimum standards for independent living transition services for current and former foster youth and incorporate minimum independent living standards into lead agency contracts by July 1, 2007.[23]
  - In coordination with community-based care lead agencies, develop measures for assessing the effectiveness of lead agency performance in meeting these minimum standards by July 1, 2007.[24]
  - Begin monitoring lead agency performance in accordance with these requirements by Fiscal Year 2008-09.[25]
- In a 2007 report, OPPAGA noted that the department made limited progress on developing minimum standards and some progress on developing outcome measures. OPPAGA again

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[15] Chapter 2002-19, L.O.F.; s. 409.145(6), F.S.
[16] Chapter 2004-362, L.O.F.
[17] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Improved Fiscal and Quality Oversight Is Needed for the Independent Living Program*, Report No. 04-78. (Nov. 2004), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0478rpt.pdf.
[18] *Id.* At a minimum, education indicators should include: percentage of youth at or above grade level; percentage of youth taking college preparatory courses; percentage of youth graduating from high school; percentage of youth completing a general equivalency degree (GED); percentage of youth entering and completing a 2-year and/or 4-year postsecondary education; and percentage of youth completing a vocational program.
[19] *Id.* At a minimum, life skills indicators should include: percentage of youth receiving life skills training; percentage youth completing a financial literacy course; percentage of youth opening and maintaining an active bank account; percentage of youth with a medical care provider; percentage of youth who are unwed parents; percentage of youth 18 and over with housing; percentage of youth homeless for at least 1 night; percentage of youth arrested; percentage of youth on probation; and percentage of youth incarcerated by the Department of Corrections or the Department of Juvenile Justice.
[20] *Id.* At a minimum, employment indicators should include: percentage of youth who are employed; average length of time youth retain their jobs; percentage of youth in jobs with health benefits; percentage of youth employed in jobs paying above minimum wage.
[21] *Id.*
[22] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth*, Report No. 05-61. (Dec. 2005), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0561rpt.pdf.
[23] Chapter 2006-25, Laws of Fla. These standards were to be consistent with, but not limited to, the standards contained in the Office of Program Policy and Analysis and Government Accountability (OPPAGA) Report No. 04-78.
[24] *Id.*
[25] *Id.*

recommended that the department develop the required standards and incorporate them into lead agency contracts.[26]

- The annual report published by the Independent Living Services Advisory Council (ILSAC) in 2008 stated:

  In our 2006 report, the ILSAC developed a set of youth outcome measures that we encouraged the department to adopt and integrate. It was our expectation, the legislature and the Department would find elements of the baseline data so alarming that a sense of urgency and call to action would result in the immediate establishment of youth outcome measures and benchmarks in every community based care contract… In the last year, we still have not identified and established Florida's standard of acceptable youth outcome levels; and those acceptable youth outcomes have not been incorporated into the CBC contracts.[27]

- The department's response to the 2007 OPPAGA report indicated that they were revising lead agency contracts to include minimum standards. However, a subsequent report issued by OPPAGA in 2010 stated that the department had not established an effective mechanism to ensure that lead agencies meet minimum contract standards and that the department failed to establish outcome measures as required by law.[28]

Additional IL Program Findings:

Office of Program Policy and Government Accountability (OPPAGA)

Office of Program Policy and Government Accountability (OPPAGA) evaluated and examined numerous aspects of the IL program multiple times since 2004. In addition to findings related to outcome measures and minimum standards, OPPAGA reports the following:

- In 2005, OPPAGA evaluated the independent living services program. While the primary focus of the OPPAGA evaluation was on services for young adults formerly in foster care, OPPAGA also sought to determine if the department was adequately monitoring the delivery of contracted independent living services.[29] OPPAGA concluded that while the department's oversight of community based care providers had improved over time, more improvements were needed. Specifically, quality management processes did not ensure that providers were delivering quality services.[30]
- In 2007 OPPAGA re-evaluated the independent living services program and reported that the department needs to improve fiscal oversight to ensure that program resources were being

[26] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Improved Fiscal and Quality Oversight Is Needed for the Independent Living Program*, Report No. 07-11. (Feb. 2007) *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0711rpt.pdf.
[27] Report of Independent Living Services for Florida's Foster Youth (2008), Independent Living Services Advisory Council. *available at* http://centerforchildwelfare2.fmhi.usf.edu/kb/Prgprac/ILSACreport2008.pdf (last visited January 10, 2013).
[28] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *DCF Has Improved Some Aspects of Independent Living Program Oversight: Other Long-Standing Problems Remain*, Report No. 10-30. (Mar. 2010), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1030rpt.pdf.
[29] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth*, Report No. 05-61. (Dec. 2005), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0561rpt.pdf.
[30] *Id.*

used as intended and in compliance with state and federal guidelines. OPPAGA determined that lack of information hinders the department's ability to provide oversight and assess the quality and level of independent living services. As a result, neither the department nor the lead agencies could readily determine if children in care receive the required independent living transition services. This also has hindered the department and lead agencies' ability to accurately determine budget needs for serving the population.[31]

- In 2010, OPPAGA found that the department broadened its contract monitoring and quality assurance systems to better address key elements of the IL program but continued to lack the ability to track whether 13-17 year olds received services as required by law.[32]

Office of the Auditor General

In the most recent operational audit of the DCF independent living transition services program conducted by the Auditor General, audit findings revealed the following:

- Needs Assessment – The department and CBC lead agencies did not require that actual living and educational expenses be utilized as a basis for determining the amounts of the RTI awards made to high school students. The department set the amount of the award at the statutory maximum. Additionally, for postsecondary students, the department and CBCs were unable to provide documentation supporting the appropriateness of the amounts of the RTI awards.
- Appropriate Progress – DCF rules and guidelines did not specifically address the type of documentation that would be sufficient to demonstrate appropriate progress by students in GED programs.
- Services and Payments – There were instances where young adults received multiple payments for the same service from multiple programs. Documentation was not always provided evidencing assessment of need for Aftercare Support assistance. In addition:
  - There was an inappropriate use of Transitional Support funds for achieving an educational goal;
  - Payments were erroneously coded;
  - Payments were made to ineligible individuals;
  - There were instances where young adults did not meet program eligibility requirements, including instances in which the maximum age limitation was exceeded; and
  - Payments were made in excess of established spending caps.
- Subsidized Independent Living (SIL) – The department and CBCs were unable to provide documentation to support the required number of services worker visitations. In addition, the department and applicable CBCs were unable to provide documentation showing that staffings, assessments, and judicial reviews had been completed.
- Staffings, Assessments, Case Plans – The department and CBCs did not properly conduct or provide supporting documentation showing that staffings, assessments, and case plans for adolescents ages 13 to 17 had been completed.

[31] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature *Improved Fiscal and Quality Oversight Is Needed for the Independent Living Program*, Report No. 07-11. (February 2007), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0711rpt.pdf.

[32] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature *DCF Has Improved Some Aspects of Independent Living Program Oversight: Other Long-Standing Problems Remain*, Report No. 10-30. (Mar. 2010), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1030rpt.pdf.

- **Florida Safe Families Network (FSFN)** – DCF did not require CBCs to fully utilize the functionality of FSFN specific to the independent living (IL) program although system capabilities were available.
- **Monitoring** – Department monitoring efforts were not sufficient to ensure IL program compliance.[33, 34]

An operational audit of the independent living transition services program performed by the Auditor General in 2005 at the direction of the Legislature reported almost identical findings.[35]

Independent Living Services Advisory Council (ILSAC)

When the Florida Legislature established a new framework for Florida's independent living transition services in 2002, the legislation provided for the creation of an independent living services integration workgroup tasked with assessing the implementation and operation of the redesigned program. The ILSAC annual reports are required to be accompanied by a report from the department that identifies the recommendations of the workgroup and either describes the department's actions to implement these recommendations or provides the department's rationale for not implementing the recommendations.[36]

- The 2006 annual report stated that the ILSAC recognized that there have been tremendous strides in the past year. However, much more needs to be done before to help young people who are out of foster care become successful and productive. The report continues, "we have gone on too long without accountability. Every dollar spent on independent living services should have a measurable impact on the quality of the lives for our foster care youth and young adults, especially in the areas of education, employment, housing, financial stability and permanency."[37]
- Baseline data indicates significant areas of deficit in both youth achievement and Community Based Care service delivery practice.[38]
- Baseline data continues to indicate significant areas of deficit in both youth achievement and Community Based Care service delivery practice.[39]
- ILSAC has recommended since 2006 that a program planning and delivery reporting tool be developed for determining the independent living services, outcomes and fiscal implications of projected and actual delivery of services for youth ages 13 to 23 for all CBC lead agencies. ILSAC has also recommended establishment of provider accountability through corrective action as part of ongoing quality assurance benchmarks, not of services provided or youth served, but of outcomes achieved by youth in care. This would show how young adults in

[33] Office of the Auditor General. *Operational Audit. Department Of Children And Family Services. Independent Living Transition Services Program.* Report No. 2011-176. (Apr. 2011).
[34] A follow-up to Report No. 2011-176 is currently in progress.
[35] Office of the Auditor General. *Operational Audit. Department Of Children And Family Services. Independent Living Transition Services Program.* Report No. 2005-119. (Feb. 2005).
[36] Section 409.1451, F.S. In 2004, the workgroup became the Independent Living Services Advisory Council.
[37] Independent Living Services Advisory Council. Annual Report. 2006. *available at* http://centerforchildwelfare2.fmhi.usf.edu/kb/indliv/ILSAC_2006report.pdf.
[38] *Report of Independent Living Services for Florida's Foster Youth* (2008). Independent Living Services Advisory Council. *available at* http://centerforchildwelfare2.fmhi.usf.edu/kb/Prgprac/ILSACreport2008.pdf
[39] *Report of Independent Living Services for Florida's Foster Youth* (2009). Independent Living Services Advisory Council. *available at* http://centerforchildwelfare2.fmhi.usf.edu/kb/Prgprac/ILSACreport09.pdf.

foster care are faring in terms of education, permanency, health care, and employment. Outcomes have been established in CBC lead agency contracts in the past year but are still inadequate in measuring success of youth.[40]

Department of Children and Family Services Report on Outcome Measures and Oversight Activities

The department was required to develop outcome measures for the independent living transition services program and other performance measures in order to maintain oversight of the program.[41] A required annual report to the Legislature must contain an analysis of performance on the outcome measures reported for each community-based care lead agency as compared with the performance of the department on the same measures and a description of the department's oversight of the program, including, by lead agency, any programmatic or fiscal deficiencies found, corrective actions required, and current status of compliance.[42]

The department's Contract Oversight Unit randomly selected cases of youth eligible to receive independent living services and young adults formerly in foster care and conducted a file review to determine if the requirements of the Florida Statutes and Florida Administrative Code were met. This included a review of eligibility requirements for these services. Deficiencies in cases or areas of concern with the delivery of independent living services were noted in reports submitted to the department's contract managers and department leadership. The contract managers determined if the area of deficiency warranted a corrective action plan (CAP). If a CAP was needed, the community-based care lead agency was required to develop steps and processes to bring services into compliance with federal regulations, Florida Statutes, Florida Administrative Code, and the contract. The January 2012 report contains the following table (Table 2) summarizing the monitoring of the community-based care lead agencies for the 2011 calendar year and the action taken by the department to address deficiencies.[43]

Table 2.

CIRCUIT	CBC	IDENTIFIED AREAS OF DEFICIENCY (SPECIFIC TO IL SERVICES)	DCF RESPONSE (SPECIFIC TO IL SERVICES)
3, 8	Partnership for Strong Families	Independent Living requirements were not met	Corrective Action Plan is in place.
4	Family Support Services of North Florida	Some Independent Living requirements were not met	Corrective Action Plan not needed.
4	Clay Baker Kids, Inc.	Some Independent Living requirements were not met	Corrective Action Plan is in place.

[40] *Report of Independent Living Services for Florida's Foster Youth* (2011). Independent Living Services Advisory Council. *available at* http://centerforchildwelfare2.fmhi.usf.edu/kb/LegislativeMandatedRpts/ILSACreport_2011%20Final.pdf .
[41] Section 409.1451(6), F.S.
[42] *Id.*
[43] *Report on Outcome Measures and Oversight Activities of the Independent Living Transition Services Program.* Department of Children and Family Services. (Jan. 2009), *available at* http://www.dcf.state.fl.us/programs/indliving/docs/2012%20ILSAC%20Report%20final.pdf/.

7	Family Integrity Program	Some Independent Living requirements were not met	Corrective Action Plan not needed.
11	Our Kids of Miami-Dade-Monroe, Inc.	Some Independent Living requirements were not met	Corrective Action Plan is in place.
17	ChildNet, Inc.	Independent Living requirements were not met	Corrective Action Plan is in place.
19	United for Families	Some Independent Living requirements were not met	Corrective Action Plan is in place.
20	Children's Network of SW Florida	Independent Living requirements were not met	Corrective Action Plan is in place.

Surveys

To address federal and state requirements, the department implemented two surveys to capture data on independent living services and outcomes:

- The My Services Review Survey that captures information on services for children 13 to 17 years of age; and
- The National Youth in Transition Database Survey that captures data and tracks outcomes on young adults 18 to 22 years of age.

My Services Survey Data – Ages 13-17 Spring 2012[44]

Table 3.

EDUCATION	
Foster parents review report cards	76%
Caseworker reviews report cards	69%
Has education and career path	35%
Has changed schools at least once during the school year	47%
HEALTH AND DENTAL CARE	
Receiving needed medical care	86%
Saw a dentist in the last year	86%
Had an eye exam in the last year	68%
NORMALCY	
Can spend time with friends without adult supervision	65%
Can spend the night with friends	45%
Receives a personal allowance each week	53%
Has a driver's license (ages 16-17 years only)	3%
JUVENILE JUSTICE SYSTEM INVOLVEMENT	
Has been arrested in the past 12 months	28%
Is currently on probation or under DJJ supervision	22%

[44] Department of Children and Families. *available at* http://www.myflfamilies.com/service-programs/independent-livingarchive-data.

Florida Nation Youth in Transition Survey Data - Ages 18-22 Spring 2012[45]

Table 4.

EDUCATION	
Completed grade 12 or GED	57%
Completed post-secondary education	7%
EMPLOYMENT	
Any job – full-time, part-time, temporary, seasonal	19%
HEALTH AND DENTAL CARE	
Has health insurance coverage	86%
Received dental services in the last year	39%
HOUSING AND TRANSPORTATION	
Safe housing	92%
Experienced homelessness	28%
Reliable means of transportation to school and/or work	80%
Have a driver's license	47%
CRIMINAL JUSTICE SYSTEM INVOLVEMENT	
Arrested in the past 12 months	40%

Fostering Connections to Success and Increasing Adoptions Act

Congress enacted the Fostering Connections to Success and Increasing Adoptions Act[46] in 2008, to improve outcomes for children in care and young adults who have aged out of care by promoting permanent families for them through relative guardianship and adoption and by improving educational stability and quality coordinated health care. Specifically, the Act:

- Promotes permanent families for children in care with relatives by providing notice to relatives when a child enters care, providing subsidized guardianship payments for relatives, and waiving certain licensing standards for relatives;
- Promotes permanent families for children with adoptive families by increasing opportunities for more children with special needs to receive federally-supported adoption assistance; and
- Improves outcomes for children in care by:
  - Allowing children who turn 18 in care without permanent families to remain in care, at a state's option, to age 19, 20, or 21 with continued federal support to increase their opportunities for success as they transition to adulthood;
  - Helping children in care achieve their educational goals by requiring that states ensure that they attend school and, when placed in care, remain at the same school where appropriate, or when a move is necessary, get help transferring promptly to a new school; and
  - Helping improve health care for children in care by requiring the state child welfare agency to work with the state Medicaid agency to create a plan to better coordinate health care for these children in order to ensure appropriate screenings and assessments and

[45] *Id*.
[46] Pub. Law No.110-351, H.R. 6893, 110th Cong. (Oct. 7, 2008).

follow-up treatment and to assure sharing of critical information with appropriate providers and oversight of prescription medications.[47]

Quality Parenting Initiative

The Quality Parenting Initiative (QPI) is a statewide initiative that is a joint project of the Youth Law Center, Florida's Department of Children and Families, community-based care lead agencies, and the Eckerd Family Foundation, which is designed to promote quality care for children in foster care by redefining the expectations and roles of foster parents. QPI was developed to ensure that every child removed from the home because of abandonment, abuse, or neglect is cared for by a foster family who provides skilled, nurturing parenting while helping the child maintain connections with his or her family. The foster family works closely with child welfare agencies, case workers, courts, attorneys, and others to protect the child's best interests.[48]

One of the key ways the QPI supports these foster families is by providing in-depth training to help them manage the challenges they face. These may be routine events, like appearing in court, or more complex problems like helping a child transition home, coping with behavioral problems, or advocating for special education services. The training also helps families to better understand any information they were given about the child at the time of placement so they can be proactive in advocating for the child and getting the right assistance.[49]

A web based learning project connects foster parents with trainers who can answer their questions and give them a framework for dealing with these challenges. The project coordinator will receive requests for training and will quickly identify individuals who are available to provide that training. These may be subject matter experts, like doctors, psychologists, lawyers, or teachers. Or they may be practice experts like other foster parents who have successfully dealt with the same situation.[50]

Normalcy

Background

Each year, approximately 30,000 children in foster care age out of the foster care system nationwide, typically at 18 years of age. This number has risen steadily in the past decade.[51] In Florida, an average of 1,290 children aged out of care over the past three years.[52] These are young adults who experienced significant psychological trauma during their formative years, including being neglected and/or abused, being separated from their homes, friends, families, and

[47] Center for Law and Social Policy. *Fostering Connections To Success And Increasing Adoptions Act*. *available at* http://www.clasp.org/admin/site/publications/files/FINAL_FCSIAA_LongSummary.pdf
[48] Quality Parenting Initiative. Center for Child Welfare. *available at* http://qpiflorida.cbcs.usf.edu/pages/About/About.html (last visited March 27, 2013).
[49] *Id*.
[50] *Id*.
[51] Congressional Coalition on Adoption Institute. Fact Sheet. (2011), *available at* http://www.ccainstitute.org/why-we-do-it-/facts-and-statistics.html (last visited Jan. 28, 2013).
[52] Provided as part of a data request from Senate Children, Families, and Elder Affairs staff to the Department of Children and Families. Response received on Dec. 21, 2012.

most things familiar to them and experiencing multiple placements in homes and group home settings.

The foster care system, which has historically been focused on safety and concerned about liability, often creates huge barriers to the normalcy of a child's experiences growing-up, causing children in care to miss out on many rites of passage common to their peers. While their friends are getting their driver's licenses, most children in care are not since they generally have no one to teach them to drive or the money for insurance or driver's education, let alone access to a car.[53] Other rites of passage are anything but typical for children in care, as each one requires additional layers of bureaucracy. Getting a first job, participating in sports, going camping with friends, and even going to the prom are all examples of activities that, while may be a normal part of growing up for most children and teenagers, are not always readily available to many foster youth.[54]

These problems often compound for children in care who live their teen years in group homes. They often do not benefit from normal growing-up experiences that most children take for granted, but which prepare them for adult life, such as seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, or undertake the dozens of other mundane tasks required to run a household.[55] In Florida, 60 percent of children 13-17 years of age live in group homes.[56]

Florida Law

The Department of Children and Families (DCF or department) and community-based care lead agencies (CBCs) are responsible for dependency proceedings and managing and providing child protection, foster care, and adoption services. Foster care services include a range of independent living services. Section 409.1451, F.S., requires the department to adopt by rule procedures to administer the independent living transition services program, including balancing the goals of normalcy and safety for children and providing caregivers with as much flexibility as possible to enable a child to participate in normal life experiences. The current rule, relating to licensed out of home caregiver roles provides that:

- Children in licensed out-of-home care shall be afforded every opportunity for social development, recreation, and normalization of their lives. Children in licensed out of home care may attend overnight or planned outings if such activities are determined to be safe and appropriate by the licensed out-of-home caregiver. The services worker … must be notified of the activity.
- The licensed out of home caregiver may allow foster children to experience circumstances without adult supervision depending on the child's age, maturity, and ability to make appropriate decisions … the licensed out of home caregiver shall be prudent and

[53] Martha Shirk and Gary Stangler, *On Their Own*, Basic Books (2004).
[54] *Id.*
[55] First Star and Children's Advocacy Institute of the University of San Diego School of Law. *The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security.* (2011). *available at* http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf (last visited Jan. 28, 2013).
[56] Provided as part of a data request from the Senate Children, Families and Elder Affairs Committee staff to the Department of Children and Families. Response received on Dec. 21, 2012.

conscientious about circumstances where the child is granted independence, including trips to the movies, mall, athletic events, and work.
- Overnight trips exceeding one night must be approved by the child's services worker and must not interfere with visitation schedules.
- Background checks for dating and outings, such as school field trips, Cub Scout campouts, and activities with friends, families, school and church groups, are not necessary for participation in normal school or community activities.[57]

The department has proposed changes to the rule relating to licensed out of home caregiver roles. However, these changes do not appear to substantively change provisions relating to normalcy. In addition, former secretaries and the current secretary of the department have issued memoranda requiring community-based care lead agencies and their providers to implement policies related to normalcy.[58] In general, foster teens continue to report that the effort to establish a more normal living environment is still lagging.[59]

III. Effect of Proposed Changes:

The bill creates an option for young adults who have not found permanency before turning 18 years of age to remain in care up to the age of 21 in order to finish high school, earn a GED, pursue postsecondary education, or begin a career. The bill also restructures the Road-To-Independence Program, strengthens the role and authority of foster parents and group home parents, and codifies the concept of normalcy for children in care. Specifically, the bill provides the following:

Extension of Foster Care

In sections 1, 2, 3, and 4, the bill provides young adults with the ability to remain in care until they reach 21 years of age. This would give those young adults who are eligible to and choose to remain in care up to an additional 3 years to be provided housing and other services and support to finish secondary or postsecondary education or become employed. Young adults may remain in care if they are:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

For a young adult choosing to remain in care, the bill provides for:

[57] Rule 65C-13.029, F.A.C.
[58] See Memorandum from Lucy Hadi dated Aug. 31, 2005, Memorandum from George Sheldon dated Sept. 3, 2010, and Memorandum from David Wilkins dated Jan. 20, 2012. (on file with the Senate Children, Families, and Elder Affairs Committee.)
[59] Independent Living Services Advisory Council. Annual Report. 2012.

- Creation of a transition plan after his or her 17th birthday which will be reviewed and updated as necessary until leaving care;
- Extension of court jurisdiction for as long as he or she remains in care;
- Specific criteria to be considered during judicial reviews;
- Extension of case management and other necessary services until he or she leaves care;
- The ability to transition in and out of care until the age of 21;
- Supervised living arrangements and required standards for those arrangements; and
- A process for appealing a determination of eligibility to remain in care.

Road-to-Independence Program

In section 6, the bill restructures the current Road-To-Independence Program to accommodate the differing needs of young adults who either remain in foster care or leave and in pursuit of a postsecondary skill, trade, or higher education.

A young adult is eligible for services and support under this subsection if he or she:

- Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding placement or adoption;
- Spent at least 6 months in licensed care before reaching his or her 18th birthday;
- Earned a standard high school diploma or its equivalent;
- Is admitted to an eligible postsecondary educational institution based on Florida Bright Futures Scholarship Program standards;[60]
- Is between 18 and 22 years old;
- Has applied, with assistance from a caregiver and community-based lead agency, for any other eligible grants and scholarships;
- Submitted a Free Application for Federal Student Aid (FAFSA) form which is complete and error free; and
- Signed an agreement to give the department and the community-based care lead agency access to school records.

The amount of financial assistance provided for pursuing postsecondary education depends on whether a young adult remains in care and whether or not he or she continues to live in a licensed foster home, licensed group home, or another supervised living arrangement:

- For a young adult who does not remain in foster care and is attending a postsecondary school, the amount is $1,256 monthly.
- For a young adult who remains in foster care, and continues to reside in a licensed foster home, the amount is the established room and board rate for foster parents.

[60] Section 1009.533, F.S., defines an eligible postsecondary institution as a state public university, a college system institution, a career center, or a private college, university, or institution with certain accreditation.

- For a young adult who remains in foster care, but temporarily resides away from a licensed foster home to attend a postsecondary school, the amount is $1,256 monthly. This takes the place of the foster care room and board payment.
- For a young adult who remains in foster care, is attending a postsecondary school, and continues to reside in a licensed group home, the amount is negotiated between the community-based care lead agency and the licensed group home provider.
- For a young adult who remains in foster care, but temporarily resides away from a licensed group home for purposes of attending a postsecondary school, the amount is $1,256 monthly. This takes the place of a negotiated room and board rate.

A young adult is eligible to receive financial assistance while enrolled in a postsecondary educational institution.

Payment of financial assistance for a young adult who:

- Is not in foster care and is attending a postsecondary school is made to the community-based care lead agency in order to secure housing and utilities with the balance paid directly to the young adult until the lead agency and the young adult determine that the young adult can successfully manage the full amount of the assistance.
- Remains in foster care under s. 39.6251, F.S., and is attending postsecondary school is made directly to the foster parent or group home provider.

The bill provides for aftercare services for young adults who have chosen not to remain in foster care after reaching 18 years of age and who are not receiving financial assistance under this program to pursue postsecondary education. Aftercare services include, but are not limited to, the following:

- Mentoring and tutoring.
- Mental health services and substance abuse counseling.
- Life skills classes, including credit management and preventive health activities.
- Parenting classes.
- Job and career skills training.
- Counselor consultations.
- Temporary financial assistance for emergency situations.
- Financial literacy skills training.

A young adult between 18 and 22 years of age who leaves foster care at 18 years of age may request services before reaching 23 years of age.

The bill provides for portability of services and support for children and young adults who relocate within the state and provides for a transition for those young adults who entered the program under current law.

Quality Parenting

In section 6, the bill codifies the concept that temporary or permanent substitute quality parenting is a core function of the system of care required of the department. The bill recognizes the effectiveness of the Quality Parenting Initiative in Florida by:

- Relieving caseworkers of many responsibilities associated with independent living services for 13 to17 year olds, transferring those duties to the foster parents and group home parents, and eliminating the need to contract for those services;
- Providing requirements and expectations for foster parents and group home parents and providers;
- Providing requirements and expectations for the department, the community-based care lead agencies, and their providers;
- Requiring adequate training and support for foster parents, inclusion in a full and equal respectful partnership with other participants in the child welfare system, and authority to assist in meeting the goals of the child and the family;
- Requiring the same education, training, background, and other screening requirements for group home staff as foster parents; and
- Codifying the board rate for foster parents and providing for an annual cost of living adjustment.

The bill also requires certain specified information related to a child to be shared with foster parents and group home parents and provides requirements related to transitioning a child from one placement to another.

Normalcy

In section 6, the bill makes numerous changes to the law relating to normalcy for children in foster care including:

- Providing legislative findings and intent that recognize the importance of normalizing the lives of children in foster care;
- Providing definitions for the terms “age-appropriate,” “caregiver,” and “reasonable and prudent parent standard;”
- Requiring verification by the department and the community-based care lead agencies that private providers have policies in place promoting and protecting the concept of normalcy;
- Establishing a reasonable and prudent parent standard of care and provides for application of the standard;
- Protecting caregivers who apply the reasonable and prudent parent standard from liability; and
- Eliminating the current requirements to develop a normalcy plan and quarterly updates for children in foster care and replacing them with an assessment of normalcy goals and objectives at each judicial review.

Additional Provisions

In sections 9 and 11, the bill also provides for the following:

- Collaboration between DCF and colleges and universities for an educational support program; and
- A new budget category for the IL program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will require termination or non-renewal of most, of not all of the contracts between CBC lead agencies and providers for independent living services for children 13-17 years of age.

The bill also has the potential to reduce the workload of caseworkers and IL case managers which could either result in those staff having more time to spend with children and their families or a reduction in the number of those positions.

The bill may result in an increased cost to those providers who operate group homes, particularly those that use a shift care model, for staff training.

C. Government Sector Impact:

The fiscal impact of the bill to the state can only be estimated as the actual impact will be determined by individual choices young adults in the foster care system will make and the types of services they may require. The main choice young adults in foster care will make is whether to stay in care and whether to pursue postsecondary education. Over the last three years, an average of 1,290 young adults left foster care at age 18. Table 5 below shows the estimated fiscal impact if all young adults in the foster care system decided at

age 18 to stay in care. The costs shown are estimates of expenditures by the community based care lead agencies to serve this group.

Table 5.

ALL YOUNG ADULTS STAY IN CARE	FY 2011-12 EXPENDITURES	EFFECT OF BILL	ESTIMATED ANNUAL COSTS	NOTES
IL Case Mtg./Life Skills Training	13,066,982	(7,936,848)	5,130,134	No IL case mgt./Life Skills Training costs for youth age 13-17. Remaining costs are for IL case mgt. for grandfathered youth.
Subsidized IL	276,761	(276,761)		No more subsidized living.
Aftercare Services	628,794	(628,794)		No aftercare needed as all young adults stay in care.
Transitional Support Services	5,208,321	(5,208,321)		All stay in care, no transition support until 18 years olds reach 21.
RTI Stipends	29,858,300	(9,808,128)	20,050,172	55% of current RTI participants are completing high school with an average payment of $1,152/month. Of 1,290 young adults reaching age 18, 710 (55%) would be ineligible for RTI due to not completing high school. Reduced costs = 710*$1,152*12. Remaining costs for grandfathered young adults.
RTI/room and board for new eligible young adults	N/A	14,969,315	14,969,315	1,290 young adults at $515 per month for foster care, $1,256 for group home care. Used ratio of 61/39, group care to foster care.
Case mgt. for 18-20 year olds	N/A	3,234,030	3,234,030	Current cost of case mgt. for IL for 18-23 year olds is $2,507 per year. $2,507 per client per year for 1,290 young adults.
TOTAL	49,039,158	(5,655,507)	43,383,651	

Table 6 shows the estimated fiscal impact of the bill if half of the estimated 1,290 young adults in foster care choose to remain in foster care.

Table 6.

HALF OF YOUNG ADULTS STAY IN CARE	FY 2011-12 EXPENDITURES	EFFECT OF BILL	ESTIMATED ANNUAL COSTS	NOTES
IL Case Mtg./Life Skills Training	13,066,982	(7,936,848)	5,130,134	No IL case mgt./Life Skills Training costs for youth age 13-17. Remaining costs are for IL case mgt. for grandfathered youth.
Subsidized IL	276,761	(276,761)		No more subsidized living.
Aftercare Services	628,794	(314,397)	314,397	Services reduced by half to reflect half of formerly aging out youth staying in care.

HALF OF YOUNG ADULTS STAY IN CARE	FY 2011-12 EXPENDITURES	EFFECT OF BILL	ESTIMATED ANNUAL COSTS	NOTES
Transitional Support Services	5,208,321	(2,604,161)	2,604,161	Services reduced by half to reflect half of formerly aging out youth staying in care.
RTI Stipends	29,858,300	(9,808,128)	20,050,172	55% of current RTI participants are completing high school with an average payment of $1,152/month. Of 1,290 young adults reaching age 18, 710 (55%) would be ineligible for RTI due to not completing high school. Reduced costs = 710*$1,152*12. Remaining costs for grandfathered young adults.
RTI/room and board for new eligible young adults	N/A	11,859,305	11,859,305	Cost for 645 young adults in care is $7.5 m. $515 per month for foster care, $1,256 for group home care. Used ratio of 61/39, group care to foster care. Cost for 645 leaving care is $4.3 m, estimated 45% will qualify for RTI at $1,256 per month.
Cast mgt. for 18-20 year olds	N/A	1,617,015	1,617,015	Current cost of case mgt. for IL for 18-23 year olds is $2,507 per year. $2,507 per client per year for 645 young adults.
TOTAL	49,039,158	(7,463,975)	41,575,184	

Table 7 shows the estimated fiscal impact if none of the 1,290 young adults in foster care decide to stay in care. Costs will be incurred for some of these young adults as they would qualify for the Road to Independence program. Others leaving care may need transitional support.

Table 7.

NONE OF YOUNG ADULTS STAY IN CARE	FY 2011-12 EXPENDITURES	EFFECT OF BILL	ESTIMATED ANNUAL COSTS	NOTES
IL Case Mtg./Life Skills Training	13,066,982	(7,936,848)	5,130,134	No IL case mgt./Life Skills Training costs for youth age 13-17. Remaining costs are for IL case mgt. for grandfathered youth.
Subsidized IL	276,761	(276,761)		No more subsidized living.
Aftercare Services	628,794		628,794	Costs remain same.
Transitional Support Services	5,208,321	4,400,190	9,608,511	All 1,290 leave care. Cost is $3,411 per year per client (1,290*$3,411).
RTI Stipends	29,858,300	(9,808,128)	20,050,172	55% of current RTI participants are completing high school with an average payment of $1,152/month. Of 1,290 young adults reaching age

NONE OF YOUNG ADULTS STAY IN CARE	FY 2011-12 EXPENDITURES	EFFECT OF BILL	ESTIMATED ANNUAL COSTS	NOTES
				18, 710 (55%) would be ineligible for RTI due to not completing high school. Reduced costs = 710*$1,152*12. Remaining costs for grandfathered young adults.
RTI/room and board for new eligible young adults	N/A	8,741,760	8,741,760	45% of 1,290 18 year olds would be eligible for RTI at a cost of $1,256 per month. (580*$1,256)*12.
Cast mgt. for 18-20 year olds	N/A	1,454,060	1,454,060	$2,507 per client for case mgt. for 45% of 1,290 who would qualify for RTI (580).
TOTAL	49,039,158	(3,425,727)	45,613,431	

Finally, to account for inflation, the bill requires an increase in dollar amount based on the annual consumer price index of foster care payments to licensed foster homes. The Department of Children and Families reports that in Fiscal Year 2011-2012, $47,608,375 was spent on foster home room and board payments. According to the U.S. Department of Labor's Bureau of Labor Statistics, the most recent consumer price index for the south region was 1.7 percent. Using this figure, the cost of increasing foster care payments for the first year of the bill is $404,671. The increase would begin on January 1, 2014. A full year cost for such an adjustment would be $809,342.

To the extent that more 18 to 20 year old foster children stay in care, the court may see an increase in the number of judicial review hearings.[61]

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.

[61] Office of the State Courts Administrator, *2013 Judicial Impact Statement* (March 11, 2013).

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

By the Committee on Children, Families, and Elder Affairs

586-01714A-13 20131036__

A bill to be entitled

An act relating to independent living; amending s. 39.013, F.S.; providing that when the court obtains jurisdiction over a child who has been found to be dependent, the court retains jurisdiction until the child reaches 21 years of age; providing exceptions; creating s. 39.6035, F.S.; requiring the Department of Children and Families, the community-based care provider, and others to assist a child in developing a transition plan after the child reaches 17 years of age and requiring a meeting to develop the plan; specifying requirements and procedures for the transition plan; requiring periodic review of the transition plan; requiring the court to approve the transition plan before the child leaves foster care and the court terminates jurisdiction; creating s. 39.6251, F.S.; providing definitions; providing that a young adult may remain in foster care under certain circumstances after attaining 18 years of age; specifying criteria for extended foster care; providing that the permanency goal for a young adult who chooses to remain in care is transition from care to independent living; specifying dates for eligibility for a young adult to remain in extended foster care; providing for supervised living arrangements in extended foster care; authorizing a young adult to return to foster care under certain circumstances; specified services that must be provided to the young adult; directing the court to

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retain jurisdiction and hold review hearings; amending s. 39.701, F.S.; revising judicial review of foster care cases; making technical changes; providing criteria for review hearings for children younger than 18 years of age; providing criteria for review hearings for children 17 years of age; requiring the department to verify that the child has certain documents; requiring the department to update the case plan; providing for review hearings for young adults in foster care; amending s. 409.145, F.S.; requiring the department to develop and implement a system of care for children in foster care; specifying the goals of the foster care system; requiring the department to assist foster care caregivers to achieve quality parenting; specifying the roles and responsibilities of caregivers, the department, and others; providing for transition from a caregiver; requiring information sharing; providing for the adoption and use of a "reasonable and prudent parent" standard; defining terms; providing for the application for the standard of care; providing for limiting liability of caregivers; specifying foster care room and board rates; directing the department to adopt rules; deleting obsolete provisions; amending s. 409.1451, F.S.; providing for the Road-to-Independence program; providing legislative findings and intent; providing for postsecondary services and supports; specifying aftercare services; providing for appeals of a determination of eligibility; providing for

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59 portability of services across county lines and
60 between lead agencies; providing for accountability;
61 creating the Independent Living Services Advisory
62 Council; providing for membership and specifying the
63 duties and functions of the council; requiring reports
64 and recommendations; directing the department to adopt
65 rules; amending s. 409.175; allowing for young adults
66 remaining in care to be considered in total number of
67 children placed in a foster home; amending s. 409.903,
68 F.S.; conforming a cross-reference; directing the
69 Department of Children and Families to work in
70 collaboration with the Board of Governors, the Florida
71 College System, and the Department of Education to
72 help address the need for a comprehensive support
73 structure in the academic arena to assist young adults
74 who have been or remain in the foster care system;
75 providing for a transfer of services; providing for
76 foster care services to be paid from a special
77 category in the General Appropriations Act; providing
78 an effective date.
79
80 Be It Enacted by the Legislature of the State of Florida:
81
82 Section 1. Subsection (2) of section 39.013, Florida
83 Statutes, is amended to read:
84 39.013 Procedures and jurisdiction; right to counsel.—
85 (2) The circuit court has exclusive original jurisdiction
86 of all proceedings under this chapter, of a child voluntarily
87 placed with a licensed child-caring agency, a licensed child-

88 placing agency, or the department, and of the adoption of
89 children whose parental rights have been terminated under this
90 chapter. Jurisdiction attaches when the initial shelter
91 petition, dependency petition, or termination of parental rights
92 petition, or a petition for an injunction to prevent child abuse
93 issued pursuant to s. 39.504, is filed or when a child is taken
94 into the custody of the department. The circuit court may assume
95 jurisdiction over any such proceeding regardless of whether the
96 child was in the physical custody of both parents, was in the
97 sole legal or physical custody of only one parent, caregiver, or
98 some other person, or was not in the physical or legal custody
99 of any person when the event or condition occurred that brought
100 the child to the attention of the court. When the court obtains
101 jurisdiction of any child who has been found to be dependent,
102 the court shall retain jurisdiction, unless relinquished by its
103 order, until the child reaches 21 ~~18~~ years of age, with the
104 following exceptions:
105 (a) If a young adult chooses to leave foster care upon
106 reaching 18 years of age.
107 (b) If a young adult does not meet the eligibility
108 requirements to remain in foster care under s. 39.6251.
109 (c) ~~However,~~ If a young adult ~~youth~~ petitions the court at
110 any time before his or her 19th birthday requesting the court's
111 continued jurisdiction, the juvenile court may retain
112 jurisdiction under this chapter for a period not to exceed 1
113 year following the young adult's ~~youth's~~ 18th birthday for the
114 purpose of determining whether appropriate ~~aftercare support,~~
115 ~~Road-to-Independence Program, transitional support, mental~~
116 ~~health, and developmental disability~~ services~~,~~ that were

117 required to be provided to the young adult before reaching 18
118 years of age, ~~to the extent otherwise authorized by law,~~ have
119 been provided ~~to the formerly dependent child who was in the~~
120 ~~legal custody of the department immediately before his or her~~
121 ~~18th birthday~~.
122 (d) If a petition for special immigrant juvenile status and
123 an application for adjustment of status have been filed on
124 behalf of a foster child and the petition and application have
125 not been granted by the time the child reaches 18 years of age,
126 the court may retain jurisdiction over the dependency case
127 solely for the purpose of allowing the continued consideration
128 of the petition and application by federal authorities. Review
129 hearings for the child shall be set solely for the purpose of
130 determining the status of the petition and application. The
131 court's jurisdiction terminates upon the final decision of the
132 federal authorities. Retention of jurisdiction in this instance
133 does not affect the services available to a young adult under s.
134 409.1451. The court may not retain jurisdiction of the case
135 after the immigrant child's 22nd birthday.
136 Section 2. Section 39.6035, Florida Statutes, is created to
137 read:
138 39.6035 Transition plan.—
139 (1) During the 180-day period after a child reaches 17
140 years of age, the department and the community-based care
141 provider, in collaboration with the caregiver and any other
142 individual whom the child would like to include, shall assist
143 the child in developing a transition plan. The required
144 transition plan is in addition to standard case management
145 requirements. The transition plan must address specific options

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146 for the child to use in obtaining services, including housing,
147 health insurance, education, and workforce support and
148 employment services. The plan must also consider establishing
149 and maintaining naturally occurring mentoring relationships and
150 other personal support services. The transition plan may be as
151 detailed as the child chooses. In developing the transition
152 plan, the department and the community-based provider shall:
153 (a) Provide the child with the documentation required
154 pursuant to s. 39.701(7); and
155 (b) Coordinate the transition plan with the independent
156 living provisions in the case plan and, for a child with
157 disabilities, the Individuals with Disabilities Education Act
158 transition plan.
159 (2) The department and the child shall schedule a time,
160 date, and place for a meeting to assist the child in drafting
161 the transition plan. The time, date, and place must be
162 convenient for the child and any individual whom the child would
163 like to include. This meeting shall be conducted in the child's
164 primary language.
165 (3) The transition plan shall be reviewed periodically with
166 the child, the department, and other individuals of the child's
167 choice and updated when necessary before each judicial review so
168 long as the child or young adult remains in care.
169 (4) If a child is planning to leave care upon reaching 18
170 years of age, the transition plan must be approved by the court
171 before the child leaves care and the court terminates
172 jurisdiction.
173 Section 3. Section 39.6251, Florida Statutes, is created to
174 read:

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175 39.6251 Continuing care for young adults.—
176 (1) As used in this section, the term "child" means an
177 individual who has not attained 21 years of age, and the term
178 "young adult" means an individual who has attained 18 years of
179 age but who has not attained 21 years of age.
180 (2) The primary goal for a child in care is permanency. A
181 child who is living in licensed care on his or her 18th birthday
182 and who has not achieved permanency under s. 39.621, is eligible
183 to remain in licensed care under the jurisdiction of the court
184 and in the care of the department. A child is eligible to remain
185 in licensed care if he or she is:
186 (a) Completing secondary education or a program leading to
187 an equivalent credential;
188 (b) Enrolled in an institution that provides postsecondary
189 or vocational education;
190 (c) Participating in a program or activity designed to
191 promote or eliminate barriers to employment;
192 (d) Employed for at least 80 hours per month; or
193 (e) Unable to participate in programs or activities listed
194 in (a)-(d) full time due to a physical, intellectual, emotional,
195 or psychiatric condition that limits participation. Any such
196 barrier to participation must be supported by documentation in
197 the child's case file or school or medical records of a
198 physical, intellectual, or psychiatric condition that impairs
199 the child's ability to perform one or more life activities.
200 (3) The permanency goal for a young adult who chooses to
201 remain in care is transition from licensed care to independent
202 living.
203 (4)(a) The young adult must reside in a supervised living

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204 environment that is approved by the department or a community-
205 based care lead agency. The young adult shall live
206 independently, but in an environment in which he or she is
207 provided supervision, case management, and supportive services
208 by the department or lead agency. Such an environment must offer
209 developmentally appropriate freedom and responsibility to
210 prepare the young adult for adulthood. For the purposes of this
211 subsection, a supervised living arrangement may include a
212 licensed foster home, licensed group home, college dormitory,
213 shared housing, apartment, or another housing arrangement if the
214 arrangement is approved by the community-based care lead agency
215 and is acceptable to the young adult, with first choice being a
216 licensed foster home. A young adult may continue to reside with
217 the same licensed foster family or group care provider with whom
218 he or she was residing at the time he or she reached the age of
219 18 years.
220 (b) Before approving the residential setting in which the
221 young adult will live, the department or community-based care
222 lead agency must ensure that:
223 1. The young adult will be provided with a level of
224 supervision consistent with his or her individual education,
225 health care needs, permanency plan, and independent living goals
226 as assessed by the department or lead agency with input from the
227 young adult. Twenty-four hour on-site supervision is not
228 required, however, 24-hour crisis intervention and support must
229 be available.
230 2. The young adult will live in an independent living
231 environment that offers, at a minimum, life skills instruction,
232 counseling, educational support, employment preparation and

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233 placement, and development of support networks. The
234 determination of the type and duration of services shall be
235 based on the young adult's assessed needs, interests, and input
236 and must be consistent with the goals set in the young adult's
237 case plan.
238 (5) Eligibility for a young adult to remain in extended
239 foster care ends on the earliest of the dates that the young
240 adult:
241 1. Reaches 21 years of age or, in the case of a young adult
242 with a disability, reaches 22 years of age;
243 2. Leaves care to live in a permanent home consistent with
244 his or her permanency plan; or
245 3. Knowingly and voluntarily withdraws his or her consent
246 to participate in extended care. Withdrawal of consent to
247 participate in extended care shall be verified by the court
248 pursuant to s. 39.701, unless the young adult refuses to
249 participate in any further court proceeding.
250 (6) A young adult who is between the ages of 18 and 21 and
251 who has left care may return to care by applying to the
252 community-based care lead agency for readmission. The community-
253 based care lead agency shall readmit the young adult if he or
254 she continues to meet the eligibility requirements in this
255 section.
256 (a) The department shall develop a standard procedure and
257 application packet for readmission to care to be used by all
258 community-based care lead agencies.
259 (b) Within 30 days after the young adult has been
260 readmitted to care, the community-based care lead agency shall
261 assign a case manager to update the case plan and the transition

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262 plan and to arrange for the required services. Such activities
263 shall be undertaken in consultation with the young adult. The
264 department shall petition the court to reinstate jurisdiction
265 over the young adult.
266 (7) During each period of time that a young adult is in
267 care, the community-based lead agency shall provide regular case
268 management reviews that must include at least monthly contact
269 with the case manager. If a young adult lives outside the
270 service area of his or her community-based care lead agency,
271 monthly contact may occur by telephone.
272 (8) During the time that a young adult is in care, the
273 court shall maintain jurisdiction to ensure that the department
274 and the lead agencies are providing services and coordinate
275 with, and maintain oversight of, other agencies involved in
276 implementing the young adult's case plan, individual education
277 plan, and transition plan. The court shall review the status of
278 the young adult at least every 6 months and hold a permanency
279 review hearing at least annually. The court may appoint a
280 guardian ad litem or continue the appointment of a guardian ad
281 litem with the young adult's consent. The young adult or any
282 other party to the dependency case may request an additional
283 hearing or review.
284 (9) The department shall establish a procedure by which a
285 young adult may appeal a determination of eligibility to remain
286 in care that was made by a community-based care lead agency. The
287 procedure must be readily accessible to young adults, must
288 provide for timely decisions, and must provide for an appeal to
289 the department. The decision of the department constitutes final
290 agency action and is reviewable by the court as provided in s.

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291 120.68.
292 Section 4. Section 39.701, Florida Statutes, is amended to
293 read:
294 39.701 Judicial review.—
295 (1) GENERAL PROVISIONS.—
296 (a) The court shall have continuing jurisdiction in
297 accordance with this section and shall review the status of the
298 child at least every 6 months as required by this subsection or
299 more frequently if the court deems it necessary or desirable.
300 (b) The court shall retain jurisdiction over a child
301 returned to his or her parents for a minimum period of 6 months
302 following the reunification, but, at that time, based on a
303 report of the social service agency and the guardian ad litem,
304 if one has been appointed, and any other relevant factors, the
305 court shall make a determination as to whether supervision by
306 the department and the court's jurisdiction shall continue or be
307 terminated.
308 (c)1.~~(2)(a)~~ The court shall review the status of the child
309 and shall hold a hearing as provided in this part at least every
310 6 months until the child reaches permanency status. The court
311 may dispense with the attendance of the child at the hearing,
312 but may not dispense with the hearing or the presence of other
313 parties to the review unless before the review a hearing is held
314 before a citizen review panel.
315 2.~~(b)~~ Citizen review panels may conduct hearings to review
316 the status of a child. The court shall select the cases
317 appropriate for referral to the citizen review panels and may
318 order the attendance of the parties at the review panel
319 hearings. However, any party may object to the referral of a

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320 case to a citizen review panel. Whenever such an objection has
321 been filed with the court, the court shall review the substance
322 of the objection and may conduct the review itself or refer the
323 review to a citizen review panel. All parties retain the right
324 to take exception to the findings or recommended orders of a
325 citizen review panel in accordance with Rule 1.490(h), Florida
326 Rules of Civil Procedure.
327 3.~~(c)~~ Notice of a hearing by a citizen review panel must be
328 provided as set forth in paragraph (f) ~~subsection (5)~~. At the
329 conclusion of a citizen review panel hearing, each party may
330 propose a recommended order to the chairperson of the panel.
331 Thereafter, the citizen review panel shall submit its report,
332 copies of the proposed recommended orders, and a copy of the
333 panel's recommended order to the court. The citizen review
334 panel's recommended order must be limited to the dispositional
335 options available to the court in paragraph (2)(d) ~~subsection~~
336 ~~(10)~~. Each party may file exceptions to the report and
337 recommended order of the citizen review panel in accordance with
338 Rule 1.490, Florida Rules of Civil Procedure.
339 (d)1.~~(3)(a)~~ The initial judicial review hearing must be
340 held no later than 90 days after the date of the disposition
341 hearing or after the date of the hearing at which the court
342 approves the case plan, whichever comes first, but in no event
343 shall the review be held later than 6 months after the date the
344 child was removed from the home. Citizen review panels may ~~shall~~
345 not conduct more than two consecutive reviews without the child
346 and the parties coming before the court for a judicial review.
347 2.~~(b)~~ If the citizen review panel recommends extending the
348 goal of reunification for any case plan beyond 12 months from

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349 the date the child was removed from the home, the case plan was
350 adopted, or the child was adjudicated dependent, whichever date
351 came first, the court must schedule a judicial review hearing to
352 be conducted by the court within 30 days after receiving the
353 recommendation from the citizen review panel.
354 3.~~(c)~~ If the child is placed in the custody of the
355 department or a licensed child-placing agency for the purpose of
356 adoptive placement, judicial reviews must be held at least every
357 6 months until the adoption is finalized.
358 4.~~(d)~~ If the department and the court have established a
359 formal agreement that includes specific authorization for
360 particular cases, the department may conduct administrative
361 reviews instead of the judicial reviews for children in out-of-
362 home care. Notices of such administrative reviews must be
363 provided to all parties. However, an administrative review may
364 not be substituted for the first judicial review, and in every
365 case the court must conduct a judicial review at least every 6
366 months. Any party dissatisfied with the results of an
367 administrative review may petition for a judicial review.
368 5.~~(e)~~ The clerk of the circuit court shall schedule
369 judicial review hearings in order to comply with the mandated
370 times cited in this section.
371 6.~~(f)~~ In each case in which a child has been voluntarily
372 placed with the licensed child-placing agency, the agency shall
373 notify the clerk of the court in the circuit where the child
374 resides of such placement within 5 working days. Notification of
375 the court is not required for any child who will be in out-of-
376 home care no longer than 30 days unless that child is placed in
377 out-of-home care a second time within a 12-month period. If the

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378 child is returned to the custody of the parents before the
379 scheduled review hearing or if the child is placed for adoption,
380 the child-placing agency shall notify the court of the child's
381 return or placement within 5 working days, and the clerk of the
382 court shall cancel the review hearing.
383 (e)~~(4)~~ The court shall schedule the date, time, and
384 location of the next judicial review during the judicial review
385 hearing and shall list same in the judicial review order.
386 (f)~~(5)~~ Notice of a judicial review hearing or a citizen
387 review panel hearing, and a copy of the motion for judicial
388 review, if any, must be served by the clerk of the court upon
389 all of the following persons, if available to be served,
390 regardless of whether the person was present at the previous
391 hearing at which the date, time, and location of the hearing was
392 announced:
393 1.~~(a)~~ The social service agency charged with the
394 supervision of care, custody, or guardianship of the child, if
395 that agency is not the movant.
396 2.~~(b)~~ The foster parent or legal custodian in whose home
397 the child resides.
398 3.~~(c)~~ The parents.
399 4.~~(d)~~ The guardian ad litem for the child, or the
400 representative of the guardian ad litem program if the program
401 has been appointed.
402 5.~~(e)~~ The attorney for the child.
403 6.~~(f)~~ The child, if the child is 13 years of age or older.
404 7.~~(g)~~ Any preadoptive parent.
405 8.~~(h)~~ Such other persons as the court may direct.
406 (g)~~(6)~~ The attorney for the department shall notify a

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407 relative who submits a request for notification of all
408 proceedings and hearings pursuant to s. 39.301(14)(b). The
409 notice shall include the date, time, and location of the next
410 judicial review hearing.
411 ~~(7)(a) In addition to paragraphs (1)(a) and (2)(a), the~~
412 ~~court shall hold a judicial review hearing within 90 days after~~
413 ~~a youth's 17th birthday. The court shall also issue an order,~~
414 ~~separate from the order on judicial review, that the disability~~
415 ~~of nonage of the youth has been removed pursuant to s. 743.045.~~
416 ~~The court shall continue to hold timely judicial review hearings~~
417 ~~thereafter. In addition, the court may review the status of the~~
418 ~~child more frequently during the year prior to the youth's 18th~~
419 ~~birthday if necessary. At each review held under this~~
420 ~~subsection, in addition to any information or report provided to~~
421 ~~the court, the foster parent, legal custodian, guardian ad~~
422 ~~litem, and the child shall be given the opportunity to address~~
423 ~~the court with any information relevant to the child's best~~
424 ~~interests, particularly as it relates to independent living~~
425 ~~transition services. In addition to any information or report~~
426 ~~provided to the court, the department shall include in its~~
427 ~~judicial review social study report written verification that~~
428 ~~the child:~~
429 ~~1. Has been provided with a current Medicaid card and has~~
430 ~~been provided all necessary information concerning the Medicaid~~
431 ~~program sufficient to prepare the youth to apply for coverage~~
432 ~~upon reaching age 18, if such application would be appropriate.~~
433 ~~2. Has been provided with a certified copy of his or her~~
434 ~~birth certificate and, if the child does not have a valid~~
435 ~~driver's license, a Florida identification card issued under s.~~

436 ~~322.051.~~
437 ~~3. Has been provided information relating to Social~~
438 ~~Security Insurance benefits if the child is eligible for these~~
439 ~~benefits. If the child has received these benefits and they are~~
440 ~~being held in trust for the child, a full accounting of those~~
441 ~~funds must be provided and the child must be informed about how~~
442 ~~to access those funds.~~
443 ~~4. Has been provided with information and training related~~
444 ~~to budgeting skills, interviewing skills, and parenting skills.~~
445 ~~5. Has been provided with all relevant information related~~
446 ~~to the Road-to-Independence Program, including, but not limited~~
447 ~~to, eligibility requirements, forms necessary to apply, and~~
448 ~~assistance in completing the forms. The child shall also be~~
449 ~~informed that, if he or she is eligible for the Road-to-~~
450 ~~Independence Program, he or she may reside with the licensed~~
451 ~~foster family or group care provider with whom the child was~~
452 ~~residing at the time of attaining his or her 18th birthday or~~
453 ~~may reside in another licensed foster home or with a group care~~
454 ~~provider arranged by the department.~~
455 ~~6. Has an open bank account, or has identification~~
456 ~~necessary to open an account, and has been provided with~~
457 ~~essential banking skills.~~
458 ~~7. Has been provided with information on public assistance~~
459 ~~and how to apply.~~
460 ~~8. Has been provided a clear understanding of where he or~~
461 ~~she will be living on his or her 18th birthday, how living~~
462 ~~expenses will be paid, and what educational program or school he~~
463 ~~or she will be enrolled in.~~
464 ~~9. Has been provided with notice of the youth's right to~~

465 ~~petition for the court's continuing jurisdiction for 1 year~~
466 ~~after the youth's 18th birthday as specified in s. 39.013(2) and~~
467 ~~with information on how to obtain access to the court.~~
468 ~~10. Has been encouraged to attend all judicial review~~
469 ~~hearings occurring after his or her 17th birthday.~~
470 ~~(b) At the first judicial review hearing held subsequent to~~
471 ~~the child's 17th birthday, in addition to the requirements of~~
472 ~~subsection (8), the department shall provide the court with an~~
473 ~~updated case plan that includes specific information related to~~
474 ~~independent living services that have been provided since the~~
475 ~~child's 13th birthday, or since the date the child came into~~
476 ~~foster care, whichever came later.~~
477 ~~(c) At the time of a judicial review hearing held pursuant~~
478 ~~to this subsection, if, in the opinion of the court, the~~
479 ~~department has not complied with its obligations as specified in~~
480 ~~the written case plan or in the provision of independent living~~
481 ~~services as required by s. 409.1451 and this subsection, the~~
482 ~~court shall issue a show cause order. If cause is shown for~~
483 ~~failure to comply, the court shall give the department 30 days~~
484 ~~within which to comply and, on failure to comply with this or~~
485 ~~any subsequent order, the department may be held in contempt.~~
486 (2) ~~(8)~~ REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS
487 OF AGE.—
488 (a) Social study report for judicial review.—Before every
489 judicial review hearing or citizen review panel hearing, the
490 social service agency shall make an investigation and social
491 study concerning all pertinent details relating to the child and
492 shall furnish to the court or citizen review panel a written
493 report that includes, but is not limited to:

494 1. A description of the type of placement the child is in
495 at the time of the hearing, including the safety of the child
496 and the continuing necessity for and appropriateness of the
497 placement.
498 2. Documentation of the diligent efforts made by all
499 parties to the case plan to comply with each applicable
500 provision of the plan.
501 3. The amount of fees assessed and collected during the
502 period of time being reported.
503 4. The services provided to the foster family or legal
504 custodian in an effort to address the needs of the child as
505 indicated in the case plan.
506 5. A statement that either:
507 a. The parent, though able to do so, did not comply
508 substantially with the case plan, and the agency
509 recommendations;
510 b. The parent did substantially comply with the case plan;
511 or
512 c. The parent has partially complied with the case plan,
513 with a summary of additional progress needed and the agency
514 recommendations.
515 6. A statement from the foster parent or legal custodian
516 providing any material evidence concerning the return of the
517 child to the parent or parents.
518 7. A statement concerning the frequency, duration, and
519 results of the parent-child visitation, if any, and the agency
520 recommendations for an expansion or restriction of future
521 visitation.
522 8. The number of times a child has been removed from his or

523 her home and placed elsewhere, the number and types of
524 placements that have occurred, and the reason for the changes in
525 placement.
526 9. The number of times a child's educational placement has
527 been changed, the number and types of educational placements
528 which have occurred, and the reason for any change in placement.
529 10. If the child has reached 13 years of age but is not yet
530 18 years of age, a statement from the caregiver on the progress
531 the child has made in acquiring independent living skills ~~the~~
532 ~~results of the preindependent living, life skills, or~~
533 ~~independent living assessment; the specific services needed; and~~
534 ~~the status of the delivery of the identified services~~.
535 11. Copies of all medical, psychological, and educational
536 records that support the terms of the case plan and that have
537 been produced concerning the parents or any caregiver since the
538 last judicial review hearing.
539 12. Copies of the child's current health, mental health,
540 and education records as identified in s. 39.6012.
541 (b) Submission and distribution of reports.—
542 1. A copy of the social service agency's written report and
543 the written report of the guardian ad litem must be served on
544 all parties whose whereabouts are known; to the foster parents
545 or legal custodians; and to the citizen review panel, at least
546 72 hours before the judicial review hearing or citizen review
547 panel hearing. The requirement for providing parents with a copy
548 of the written report does not apply to those parents who have
549 voluntarily surrendered their child for adoption or who have had
550 their parental rights to the child terminated.
551 2.~~(c)~~ In a case in which the child has been permanently

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552 placed with the social service agency, the agency shall furnish
553 to the court a written report concerning the progress being made
554 to place the child for adoption. If the child cannot be placed
555 for adoption, a report on the progress made by the child towards
556 alternative permanency goals or placements, including, but not
557 limited to, guardianship, long-term custody, long-term licensed
558 custody, or independent living, must be submitted to the court.
559 The report must be submitted to the court at least 72 hours
560 before each scheduled judicial review.
561 3.~~(d)~~ In addition to or in lieu of any written statement
562 provided to the court, the foster parent or legal custodian, or
563 any preadoptive parent, shall be given the opportunity to
564 address the court with any information relevant to the best
565 interests of the child at any judicial review hearing.
566 (c)~~(9)~~ Review determinations.—The court and any citizen
567 review panel shall take into consideration the information
568 contained in the social services study and investigation and all
569 medical, psychological, and educational records that support the
570 terms of the case plan; testimony by the social services agency,
571 the parent, the foster parent or legal custodian, the guardian
572 ad litem or surrogate parent for educational decisionmaking if
573 one has been appointed for the child, and any other person
574 deemed appropriate; and any relevant and material evidence
575 submitted to the court, including written and oral reports to
576 the extent of their probative value. These reports and evidence
577 may be received by the court in its effort to determine the
578 action to be taken with regard to the child and may be relied
579 upon to the extent of their probative value, even though not
580 competent in an adjudicatory hearing. In its deliberations, the

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581 court and any citizen review panel shall seek to determine:
582 1.~~(a)~~ If the parent was advised of the right to receive
583 assistance from any person or social service agency in the
584 preparation of the case plan.
585 2.~~(b)~~ If the parent has been advised of the right to have
586 counsel present at the judicial review or citizen review
587 hearings. If not so advised, the court or citizen review panel
588 shall advise the parent of such right.
589 3.~~(c)~~ If a guardian ad litem needs to be appointed for the
590 child in a case in which a guardian ad litem has not previously
591 been appointed or if there is a need to continue a guardian ad
592 litem in a case in which a guardian ad litem has been appointed.
593 4.~~(d)~~ Who holds the rights to make educational decisions
594 for the child. If appropriate, the court may refer the child to
595 the district school superintendent for appointment of a
596 surrogate parent or may itself appoint a surrogate parent under
597 the Individuals with Disabilities Education Act and s. 39.0016.
598 5.~~(e)~~ The compliance or lack of compliance of all parties
599 with applicable items of the case plan, including the parents'
600 compliance with child support orders.
601 6.~~(f)~~ The compliance or lack of compliance with a
602 visitation contract between the parent and the social service
603 agency for contact with the child, including the frequency,
604 duration, and results of the parent-child visitation and the
605 reason for any noncompliance.
606 7.~~(g)~~ The compliance or lack of compliance of the parent in
607 meeting specified financial obligations pertaining to the care
608 of the child, including the reason for failure to comply if such
609 is the case.

610 8.~~(h)~~ Whether the child is receiving safe and proper care
611 according to s. 39.6012, including, but not limited to, the
612 appropriateness of the child's current placement, including
613 whether the child is in a setting that is as family-like and as
614 close to the parent's home as possible, consistent with the
615 child's best interests and special needs, and including
616 maintaining stability in the child's educational placement, as
617 documented by assurances from the community-based care provider
618 that:
619 a.~~1.~~ The placement of the child takes into account the
620 appropriateness of the current educational setting and the
621 proximity to the school in which the child is enrolled at the
622 time of placement.
623 b.~~2.~~ The community-based care agency has coordinated with
624 appropriate local educational agencies to ensure that the child
625 remains in the school in which the child is enrolled at the time
626 of placement.
627 9.~~(i)~~ A projected date likely for the child's return home
628 or other permanent placement.
629 10.~~(j)~~ When appropriate, the basis for the unwillingness or
630 inability of the parent to become a party to a case plan. The
631 court and the citizen review panel shall determine if the
632 efforts of the social service agency to secure party
633 participation in a case plan were sufficient.
634 11.~~(k)~~ For a child who has reached 13 years of age but is
635 not yet 18 years of age, the adequacy of the child's preparation
636 for adulthood and independent living.
637 12.~~(l)~~ If amendments to the case plan are required.
638 Amendments to the case plan must be made under s. 39.6013.

639 (d)~~(10)(a)~~ Orders.—
640 1. Based upon the criteria set forth in paragraph (c)
641 ~~subsection (9)~~ and the recommended order of the citizen review
642 panel, if any, the court shall determine whether or not the
643 social service agency shall initiate proceedings to have a child
644 declared a dependent child, return the child to the parent,
645 continue the child in out-of-home care for a specified period of
646 time, or initiate termination of parental rights proceedings for
647 subsequent placement in an adoptive home. Amendments to the case
648 plan must be prepared as prescribed in s. 39.6013. If the court
649 finds that the prevention or reunification efforts of the
650 department will allow the child to remain safely at home or be
651 safely returned to the home, the court shall allow the child to
652 remain in or return to the home after making a specific finding
653 of fact that the reasons for the creation of the case plan have
654 been remedied to the extent that the child's safety, well-being,
655 and physical, mental, and emotional health will not be
656 endangered.
657 2.~~(b)~~ The court shall return the child to the custody of
658 the parents at any time it determines that they have
659 substantially complied with the case plan, if the court is
660 satisfied that reunification will not be detrimental to the
661 child's safety, well-being, and physical, mental, and emotional
662 health.
663 3.~~(c)~~ If, in the opinion of the court, the social service
664 agency has not complied with its obligations as specified in the
665 written case plan, the court may find the social service agency
666 in contempt, shall order the social service agency to submit its
667 plans for compliance with the agreement, and shall require the

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668 social service agency to show why the child could not safely be
669 returned to the home of the parents.
670 4.~~(d)~~ If, at any judicial review, the court finds that the
671 parents have failed to substantially comply with the case plan
672 to the degree that further reunification efforts are without
673 merit and not in the best interest of the child, on its own
674 motion, the court may order the filing of a petition for
675 termination of parental rights, whether or not the time period
676 as contained in the case plan for substantial compliance has
677 expired.
678 5.~~(e)~~ Within 6 months after the date that the child was
679 placed in shelter care, the court shall conduct a judicial
680 review hearing to review the child's permanency goal as
681 identified in the case plan. At the hearing the court shall make
682 findings regarding the likelihood of the child's reunification
683 with the parent or legal custodian within 12 months after the
684 removal of the child from the home. If the court makes a written
685 finding that it is not likely that the child will be reunified
686 with the parent or legal custodian within 12 months after the
687 child was removed from the home, the department must file with
688 the court, and serve on all parties, a motion to amend the case
689 plan under s. 39.6013 and declare that it will use concurrent
690 planning for the case plan. The department must file the motion
691 within 10 business days after receiving the written finding of
692 the court. The department must attach the proposed amended case
693 plan to the motion. If concurrent planning is already being
694 used, the case plan must document the efforts the department is
695 taking to complete the concurrent goal.
696 6.~~(f)~~ The court may issue a protective order in assistance,

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697 or as a condition, of any other order made under this part. In
698 addition to the requirements included in the case plan, the
699 protective order may set forth requirements relating to
700 reasonable conditions of behavior to be observed for a specified
701 period of time by a person or agency who is before the court;
702 and the order may require any person or agency to make periodic
703 reports to the court containing such information as the court in
704 its discretion may prescribe.
705 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—
706 (a) In addition to the review and report required under
707 paragraphs (1)(a) and (2)(a), respectively, the court shall hold
708 a judicial review hearing within 90 days after a child's 17th
709 birthday. The court shall also issue an order, separate from the
710 order on judicial review, that the disability of nonage of the
711 child has been removed pursuant to s. 743.045 and shall continue
712 to hold timely judicial review hearings. If necessary, the court
713 may review the status of the child more frequently during the
714 year before the child's 18th birthday. At each review hearing
715 held under this subsection, in addition to any information or
716 report provided to the court by the foster parent, legal
717 custodian, or guardian ad litem, the child shall be given the
718 opportunity to address the court with any information relevant
719 to the child's best interest, particularly in relation to
720 independent living transition services. The department shall
721 include in the social study report for judicial review written
722 verification that the child has:
723 1. A current Medicaid card and all necessary information
724 concerning the Medicaid program sufficient to prepare the child
725 to apply for coverage upon reaching the age of 18, if such

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726 application is appropriate.
727 2. A certified copy of the child's birth certificate and,
728 if the child does not have a valid driver license, a Florida
729 identification card issued under s. 322.051.
730 3. A social security card and information relating to
731 social security insurance benefits if the child is eligible for
732 those benefits. If the child has received such benefits and they
733 are being held in trust for the child, a full accounting of
734 these funds must be provided and the child must be informed as
735 to how to access those funds.
736 4. All relevant information related to the Road-to-
737 Independence Program, including, but not limited to, eligibility
738 requirements, information on participation, and assistance in
739 gaining admission to the program. If the child is eligible for
740 the Road-to-Independence Program, he or she must be advised that
741 he or she may continue to reside with the licensed family home
742 or group care provider with whom the child was residing at the
743 time the child attained his or her 18th birthday, in another
744 licensed family home, or with a group care provider arranged by
745 the department.
746 5. An open bank account or the identification necessary to
747 open a bank account and to acquire essential banking and
748 budgeting skills.
749 6. Information on public assistance and how to apply for
750 public assistance.
751 7. A clear understanding of where he or she will be living
752 on his or her 18th birthday, how living expenses will be paid,
753 and the educational program or school in which he or she will be
754 enrolled.

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755 8. Information related to the ability of the child to
756 remain in care until he or she reaches 21 years of age under s.
757 39.013.
758 9. A letter providing the dates that the child is under the
759 jurisdiction of the court.
760 10. A letter stating that the child is in compliance with
761 financial aid documentation requirements.
762 11. The child's educational records.
763 12. The child's entire health and mental health records.
764 13. The process for accessing his or her case file.
765 14. A statement encouraging the child to attend all
766 judicial review hearings occurring after the child's 17th
767 birthday.
768 (b) At the first judicial review hearing held subsequent to
769 the child's 17th birthday, the department shall provide the
770 court with an updated case plan that includes specific
771 information related to the independent living skills that the
772 child has acquired since the child's 13th birthday, or since the
773 date the child came into foster care, whichever came later.
774 (c) If the court finds at the judicial review hearing that
775 the department has not met with its obligations to the child as
776 stated in the written case plan or in the provision of
777 independent living services, the court may issue an order
778 directing the department to show cause as to why it has not done
779 so. If the department cannot justify its noncompliance, the
780 court may give the department 30 days within which to comply. If
781 the department fails to comply within 30 days, the court may
782 hold the department in contempt.
783 (d) At the last review hearing before the child reaches 18

784 years of age, and in addition to the requirements of subsection
785 (2), the court shall:
786 1. Address whether the child plans to remain in foster
787 care, and, if so, ensure that the child's transition plan
788 includes a plan for meeting one or more of the criteria
789 specified in s. 39.6251.
790 2. Ensure that the transition plan includes a supervised
791 living arrangement under s. 39.6251.
792 3. Ensure the child has been informed of:
793 a. The right to continued support and services from the
794 department and the community-based care lead agency.
795 b. The right to request termination of dependency
796 jurisdiction and be discharged from foster care.
797 c. The opportunity to reenter foster care pursuant to s.
798 39.6251.
799 4. Ensure that the young adult, if he or she requests
800 termination of dependency jurisdiction and discharge from foster
801 care, has been informed of:
802 a. Services or benefits for which the young adult may be
803 eligible based on his or her former placement in foster care;
804 b. Services or benefits that may be lost through
805 termination of dependency jurisdiction; and
806 c. Other federal, state, local, or community-based services
807 or supports available to the him or her.
808 (4) REVIEW HEARINGS FOR YOUNG ADULTS IN FOSTER CARE.—
809 During each period of time that a young adult remains in foster
810 care, the court shall review the status of the young adult at
811 least every 6 months and must hold a permanency review hearing
812 at least annually.

813 (a) The department and community-based care lead agency
814 shall prepare and submit to the court a report, developed in
815 collaboration with the young adult, which addresses the young
816 adult's progress in meeting the goals in the case plan. The
817 report must include progress information related to the young
818 adult's independent living plan and transition plan, if
819 applicable, and shall propose modifications as necessary to
820 further the young adult's goals.
821 (b) The court shall attempt to determine whether the
822 department and any service provider under contract with the
823 department are providing the appropriate services as provided in
824 the case plan.
825 (c) If the court believes that the young adult is entitled
826 under department policy or under a contract with a service
827 provider to additional services to achieve the goals enumerated
828 in the case plan, it may order the department to take action to
829 ensure that the young adult receives the identified services.
830 (d) The young adult or any other party to the dependency
831 case may request an additional hearing or judicial review.
832 (e) Notwithstanding the provisions of this subsection, if a
833 young adult has chosen to remain in extended foster care after
834 he or she has reached 18 years of age, the department may not
835 close a case and the court may not terminate jurisdiction until
836 the court finds, following a hearing, that the following
837 criteria have been met:
838 1. Attendance of the young adult at the hearing; or
839 2. Findings by the court that:
840 a. The young adult has been informed by the department of
841 his or her right to attend the hearing and has provided written

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842 consent to waive this right; and
843 b. The young adult has been informed of the potential
844 negative effects of early termination of care, the option to
845 reenter care before reaching 21 years of age, the procedure for,
846 and limitations on, reentering care, and the availability of
847 alternative services, and has signed a document attesting that
848 he or she has been so informed and understands these provisions;
849 or
850 c. The young adult has voluntarily left the program, has
851 not signed the document in sub-subparagraph b., and is unwilling
852 to participate in any further court proceeding.
853 3. In all permanency hearings or hearings regarding the
854 transition of the young adult from care to independent living,
855 the court shall consult with the young adult regarding the
856 proposed permanency plan, case plan, and individual education
857 plan for the young adult and ensure that he or she has
858 understood the conversation.
859 Section 5. Section 409.145, Florida Statutes, is amended to
860 read:
861 409.145 Care of children; quality parenting; "reasonable
862 and prudent parent" standard.—The child welfare system of the
863 department shall operate as a coordinated community-based system
864 of care which empowers all caregivers for children in foster
865 care to provide quality parenting, including approving or
866 disapproving a child's participation in activities based on the
867 caregiver's assessment using the "reasonable and prudent parent"
868 standard.
869 (1) SYSTEM OF CARE.—The department shall develop, implement
870 ~~conduct, supervise~~, and administer a coordinated community-based

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871 system of care ~~program~~ for ~~dependent~~ children who are found to
872 be dependent and their families. This system of care must ~~The~~
873 ~~services of the department are to~~ be directed toward the
874 following goals:
875 (a) ~~The~~ Prevention of separation of children from their
876 families.
877 (b) Intervention to allow children to remain safely in
878 their own homes.
879 (c) ~~(b)~~ ~~The~~ Reunification of families who have had children
880 removed from their care ~~placed in foster homes or institutions~~.
881 (d) Safety for children who are separated from their
882 families by providing alternative emergency or longer-term
883 parenting arrangements.
884 (e) Focus on the well-being of children through emphasis on
885 maintaining educational stability and providing timely health
886 care.
887 (f) ~~(c)~~ Permanency for ~~The permanent placement of~~ children
888 for whom reunification ~~who cannot be reunited~~ with their
889 families is not possible or ~~when reunification would~~ is not ~~be~~
890 in the best interest of the child.
891 ~~(d) The protection of dependent children or children~~
892 ~~alleged to be dependent, including provision of emergency and~~
893 ~~long-term alternate living arrangements.~~
894 (g) ~~(e)~~ The transition to independence and self-sufficiency
895 for older children who remain in foster care through adolescence
896 ~~continue to be in foster care as adolescents~~.
897 ~~(2) The following dependent children shall be subject to~~
898 ~~the protection, care, guidance, and supervision of the~~
899 ~~department or any duly licensed public or private agency:~~

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900 ~~(a) Any child who has been temporarily or permanently taken~~
901 ~~from the custody of the parents, custodians, or guardians in~~
902 ~~accordance with those provisions in chapter 39 that relate to~~
903 ~~dependent children.~~
904 ~~(b) Any child who is in need of the protective supervision~~
905 ~~of the department as determined by intake or by the court in~~
906 ~~accordance with those provisions of chapter 39 that relate to~~
907 ~~dependent children.~~
908 ~~(c) Any child who is voluntarily placed, with the written~~
909 ~~consent of the parents or guardians, in the department's foster~~
910 ~~care program or the foster care program of a licensed private~~
911 ~~agency.~~
912 ~~(3) The circuit courts exercising juvenile jurisdiction in~~
913 ~~the various counties of this state shall cooperate with the~~
914 ~~department and its employees in carrying out the purposes and~~
915 ~~intent of this chapter.~~
916 ~~(4) The department is authorized to accept children on a~~
917 ~~permanent placement basis by order of a court of competent~~
918 ~~jurisdiction for the single purpose of adoption placement of~~
919 ~~these children. The department is authorized to provide the~~
920 ~~necessary services to place these children ordered to the~~
921 ~~department on a permanent placement basis for adoption.~~
922 ~~(5) Any funds appropriated by counties for child welfare~~
923 ~~services may be matched by state and federal funds, such funds~~
924 ~~to be utilized by the department for the benefit of children in~~
925 ~~those counties.~~
926 ~~(6) Whenever any child is placed under the protection,~~
927 ~~care, and guidance of the department or a duly licensed public~~
928 ~~or private agency, or as soon thereafter as is practicable, the~~

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929 ~~department or agency, as the case may be, shall endeavor to~~
930 ~~obtain such information concerning the family medical history of~~
931 ~~the child and the natural parents as is available or readily~~
932 ~~obtainable. This information shall be kept on file by the~~
933 ~~department or agency for possible future use as provided in ss.~~
934 ~~63.082 and 63.162 or as may be otherwise provided by law.~~
935 ~~(7) Whenever any child is placed by the department in a~~
936 ~~shelter home, foster home, or other residential placement, the~~
937 ~~department shall make available to the operator of the shelter~~
938 ~~home, foster home, other residential placement, or other~~
939 ~~caretaker as soon thereafter as is practicable, all relevant~~
940 ~~information concerning the child's demographic, social, and~~
941 ~~medical history.~~
942 (2) QUALITY PARENTING.—A child in foster care shall be
943 placed only with a caregiver who has the ability to care for the
944 child, is willing to accept responsibility for providing care,
945 and is willing and able to learn about and be respectful of the
946 child's culture, religion and ethnicity, special physical or
947 psychological needs, any circumstances unique to the child, and
948 family relationships. The department, the community-based care
949 lead agency, and other agencies shall provide such caregiver
950 with all available information necessary to assist the caregiver
951 in determining whether he or she is able to appropriately care
952 for a particular child.
953 (a) Roles and responsibilities of caregivers.—A caregiver
954 shall:
955 1. Participate in developing the case plan for the child
956 and his or her family and work with others involved in his or
957 her care to implement this plan. This participation includes the

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958 caregiver's involvement in all team meetings or court hearings
959 related to the child's care.
960 2. Complete all training needed to improve skills in
961 parenting a child who has experienced trauma due to neglect,
962 abuse, or separation from home, to meet the child's special
963 needs, and to work effectively with child welfare agencies, the
964 court, the schools, and other community and governmental
965 agencies.
966 3. Respect and support the child's ties to members of his
967 or her biological family and assist the child in maintaining
968 allowable visitation and other forms of communication.
969 4. Effectively advocate for the child in the caregiver's
970 care with the child welfare system, the court, and community
971 agencies, including the school, child care, health and mental
972 health providers, and employers.
973 5. Participate fully in the child's medical, psychological,
974 and dental care as the caregiver would for his or her biological
975 child.
976 6. Support the child's school success by participating in
977 school activities and meetings, including Individual Education
978 Plan meetings, assisting with school assignments, supporting
979 tutoring programs, meeting with teachers and working with an
980 educational surrogate if one has been appointed, and encouraging
981 the child's participation in extracurricular activities.
982 7. Work in partnership with other stakeholders to obtain
983 and maintain records that are important to the child's well-
984 being, including child resource records, medical records, school
985 records, photographs, and records of special events and
986 achievements.

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987 8. Ensure that the child in the caregiver's care who is
988 between 13 and 17 years of age learns and masters independent
989 living skills.
990 9. Ensure that the child in the caregiver's care is aware
991 of the requirements and benefits of the Road-to-Independence
992 Program.
993 10. Work to enable the child in the caregiver's care to
994 establish and maintain naturally occurring mentoring
995 relationships.
996 (b) Roles and responsibilities of the department, the
997 community-based care lead agency, and other agency staff.—The
998 department, the community-based care lead agency, and other
999 agency staff shall:
1000 1. Include a caregiver in the development and
1001 implementation of the case plan for the child and his or her
1002 family. The caregiver shall be authorized to participate in all
1003 team meetings or court hearings related to the child's care and
1004 future plans. The caregiver's participation shall be facilitated
1005 through timely notification, an inclusive process, and
1006 alternative methods for participation for a caregiver who cannot
1007 be physically present.
1008 2. Develop and make available to the caregiver the
1009 information, services, training, and support that the caregiver
1010 needs to improve his or her skills in parenting children who
1011 have experienced trauma due to neglect, abuse, or separation
1012 from home, to meet these children's special needs and to
1013 advocate effectively with child welfare agencies, the courts,
1014 schools, and other community and governmental agencies.
1015 3. Provide the caregiver with all information related to

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1016 services and other benefits that are available to the child.
1017 (c) Transitions.—
1018 1. Once a caregiver accepts the responsibility of caring
1019 for a child, the child will be removed from the home of that
1020 caregiver only if:
1021 a. The caregiver is clearly unable to safely or legally
1022 care for the child;
1023 b. The child and his or her biological family are
1024 reunified;
1025 c. The child is being placed in a legally permanent home
1026 pursuant to the case plan or a court order; or
1027 d. The removal is demonstrably in the child's best
1028 interest.
1029 2. In the absence of an emergency, if a child leaves the
1030 caregiver's home for a reason provided under subparagraph 1.,
1031 the transition must be accomplished according to a plan that
1032 involves cooperation and sharing of information among all
1033 persons involved, respects the child's developmental stage and
1034 psychological needs, ensures the child has all of his or her
1035 belongings, allows for a gradual transition from the caregiver's
1036 home and, if possible, for continued contact with the caregiver
1037 after the child leaves.
1038 (d) Information sharing.—Whenever a foster home or
1039 residential group home assumes responsibility for the care of a
1040 child, the department and any additional providers shall make
1041 available to the caregiver as soon as is practicable all
1042 relevant information concerning the child. Records and
1043 information that are required to be shared with caregivers
1044 include, but are not limited to:

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1045 1. Medical, dental, psychological, psychiatric, and
1046 behavioral history, as well as ongoing evaluation or treatment
1047 needs;
1048 2. School records;
1049 3. Copies of his or her birth certificate and, if
1050 appropriate, immigration status documents;
1051 4. Consents signed by parents;
1052 5. Comprehensive behavioral assessments and other social
1053 assessments;
1054 6. Court orders;
1055 7. Visitation and case plans;
1056 8. Guardian ad litem reports;
1057 9. Staffing forms; and
1058 10. Judicial or citizen review panel reports and
1059 attachments filed with the court, except confidential medical,
1060 psychiatric, and psychological information regarding any party
1061 or participant other than the child.
1062 (e) Caregivers employed by residential group homes.-All
1063 caregivers in residential group homes shall meet the same
1064 education, training, and background and other screening
1065 requirements as foster parents.
1066 (3) REASONABLE AND PRUDENT PARENT STANDARD.-
1067 (a) Definitions.—As used in this subsection, the term:
1068 1. "Age-appropriate" means an activity or item that is
1069 generally accepted as suitable for a child of the same
1070 chronological age or level of maturity. Age appropriateness is
1071 based on the development of cognitive, emotional, physical, and
1072 behavioral capacity which is typical for an age or age group.
1073 2. "Caregiver" means a person with whom the child is placed

1074 in out-of-home care, or a designated official for a group care
1075 facility licensed by the department under s. 409.175.
1076 3. "Reasonable and prudent parent" standard means the
1077 standard of care used by a caregiver in determining whether to
1078 allow a child in his or her care to participate in
1079 extracurricular, enrichment, and social activities. This
1080 standard is characterized by careful and thoughtful parental
1081 decisionmaking that is intended to maintain a child's health,
1082 safety, and best interest while encouraging the child's
1083 emotional and developmental growth.
1084 (b) Application of standard of care.—
1085 1. Every child who comes into out-of-home care pursuant to
1086 this chapter is entitled to participate in age-appropriate
1087 extracurricular, enrichment, and social activities.
1088 2. Each caregiver shall use the reasonable and prudent
1089 parent standard in determining whether to give permission for a
1090 child living in out-of-home care to participate in
1091 extracurricular, enrichment, or social activities. When using
1092 the reasonable and prudent parent standard, the caregiver must
1093 consider:
1094 a. The child's age, maturity, and developmental level to
1095 maintain the overall health and safety of the child.
1096 b. The potential risk factors and the appropriateness of
1097 the extracurricular, enrichment, or social activity.
1098 c. The best interest of the child, based on information
1099 known by the caregiver.
1100 d. The importance of encouraging the child's emotional and
1101 developmental growth.
1102 e. The importance of providing the child with the most

1103 family-like living experience possible.
1104 f. The behavioral history of the child and the child's
1105 ability to safely participate in the proposed activity.
1106 (c) Verification of services delivered.—The department and
1107 each community-based care lead agency shall verify that private
1108 agencies providing out-of-home care services to dependent
1109 children have policies in place which are consistent with this
1110 section and that these agencies promote and protect the ability
1111 of dependent children to participate in age-appropriate
1112 extracurricular, enrichment, and social activities.
1113 (d) Limitation of liability.—A caregiver is not liable for
1114 harm caused to a child who participates in an activity approved
1115 by the caregiver, provided that the caregiver has acted in
1116 accordance with the reasonable and prudent parent standard. This
1117 paragraph may not be interpreted as removing or limiting any
1118 existing liability protection afforded by law.
1119 (4) FOSTER PARENT ROOM AND BOARD RATES.—
1120 (a) Effective October 1, 2013, room and board rates paid to
1121 foster parents are as follows:
1122

Monthly Foster Care Rate	0-5 Years Age	6-12 Years Age	13-21 Years Age
	$429	$440	$515

1123
1124
1125
1126 (b) Foster parents shall receive an annual cost of living
1127 increase. The department shall calculate the new room and board
1128 rate increase equal to the percentage change in the Consumer

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1129 Price Index for All Urban Consumers, U.S. City Average, All
1130 Items, not seasonally adjusted, or successor reports, for the
1131 preceding December compared to the prior December as initially
1132 reported by the United States Department of Labor, Bureau of
1133 Labor Statistics.
1134 (c) The amount of the monthly foster care board rate may be
1135 increased upon agreement among the department, the community-
1136 based care lead agency, and the foster parent.
1137 (5) RULEMAKING.—The department shall adopt by rule
1138 procedures to administer this section.
1139 Section 6. Section 409.1451, Florida Statutes, is amended
1140 to read:
1141 (Substantial rewording of section. See
1142 s. 409.1451, F.S., for present text).
1143 409.1451 The Road-to-Independence Program.—
1144 (1) LEGISLATIVE FINDINGS AND INTENT.—
1145 (a) The Legislature recognizes that most children and young
1146 adults are resilient and, with adequate support, can expect to
1147 be successful as independent adults. Not unlike many young
1148 adults, some young adults who have lived in foster care need
1149 additional support and resources for a period of time after
1150 reaching 18 years of age.
1151 (b) The Legislature finds that while it is important to
1152 provide young adults who have lived in foster care with
1153 education and independent living skills, there is also a need to
1154 focus more broadly on creating and preserving family
1155 relationships so that young adults have a permanent connection
1156 with at least one committed adult who provides a safe and stable
1157 parenting relationship.

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1158 (c) It is the intent of the Legislature that young adults
1159 who choose to participate in the program receive the skills,
1160 education, and support necessary to become self-sufficient and
1161 leave foster care with a lifelong connection to a supportive
1162 adult through the Road-to-Independence Program, either through
1163 postsecondary education services and support, as provided in
1164 subsection (2), or aftercare services.
1165 (2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.—
1166 (a) A young adult is eligible for services and support
1167 under this subsection if he or she:
1168 1. Was living in licensed care on his or her 18th birthday
1169 or is currently living in licensed care; or was at least 16
1170 years of age and was adopted from foster care or placed with a
1171 court-approved dependency guardian after spending at least 6
1172 months in licensed care within the 12 months immediately
1173 preceding such placement or adoption;
1174 2. Spent at least 6 months in licensed care before reaching
1175 his or her 18th birthday;
1176 3. Earned a standard high school diploma or its equivalent
1177 pursuant to s. 1003.428, s. 1003.4281, s. 1003.429, s. 1003.43,
1178 or s. 1003.435;
1179 4. Has been admitted for enrollment in an eligible
1180 postsecondary educational institution as provided in s.
1181 1009.533;
1182 5. Has reached 18 years of age but is not yet 23 years of
1183 age;
1184 6. Has applied, with assistance from the young adult's
1185 caregiver and the community-based lead agency, for any other
1186 grants and scholarships for which he or she may qualify;

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1187 7. Submitted a Free Application for Federal Student Aid
1188 which is complete and error free; and
1189 8. Signed an agreement to allow the department and the
1190 community-based care lead agency access to school records.
1191 (b) The amount of the financial assistance shall be as
1192 follows:
1193 1. For a young adult who does not remain in foster care and
1194 is attending a postsecondary school as provided in s. 1009.533,
1195 the amount is $1,256 monthly.
1196 2. For a young adult who remains in foster care, is
1197 attending a postsecondary school, as provided in s. 1009.533,
1198 and continues to reside in a licensed foster home, the amount is
1199 the established room and board rate for foster parents. This
1200 takes the place of the payment provided for in subsection (4).
1201 3. For a young adult who remains in foster care, but
1202 temporarily resides away from a licensed foster home for
1203 purposes of attending a postsecondary school as provided in s.
1204 1009.533, the amount is $1,256 monthly. This takes the place of
1205 the payment provided for in subsection (4).
1206 4. For a young adult who remains in foster care, is
1207 attending a postsecondary school as provided in s. 1009.533, and
1208 continues to reside in a licensed group home, the amount is
1209 negotiated between the community-based care lead agency and the
1210 licensed group home provider.
1211 5. For a young adult who remains in foster care, but
1212 temporarily resides away from a licensed group home for purposes
1213 of attending a postsecondary school as provided in s. 1009.533,
1214 the amount is $1,256 monthly. This takes the place of a
1215 negotiated room and board rate.

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1216 6. The amount of the award may be disregarded for purposes
1217 of determining the eligibility for, or the amount of, any other
1218 federal or federally supported assistance.
1219 7. A young adult is eligible to receive financial
1220 assistance during the months when enrolled in a postsecondary
1221 educational institution.
1222 (c) Payment of financial assistance for a young adult who:
1223 1. Has chosen not to remain in foster care and is attending
1224 a postsecondary school as provided in s. 1009.533, shall be made
1225 to the community-based care lead agency in order to secure
1226 housing and utilities, with the balance being paid directly to
1227 the young adult until such time the lead agency and the young
1228 adult determine that the young adult can successfully manage the
1229 full amount of the assistance.
1230 2. Has remained in foster care under s. 39.6251 and who is
1231 attending postsecondary school as provided in s. 1009.533, shall
1232 be made directly to the foster parent or group home provider.
1233 (d)1. The department must advertise the availability of the
1234 stipend and must provide notification of the criteria and
1235 application procedures for the stipend to children and young
1236 adults leaving, or who were formerly in, foster care;
1237 caregivers; case managers; guidance and family services
1238 counselors; principals or other relevant school administrators;
1239 and guardians ad litem.
1240 2. If the award recipient transfers from one eligible
1241 institution to another and continues to meet eligibility
1242 requirements, the award shall be transferred with the recipient.
1243 (3) AFTERCARE SERVICES.—
1244 (a) Aftercare services are available to young adults who

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1245 have chosen not to remain in foster care after reaching 18 years
1246 of age and who are not receiving financial assistance under
1247 subsection (2) to pursue postsecondary education. These
1248 aftercare services include, but are not limited to, the
1249 following:
1250 1. Mentoring and tutoring.
1251 2. Mental health services and substance abuse counseling.
1252 3. Life skills classes, including credit management and
1253 preventive health activities.
1254 4. Parenting classes.
1255 5. Job and career skills training.
1256 6. Counselor consultations.
1257 7. Temporary financial assistance for emergency situations.
1258 8. Financial literacy skills training.
1259
1260 The specific services to be provided under this paragraph shall
1261 be determined by an assessment of the young adult and may be
1262 provided by the community-based care provider or through
1263 referrals in the community.
1264 (b) Temporary assistance provided to prevent homelessness
1265 shall be provided as expeditiously as possible and within the
1266 limitations defined by the department.
1267 (c) A young adult who has reached 18 years of age but is
1268 not yet 23 years of age who leaves foster care at 18 years of
1269 age may request and is eligible for such services before
1270 reaching 23 years of age.
1271 (4) APPEALS PROCESS.—
1272 (a) The department shall have a procedure by which a young
1273 adult may appeal the department's refusal to provide Road-to-

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1274 Independence Program services or support, or the termination of
1275 such services or support if funds for such services or support
1276 are available.
1277 (b) The appeal procedure must be readily accessible to
1278 young adults, must provide for timely decisions, and must
1279 provide for an appeal to the department. The decision of the
1280 department constitutes final agency action and is reviewable by
1281 the court as provided in s. 120.68.
1282 (5) PORTABILITY.—The services provided under this section
1283 are portable across county lines and between lead agencies.
1284 (a) The service needs that are identified in the original
1285 or updated transition plan, pursuant to s. 39.6035, shall be
1286 provided by the lead agency where the young adult is currently
1287 residing but shall be funded by the lead agency who initiated
1288 the transition plan.
1289 (b) The lead agency with primary case management
1290 responsibilities shall provide maintenance payments, case
1291 planning, including a written description of all services that
1292 will assist a child 16 years of age or older in preparing for
1293 the transition from care to independence, as well as regular
1294 case reviews that conform with all federal scheduling and
1295 content requirements, for all children in foster care who are
1296 placed or visiting out-of-state.
1297 (6) ACCOUNTABILITY.—The department shall develop outcome
1298 measures for the program and other performance measures in order
1299 to maintain oversight of the program. No later than January 31
1300 of each year, the department shall prepare a report on the
1301 outcome measures and the department's oversight activities and
1302 submit the report to the President of the Senate, the Speaker of

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1303 the House of Representatives, and the committees with
1304 jurisdiction over issues relating to children and families in
1305 the Senate and the House of Representatives. The report must
1306 include:
1307 (a) An analysis of performance on the outcome measures
1308 developed under this section reported for each community-based
1309 care lead agency and compared with the performance of the
1310 department on the same measures.
1311 (b) A description of the department's oversight of the
1312 program, including, by lead agency, any programmatic or fiscal
1313 deficiencies found, corrective actions required, and current
1314 status of compliance.
1315 (c) Any rules adopted or proposed under this section since
1316 the last report. For the purposes of the first report, any rules
1317 adopted or proposed under this section must be included.
1318 (7) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.—The
1319 secretary shall establish the Independent Living Services
1320 Advisory Council for the purpose of reviewing and making
1321 recommendations concerning the implementation and operation of
1322 the provisions of s. 39.6015 and the Road-to-Independence
1323 Program. The advisory council shall function as specified in
1324 this subsection until the Legislature determines that the
1325 advisory council can no longer provide a valuable contribution
1326 to the department's efforts to achieve the goals of the services
1327 designed to enable a young adult to live independently.
1328 (a) The advisory council shall assess the implementation
1329 and operation of the Road-to-Independence Program and advise the
1330 department on actions that would improve the ability of these
1331 Road-to-Independence Program services to meet the established

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1332 goals. The advisory council shall keep the department informed
1333 of problems being experienced with the services, barriers to the
1334 effective and efficient integration of services and support
1335 across systems, and successes that the system of services has
1336 achieved. The department shall consider, but is not required to
1337 implement, the recommendations of the advisory council.
1338 (b) The advisory council shall report to the secretary on
1339 the status of the implementation of the Road-To-Independence
1340 Program, efforts to publicize the availability of the Road-to-
1341 Independence Program, the success of the services, problems
1342 identified, recommendations for department or legislative
1343 action, and the department's implementation of the
1344 recommendations contained in the Independent Living Services
1345 Integration Workgroup Report submitted to the appropriate
1346 substantive committees of the Legislature by December 31, 2013.
1347 The department shall submit a report by December 31 of each year
1348 to the Governor, the President of the Senate, and the Speaker of
1349 the House of Representatives which includes a summary of the
1350 factors reported on by the council and identifies the
1351 recommendations of the advisory council and either describes the
1352 department's actions to implement the recommendations or
1353 provides the department's rationale for not implementing the
1354 recommendations.
1355 (c) Members of the advisory council shall be appointed by
1356 the secretary of the department. The membership of the advisory
1357 council must include, at a minimum, representatives from the
1358 headquarters and regional offices of the Department of Children
1359 and Families, community-based care lead agencies, the Department
1360 of Juvenile Justice, the Department of Economic Opportunity, the

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1361 Department of Education, the Agency for Health Care
1362 Administration, the State Youth Advisory Board, Workforce
1363 Florida, Inc., the Statewide Guardian Ad Litem Office, foster
1364 parents, recipients of services and funding through the Road-to-
1365 Independence Program, and advocates for children in care. The
1366 secretary shall determine the length of the term to be served by
1367 each member appointed to the advisory council, which may not
1368 exceed 4 years.
1369 (d) The department shall provide administrative support to
1370 the Independent Living Services Advisory Council to accomplish
1371 its assigned tasks. The advisory council shall be afforded
1372 access to all appropriate data from the department, each
1373 community-based care lead agency, and other relevant agencies in
1374 order to accomplish the tasks set forth in this section. The
1375 data collected may not include any information that would
1376 identify a specific child or young adult.
1377 (e) The advisory council report required under paragraph
1378 (b), must include an analysis of the system of independent
1379 living transition services for young adults who reach 18 years
1380 of age while in foster care before completing high school or its
1381 equivalent and recommendations for department or legislative
1382 action. The council shall assess and report on the most
1383 effective method of assisting these young adults to complete
1384 high school or its equivalent by examining the practices of
1385 other states.
1386 (8) PERSONAL PROPERTY.—Property acquired on behalf of a
1387 young adult in this program shall become the personal property
1388 of the young adult and is not subject to the requirements of
1389 chapter 273 relating to state-owned tangible personal property.

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1390 Such property continues to be subject to applicable federal
1391 laws.
1392 (9) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN CARE.—
1393 The department or community-based care lead agency shall
1394 document that eligible young adults are enrolled in Medicaid
1395 under s. 409.903(4).
1396 (10) RULEMAKING.—The department shall adopt rules to
1397 administer this section.
1398 Section 7. Paragraph (a) of subsection (3) of section
1399 409.175, Florida Statutes, is amended to read:
1400 409.175 Licensure of family foster homes, residential
1401 child-caring agencies, and child-placing agencies; public
1402 records exemption.—
1403 (3)(a) The total number of children placed in each family
1404 foster home shall be based on the recommendation of the
1405 department, or the community-based care lead agency where one is
1406 providing foster care and related services, based on the needs
1407 of each child in care, the ability of the foster family to meet
1408 the individual needs of each child, including any adoptive or
1409 biological children or young adults remaining in foster care
1410 living in the home, the amount of safe physical plant space, the
1411 ratio of active and appropriate adult supervision, and the
1412 background, experience, and skill of the family foster parents.
1413 Section 8. Subsection (4) of section 409.903, Florida
1414 Statutes, is amended to read:
1415 409.903 Mandatory payments for eligible persons.—The agency
1416 shall make payments for medical assistance and related services
1417 on behalf of the following persons who the department, or the
1418 Social Security Administration by contract with the Department

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1419 of Children and Family Services, determines to be eligible,
1420 subject to the income, assets, and categorical eligibility tests
1421 set forth in federal and state law. Payment on behalf of these
1422 Medicaid eligible persons is subject to the availability of
1423 moneys and any limitations established by the General
1424 Appropriations Act or chapter 216.
1425 (4) A child who is eligible under Title IV-E of the Social
1426 Security Act for subsidized board payments, foster care, or
1427 adoption subsidies, and a child for whom the state has assumed
1428 temporary or permanent responsibility and who does not qualify
1429 for Title IV-E assistance but is in foster care, shelter or
1430 emergency shelter care, or subsidized adoption. This category
1431 includes a young adult who is eligible to receive services under
1432 s. 409.1451~~(5)~~, until the young adult reaches 21 years of age,
1433 without regard to any income, resource, or categorical
1434 eligibility test that is otherwise required. This category also
1435 includes a person who as a child was eligible under Title IV-E
1436 of the Social Security Act for foster care or the state-provided
1437 foster care and who is a participant in the Road-to-Independence
1438 Program.
1439 Section 9. The Department of Children and Families shall
1440 work in collaboration with the Board of Governors, the Florida
1441 College System, and the Department of Education to help address
1442 the need for a comprehensive support structure in the academic
1443 arena to assist young adults who have been or continue to remain
1444 in the foster care system in making the transition from a
1445 structured care system into an independent living setting.
1446 Section 10. Effective October 1, 2013, a child or young
1447 adult who is a participant in the Road-to-Independence Program

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1448 may continue in the program as it exists through December 31,
1449 2013. Effective January 1, 2014, a child or young adult who is a
1450 participant in the program shall transfer to the program
1451 services provided in this act and his or her monthly stipend may
1452 not be reduced, the method of payment of the monthly stipend may
1453 not be changed, and the young adult may not be required to
1454 change his or her living arrangement. These conditions shall
1455 remain in effect for a child or young adult until he or she
1456 ceases to meet the eligibility requirements under which he or
1457 she entered the Road-to-Independence Program. A child or young
1458 adult applying or reapplying for the Road-to-Independence
1459 Program on or after October 1, 2013, may apply for program
1460 services only as provided in this act.
1461 Section 11. The cost of foster care payments for children
1462 in foster care from age 18 until age 21, and the cost of
1463 independent living services for those qualified former foster
1464 care children up until the age of 23, shall be paid from a
1465 special category established for that purpose in the General
1466 Appropriations Act. The amount and fund source in this special
1467 category will be set each year by the legislature.
1468 Section 12. This act shall take effect July 1, 2013.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1300

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Limited Liability Companies

DATE: April 3, 2013 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1300 creates the Revised Limited Liability Companies Act. The bill carries over many provisions in existing law to new chapter 605, F.S., but makes some substantial changes to the rules governing Limited Liability Companies. The bill is the result of efforts by representatives of the Business Law Section, the Tax Section, and the Real Property, Probate, and Trust Law Section of The Florida Bar. The bill is substantially based on the Revised Uniform Limited Liability Company Act of 2006 as amended in 2011(RULLCA)[1] with deviations to reflect unique situations present in Florida. The bill:

- Expands the list of nonwaivable default rules that cannot be "trumped" by the operating agreement;
- Modifies rules for the power of members and managers to bind the company;
- Modifies provisions addressing the LLC's management structure (including the elimination of the term "managing member");

[1] *Uniform Limited Liability Company act of 2006 as amended in 2011*, National Conference of Commissioners on Uniform State Laws, 2011, available at http://uniformlaws.org/Act.aspx?title=Limited%20Liability%20Company%20%28Revised%29.

- Modifies default management and voting rules;
- Modifies provisions relating to member dissociation and company dissolution;
- Modifies provisions for service of process on LLCs;
- Modifies provisions for derivative actions;
- Adds provisions to permit interest exchanges and in-bound domestications by non-U.S. entities; and
- Modifies appraisal rights provisions, including adding events that trigger appraisal rights, and provides clarifications to the procedural aspects of the appraisal rights provisions, particularly in dealing with organic transactions approved by way of written consent.

The bill does not change the rules regarding charging orders, and therefore the 2011 amendments to s. 608.433, F.S., made as a result of the Olmstead Patch continue unchanged under new s. 605.0503, F.S.

This bill substantially amends the following sections of the Florida Statutes: 607.1109, 607.1113, 607.193, 617.1108, 620.2104, 620.2108, 620.8914, 620.8918, 621.051, 621.07, 621.12, and 621.13.

This bill creates the following sections of the Florida Statutes: 48.062, 605.0101, 605.0102, 605.0103, 605.0104, 605.0105, 605.0106, 605.0107, 605.0108, 605.0109, 605.011, 605.0111, 605.0112, 605.0113, 605.0114, 605.0115, 605.0116, 605.0117, 605.0118, 605.0119, 605.0201, 605.0202, 605.0203, 605.0204, 605.0205, 605.0206, 605.0207, 605.0208, 605.0209, 605.021, 605.0211, 605.0212, 605.0213, 605.0214, 605.0215, 605.0216, 605.0301, 605.0302, 605.0304, 605.0401, 605.0402, 605.0403, 605.0404, 605.0405, 605.0406, 605.0407, 605.0408, 605.0409, 605.041, 605.0411, 605.0501, 605.0502, 605.0503, 605.0504, 605.0601, 605.0602, 605.0603, 605.0701, 605.0702, 605.0703, 605.0704, 605.0705, 605.0706, 605.0707, 605.0708, 605.0709, 605.071, 605.0711, 605.0712, 605.0713, 605.0714, 605.0715, 605.0716, 605.0717, 605.0801, 605.0802, 605.0803, 605.0804, 605.0805, 605.0806, 605.0901, 605.0902, 605.0903, 605.0904, 605.0905, 605.0906, 605.0907, 605.0908, 605.0909, 605.091, 605.0911, 605.0912, 605.0913, 605.1001, 605.1002, 605.1003, 605.1004, 605.1005, 605.1006, 605.1021, 605.1022, 605.1023, 605.1024, 605.1025, 605.1026, 605.1031, 605.1032, 605.1033, 605.1034, 605.1035, 605.1036, 605.1041, 605.1042, 605.1043, 605.1044, 605.1045, 605.1046, 605.1051, 605.1052, 605.1053, 605.1054, 605.1055, 605.1056, 605.1061, 605.1062, 605.1063, 605.1064, 605.1065, 605.1066, 605.1067, 605.1068, 605.1069, 605.107, 605.1071, 605.1072, 605.1101, 605.1102, 605.1103, 605.1104, 605.1105, 605.1106, 605.1107, and 605.1108.

This bill repeals the following sections of the Florida Statutes: 608.401, 608.402, 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081, 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415, 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227, 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235, 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261, 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351, 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357, 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438, 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402, 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431, 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482, 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511, 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501, 608.502, 608.503, 608.504,

608.505, 608.506, 608.507, 608.508, 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514, 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705.

II. Present Situation:

Limited Liability Company (LLC) statutes were created to address the perceived gap in the ideal business organization in certain situations. On the one hand, corporations are often highly complex and require payment of state corporate taxes, making them less than ideal for small businesses. On the other hand, partnerships are simpler but carry the risk of full joint and severable liability for each member. The LLC provides limited liability with the tax and management structure of a partnership.[2]

Florida's existing Limited Liability Company act was codified in ch. 608, F.S., in 1982. The chapter has been subsequently amended multiple times, with the last significant modifications made in 2002. In 2011, in response to the Florida Supreme Court decision, *Olmstead v. Federal Trade Commission*, 44 So. 3d 76 (Fla. 2010), the Florida legislature adopted amendments to s. 608.433, F.S. (which has come to be known as the "Olmstead Patch"). The Olmstead Patch clarified that a charging order is the sole and exclusive remedy afforded a judgment creditor of a member in a multi-member LLC with respect to seeking recourse against the member's membership interest, but allowed for a judgment creditor of the member in a single member LLC to seek a court supervised foreclosure against the single member's membership interest, but only upon a showing to the court issuing the charging order that the judgment will not be satisfied out of LLC distributions within a "reasonable time."

III. Effect of Proposed Changes:

The bill creates ch. 605, F.S., which it designates as the Florida Revised Limited Liability Company Act. Until January 1, 2015, LLCs in existence before January 1, 2014, may continue to operate under the provisions of existing law. As of January 1, 2015, all LLCs are subject to the provisions under ch. 605, F.S., and ch. 608, F.S., is repealed.

Operating Agreement

Current law allows for the members of an LLC to enter into an operating agreement to regulate the affairs of the LLC and govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, ch. 608, F.S., governs relations among the members, managers, and the LLC. However, the operating agreement may not:

- Unreasonably restrict a right to information or access to records required under s. 608.4101, F.S.;
- Eliminate the duty of loyalty under s. 608.4225, F.S.;
- Unreasonably reduce the duty of care under s. 608.4225, F.S.;
- Eliminate the obligation of good faith and fair dealing under s. 608.4225, F.S.;
- Vary the requirement to wind up the limited liability company's business; or

[2] McGinty, A. Edward, *Olmstead – A Lever from Member's Creditor to Full Multi-member LLC Membership?* 85 FLA. BAR J., 39, 42 (March 2011).

- Restrict rights of a person, other than a manager, member, or transferee of a member's distributional interest, under chapter 608, F.S.[3]

The bill retains many similarities to current law. Like current law, the bill provides a gap-filler provision for when the operating agreement does not provide a specific rule. Additionally, the bill delineates matters that the operating agreement may not alter. This is a far more extensive list than exist under current law. The operating agreement may not:

- Vary a limited liability company's capacity to sue and be sued in its own name;
- Vary the law applicable governing LLCs;
- Vary the procedure pertaining to registered agents or the Department of State;
- Eliminate the duty of loyalty or the duty of care;
- Eliminate the obligation of good faith and fair dealing;
- Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law;
- Unreasonably restrict the duties and rights to records required by the bill;
- Vary the power of a person to dissociate;
- Vary the grounds for dissolution specified;
- Vary the requirement to wind up the company's business;
- Unreasonably restrict the right of a member to maintain an action against another member or manager;
- Vary the provisions relating to the formation of a special litigation committee as a result of a derivative action;
- Vary the required contents of plan of merger, a plan of interest exchange, a plan of conversion, or a plan of domestication;
- Except in certain narrow circumstances, restrict the rights under this chapter of a person other than a member or manager; and
- Provide for indemnification for a member or manager when he or she commits:
  - Conduct involving bad faith, intentional misconduct, or a knowing violation of law;
  - A transaction from which the member or manager derived an improper personal benefit;
  - An improper distribution of funds; or
  - A breach of the duty of loyalty or the duty of care.

Registered Agent

Under current law, each LLC must maintain a registered agent with an office in Florida and must file a statement, including the address of the agent, with the Department of State.[4] The bill limits the duties of a registered agent to forwarding process, forwarding notices or demands served upon him or her to the company, and providing notice of the agent's resignation.

[3] Section 608.423(2), F.S.
[4] Section 608.415, F.S.

Service of Process

Under Existing Law, service of process must be effected in the same manner as service is made upon a partnership under ch. 49, F.S.[5] This has caused considerable confusion, particularly because of the significant differences between "manager-managed" and "member-managed" LLCs, and how those differences impact the application of the principles of agency and constructive notice.

The bill provides more detail to serve process on an LLC, recognizing different types of LLCs. The bill also provides for a method of delivery and waiver of notice. The bill also creates s. 48.062, F.S., to provide for service of process on an LLC within the chapter of the Florida Statutes relating to Service of Process.

Formation

Under existing law, in order to form an LLC one or more members or authorized representatives of the LLC must file articles of incorporation with the department of state.[6] Consistent with existing law, the bill requires an LLC to have at least one member in order for the formation of the LLC to be effective. "Shelf" LLCs, where there are no members when the LLC is formed, are not authorized. Only a minimal amount of disclosure is necessary in the articles of organization. For example, the bill does not require the articles to state whether the LLC is member-managed or manager-managed. However, the filing party may include this or any other items in the articles so long as they are not inconsistent with the nonwaivable provisions set forth in new s. 605.0105, F.S.

Amending the Articles of Organization

Currently, s. 608.411, F.S., allows an LLC to amend its articles of organization by filing an amendment with the Department of State. The bill is substantively the same as current law. The bill sets forth the differences between an amendment and a restatement, and adds a provision, consistent with existing law, to more specifically outline the process and requirements for simultaneously amending and restating articles of organization. However, contrary to existing law, the bill imposes an obligation directly on the members or managers, as applicable, to correct information in articles of organization that have become inaccurate. A member or manager's failure to meet the obligation exposes the member or manager, as applicable, to potential liabilities to third parties under new s. 605.0205(1)(b), F.S.

Filing of Records

Currently, a number of records must be filed with the Department of State including articles of organization and any amendments or restatements to the articles as well as an annual report.[7] The bill allows an LLC to file a document with a specification of when it takes effect, though it cannot be retroactive by more than 5 days. The bill allows an LLC to withdraw a statement that has been filed as long so it has not yet taken effect, in which case the record may be corrected

[5] Section 608.407, F.S.
[6] Section 608.407(1), F.S.
[7] *Id.*

but not withdrawn. The bill allows for a corrected record to relate back to the date of the originally filed record except when a person relied on the uncorrected record and was adversely affected by the correction. The bill requires an annual report, consistent with current law, but explicitly allows an LLC to file multiple annual reports, with subsequent reports being considered amended reports.

The bill addresses liability to third parties for inaccurate information in a filed record and provides that an operating agreement may relieve and shift the liability to third parties from certain specified members to other specified members. Existing law expressly states that the execution of a certificate filed with the Department of State is an affirmation of accuracy under penalties of perjury. Section 605.0205(3), F.S., of the bill clarifies this provision in existing law by clarifying that the affirmation under penalties of perjury applies to any and all records authorized or required to be filed with the Department of State.

Authority

Currently, s. 608.4235, F.S., provides for multiple ways in which a person can bind an LLC to an agreement. The bill retains the traditional Florida rule by providing four ways in which someone has the power to bind the LLC. A person may bind the LLC if he or she:

- Is an agent of the company;
- Has the authority to do something under the articles of organization or operating agreement;
- Has the authority pursuant to a statement of authority; or
- Has the status as an agent under another law.

This is the default rule, but the articles of organization or operating agreement may provide otherwise.

The bill provides that an LLC may file a statement of authority, which is a concept that comes from the RULLCA and is currently unknown to Florida law. This statement provides constructive notice as to who can bind the LLC. Likewise, a person who has been granted authority in a statement of authority may subsequently file a statement of denial to deny the grant of authority.

Liability

Under current law, the members of an LLC are not liable, solely by reason of being a member or serving as a manager or managing member for a debt, obligation, or liability of the limited liability company unless this liability is altered by an LLC's articles of organization or operating agreement.[8]

Similar to existing law, the bill shields members and managers against the debts, obligations, and liabilities of the LLC, but does not provide any shield against a person's own conduct or any contractual obligation he or she expressly assumes.

[8] Section 608.4227, F.S.

The bill makes no changes to the common law concept of "piercing the veil," which allows individual liability in certain situations. Therefore, this concept will likely still apply to LLCs.

Members

The bill changes the membership requirements from existing law while retaining some language for consistency. Under existing law, the required consent is a majority in interest of the members for consent to add a new member. However, existing law requires unanimous consent if the new member is a person that has been assigned an interest in the LLC.[9] The bill requires unanimous consent in all cases.

Unlike existing law, the bill allows a person to become a non-economic member without a transferable interest or any obligation to contribute capital. The default rule under the bill requires all of the members to consent to the admission of a new member after the LLC has been formed.

Contributions

Currently, under s. 608.4211, F.S., a contribution to the LLC by a member may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. The form of contribution required by the bill is similar to current law, except that it adds new permissible contributions in accordance with the RULLCA. A contribution may consist of tangible or intangible property, including services performed and contracts for services to be performed. A promise to contribute is not enforceable unless it is set out in a writing signed by the member. A member is obligated to the agreement, even after death or disability, and that obligation is enforceable by other members and a non-member creditor. Unlike the RULLCA, the bill allows an operating agreement to provide penalties for failure to meet the obligation.

Distributions

Currently, the default rule in Florida for LLCs is that distributions are made in accordance with the value of the members' capital contributions.[10] The bill changes current law by ignoring the value of any capital contributions that, at the time of the particular distribution, have previously been returned.

The bill clarifies existing law by providing that no member has a right to distributions prior to the LLC's dissolution unless the LLC decides to make the distribution. A member or transferee that becomes entitled to a distribution has the status and remedies of a creditor with respect to the distribution. The bill changes the default rule under current law in that although it allocates profits and losses based on the value of contributions, consistent with existing law, it does not, in making the calculation, subtract any contributions that have been returned.

Like current law, the bill limits distributions in prohibiting distributions that would render the LLC insolvent. The bill, however, provides the two methods to be used in the determination of

[9] Sections 608.4232 and 608.433, F.S.
[10] Section 608.426(1), F.S.

insolvency. The bill is consistent with current law, except that the bill eliminates the requirement of identifying distributions that are based on financial statements or a fair valuation of assets. The bill also provides that debts owed by a LLC to a member as a result of a permitted distribution puts the member in parity with other unsecured creditors of the LLC unless expressly subordinated by agreement.

The bill also provides liability for a member or manager that makes improper distributions. The bill provides that in a member-managed LLC, if the operating agreement expressly relieves a member of the authority and duty to consent to distributions and imposes that authority and obligation on another member or members, the relieved member will have no liability. The bill also imposes direct liability to the LLC by a member that receives a distribution that the member knows violates the law.

Management

Currently, Florida law contains the concept of a "managing member," who is elected from among the existing members.[11] The term "managing member" is fairly unique to Florida and is not used in the RULLCA or LLC statutes in any of the more prominent states. The bill does not follow either the RULLCA or existing law with respect to management. The bill changes existing law by eliminating the concept of a "managing member." This change was made to eliminate the confusion and disparate interpretations under existing law as to the ramifications that having a managing member has on the nature of the management structure of the LLC. The bill provides that existing LLCs that are managed by a managing member are deemed to be member-managed rather than manager managed. The bill provides that, absent an agreement, a member in a member-managed LLC is not entitled to compensation for its services, except for reasonable compensation for services to wind up the LLC. Additionally, a member that advances funds to an LLC is entitled to reimbursement. Finally, the bill provides that the management provisions of the bill apply in the event of dissolution of the LLC, except that a person that wrongfully causes the dissolution cannot participate in management as either a member or manager.

The bill authorizes an operating agreement to establish an LLC's status as a manager-managed limited liability company, in addition to the right to so authorize in the articles of organization. This is a carryover from current law, which states that an LLC may (but is not required to) identify whether it is "manager-managed" in its articles of organization. As in current law, a limited liability company that does not effectively designate itself a "manager-managed limited liability company" under the new act will operate, subject to any contrary provisions in its operating agreement, under statutory rules governing a "member-managed limited liability company."

The voting rights provisions of the bill are based on a combination of existing law and the RULLCA. The bill provides:

[11] Section 608.422(a), F.S.

- For a member-managed LLC, each member votes in accordance with its then-current percentage of the profits interest of the LLC;[12]
- The general rule that in a member-managed LLC, all decisions, whether in the ordinary course of business or not, require the consent by members holding a majority of the then-current interests in the profits of the LLC;[13]
- A transferring member that transfers all of its transferable interest continues to vote as a member based on the percentage of profits interest that the transferring member would have had but for the transfer;
- A requirement that notice of an action by written consent of the members be sent within 10 days to all members who did not consent;[14] and
- That managers may act by unanimous written consent or by proxy vote. However, the bill eliminates the requirement under current law to provide of any non-unanimous manager written consent actions within 10 days to all managers that did not consent to the action because, under the default rule, managers only can act by unanimous written consent.[15]

Under existing law, no specific provision addresses the amendment to the operating agreement. Therefore, under current law, the general rule applies, requiring the vote or consent by members holding a majority of the then-current interests in the profits of the LLC. The bill adopts the RULLCA approach by providing that in a member-managed LLC, the unanimous vote of the members is required to amend the operating agreement or the articles of organization.

The new act eliminates the following provisions under existing law, none of which is in the RULLCA:

- Section 608.4231(4), F.S., which prohibits amending the articles of organization or the operating agreement to provide for a vote of less than a majority in interest.
- Section 608.4231(5), F.S., which provides that notwithstanding anything to the contrary in the articles of organization or the operating agreement, members have the right to vote on dissolutions and mergers.
- Section 608.4231(7), F.S., which expressly allows the articles of organization or the operating agreement to provide for the mechanics of voting.

Records

The bill provides a list of specific records that are required to be maintained by the LLC. The bill also provides circumstances under which a member may inspect the records, and provides a cause of action for a member that is improperly denied access to the records.

Transferable Interests

The bill provides for a transferrable interest, which is generally defined as a member's right to distributions. This is distinguishable from a member's interest, which is the membership interest.

[12] This is the same as current law. See s. 608.422(a), F.S. for the current law.
[13] This is the same as current law. See ss. 608.4232 and 608.433, F.S. for the current law.
[14] This is the same as current law. See ss. 608.4231(6), F.S. for the current law.
[15] This is the same as current law. See ss. 608.4231(8), F.S. for the current law.

A member may transfer a transferable interest to another without transferring management rights or access to records. The bill retains the Olmstead patch from current law, as previously discussed.

Indemnification

Under current law, an LLC has discretion to indemnify and hold harmless any person from and against any claims, subject to any restrictions in the articles of organization or operating agreement.[16] Existing law limits the prohibition of indemnification and advancement of expenses to violations of criminal law, a transaction in which the person seeking indemnification received an improper personal benefit and liability in connection with improper distributions.[17]

The bill varies from existing law in that it expands the categories for which indemnification of a current or former member or manager is prohibited by including in such group any violation of ss. 608.4071-608.4074, F.S. and 608.4091, F.S., which relate to the standards of conduct of a manager or a member.

Power to Dissociate

Under current law, a member does not have the right, unless in the articles of organization or operating agreement state otherwise, to withdraw or resign prior to dissolution and winding up. In accordance with the RULLCA, the bill allows a member to dissociate at any time, rightfully or wrongfully, by withdrawing by "express will." The bill provides that if a person is dissociated, the person loses the right to participate in the LLC's management, which is not consistent with current law, and if the LLC is member-managed, the person has no further duties or liability for breaches of the standards of care for members under the new act with respect to matters and events that take place after the dissociation. The bill eliminates the provision from current law that a withdrawing member is not entitled to any distributions upon withdrawal but is entitled to payment equal to the fair value of the person's interest based on the withdrawing member's rights to distributions.

In addition, the bill provides 14 causes of dissociation that are new to existing law, other than the bankruptcy or insolvency of a member, which are generally the same in both the bill and current law.

Events Causing Dissolution

Under current law, an LLC must be dissolved upon the occurrence of any of the following events:

- At the time specified in the articles of organization or operating agreement;
- Upon the occurrence of events specified in the articles of organization or operating agreement;

[16] Section 608.4229(1), F.S.
[17] Section 608.4229(2), F.S.

- Upon the written consent of all of the members of the limited liability company unless this is forbidden by the articles of organization or the operating agreement;
- At any time there are no members; or
- Upon the entry of an order of dissolution by a circuit court.[18]

The bill provides for a similar set of circumstances with slightly altered wording. Under the bill, an LLC must be dissolved:

- Upon the occurrence of an event described in the operating agreement;
- Upon the consent of all members;
- Upon the passage of 90 days without a member, unless certain circumstances apply;
- Upon the entry of a decree of judicial dissolution; or
- Upon the filing of a statement of administrative dissolution by the Department of State.

The Department of State may file for administrative dissolution when an LLC does not timely file required documents or fails to pay a required fee. The bill simplifies the process by which the Department of State can commence an action for dissolution by allowing for electronic transmission of notice and automatic dissolution under certain circumstances.

Additionally the bill eliminates the ability of a creditor to bring an action for judicial dissolution if the creditor had an unsatisfied judgment and the LLC was insolvent, or if the LLC admitted that the creditor's claim was due and owing and the LLC was insolvent.[19] The bill does not make substantial changes to how articles of dissolution are handled.

Winding Up

Existing law does not have a comprehensive winding up provision. Winding up occurs following dissolution and results in termination of the existence of the LLC. The bill provides rules for winding up the LLC's activities and affairs, providing for payment of its debts, and sale of its assets, as well as bringing or defending actions and proceedings, and distributing assets to its members. A member, manager or legal representative may conduct the winding up, and may seek judicial supervision of the process, or the appointment of one or more persons to wind up the company's activities and affairs. A creditor may, upon establishing good cause, ask for judicial appointment of a trustee to handle the wind up.

The bill authorizes an LLC dissolved by administrative dissolution to file for reinstatement upon payment of all fees owed and providing all information required.

Direct Action by a Member

Existing law does not have a provision concerning a comprehensive direct action by a member. The bill provides that a member may maintain a direct action against another member, manager, or the limited liability company to enforce the member's rights and protect the member's

[18] Section 608.441, F.S.
[19] See s. 608.449(3), F.S. This provision does not exist under new chapter 605, F.S., and will be repealed on January 1, 2015.

interests. A member maintaining a direct action under this provision must plead an actual or threatened injury that is not solely the result of an injury suffered by the LLC.

Derivative Action

Existing law requires that, as a prerequisite to a derivative action, the plaintiff make a demand on the managing members of a member-managed company or the managers of a manager-managed company and that the demand be refused or ignored.[20]

The new act allows a member to maintain a derivative action to enforce a right of the LLC when either of two circumstances occurs. First if, within a reasonable time not to exceed 90 days, an action is not instituted after a member on the managing members of a member-managed company or the managers of a manager-managed company makes a demand. Second, if a demand is not made but the demand would be futile or irreparable injury would result to the company by waiting for the members or managers to bring the action.

Charitable Provisions

The bill prevents nonprofit LLCs from using the provisions in the bill to avoid restrictions on the use of property held for charitable purposes for other than the use permitted without order of an appropriate court specifying the disposition of the property. The bill also provides a legal effect of a merger on bequests, etc., that were originally made to an entity that does not survive a merger. This provision applies only to mergers, because in an interest exchange, conversion, or domestication transaction, the entity to which the bequest was made continues in existence.

Merger

Under current law, unless counter to the articles of organization or the operating agreement, an LLC may merge with another business entity if:

- Each LLC that is a party to the merger complies with the applicable provisions of ch. 608, F.S., and with the terms of its articles of organization and operating agreement;
- Each partnership that is a party to the merger complies with the applicable provisions of ch. 620, F.S.;
- Each domestic corporation that is a party to the merger complies with the applicable provisions of ch. 607, F.S.; and
- The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed.[21]

Under s. 608.4231, F.S., "[n]otwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on . . . a merger of the limited liability company as provided in s. 608.4381."

[20] Section 608.601(2), F.S.
[21] Section 608.438, F.S.

Read literally, this provision gives all members of the limited liability company a vote on a merger, whether or not such members have voting rights under the articles of organization or operating agreement of the LLC. At the same time, this provision was not one of the nonwaivable provisions in ch. 608, F.S. Thus, arguably this provision could be modified in the articles of organization or operating agreement of the LLC.

The bill removes the ambiguity in existing law and provides that non-voting members do not have the right to vote on a merger unless the articles of organization or operating agreement provide otherwise.

The bill requires that each entity of a merger approve the plan in accordance with the laws that govern the LLC. The plan may be amended or abandoned thereafter so long as the articles of merger have not yet been approved. To make the merger effective, articles of merger must then be approved by each merging entity and filed with the Department of State. When the merger becomes effective, the surviving LLC continues and the other merging entities cease to exist.

Interest exchange

Current law does not apply the concept of interest exchange to LLC's. The bill applies this concept from corporate law to LLCs. In an interest exchange, the separate existence of the acquired entity is not affected and the acquiring entity acquires all of the interest of one or more classes of the interests in the acquired entity. An interest exchange also allows for an indirect acquisition through the use of consideration in an exchange that is not provided by the acquiring entity, such as consideration from another or related entity.

Domestication

The new act, for the first time, allows domestications of non-U.S. entities who wish to become domestic LLCs in Florida. A domestication allows the domesticating entity to retain its status and existence in the non-U.S. jurisdiction in which it currently exists. The bill allows domestication of all non-U.S. entities. Much like a merger, the bill requires a plan of domestication and approval of domestication and allows amendment or abandonment of the plan. The plan becomes effective upon the passage and filing of the articles of domestication.

Charging Orders

The bill does not change the rules regarding charging orders, and therefore the 2011 amendments to s. 608.433, F.S., made as a result of the Olmstead Patch continue unchanged. These rules continue to exist under new s. 605.0503, F.S.

The bill includes a severability clause.

The bill takes effect January 1, 2014.

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:

This bill is substantial rewrite of the laws governing Limited Liability Corporations in Florida. Existing LLCs will need to ensure that they are in compliance with the new laws.

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/SB 1300 by Judiciary on April 1, 2013:
The committee substitute creates ch. 605, F.S., to house the new LLC provisions in order to reduce confusion that may result from including these provisions in existing ch. 608, F.S. The committee substitute amends ss. 607.1109, 607.1113, 607.193, 617.1108, 620.2104, 620.2108, 620.8914, 620.8918, 621.051, 621.07, 621.12, and 621.13, F.S., to conform to provisions in the act. The committee substitute also creates s. 48.062, F.S., to provide for service of process on an LLC within the chapter of the Florida Statutes relating to service of process.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Division of Law Revision and Information is directed to entitle chapter 605, Florida Statutes, as the "Florida Revised Limited Liability Company Act."

Section 2. Chapter 605, Florida Statutes, consisting of sections 605.0101-605.1108, Florida Statutes, is created to read:

605.0101 Short title.—Sections 605.0101-605.1108 may be cited as the "Florida Revised Limited Liability Company Act."

605.0102 Definitions.—As used in this chapter, the term:

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14 (1) "Acquired entity" means the entity that has all of one
15 or more of its classes or series of interests acquired in an
16 interest exchange.
17 (2) "Acquiring entity" means the entity that acquires all
18 of one or more classes or series of interests of the acquired
19 entity in an interest exchange.
20 (3) "Articles of conversion" means the articles of
21 conversion required under s. 605.1045. The term includes the
22 articles of conversion as amended or restated.
23 (4) "Articles of domestication" means the articles of
24 domestication required under s. 605.1055. The term includes the
25 articles of domestication as amended or restated.
26 (5) "Articles of interest exchange" means the articles of
27 interest exchange required under s. 605.1035. The term includes
28 the articles of interest exchange as amended or restated.
29 (6) "Articles of merger" means the articles of merger
30 required under s. 605.1025. The term includes the articles of
31 merger as amended or restated.
32 (7) "Articles of organization" means the articles of
33 organization required under s. 605.0201. The term includes the
34 articles of organization as amended or restated.
35 (8) "Authorized representative" means:
36 (a) In the case of the formation of a limited liability
37 company, a person authorized by a prospective member of the
38 limited liability company to form the company by executing and
39 filing its articles of organization with the department.
40 (b) In the case of an existing limited liability company,
41 with respect to the execution and filing of a record with the
42 department or taking any other action required or authorized

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43 under this chapter:
44 1. A manager of a manager-managed limited liability company
45 who is authorized to do so;
46 2. A member of a member-managed limited liability company
47 who is authorized to do so; or
48 3. An agent or officer of the limited liability company who
49 is granted the authority to do so by such a manager or such a
50 member, pursuant to the operating agreement of the limited
51 liability company or pursuant to s. 605.0709.
52 (c) In the case of a foreign limited liability company or
53 another entity, with respect to the execution and filing of a
54 record with the department or taking any other action required
55 or authorized under this chapter, a person who is authorized to
56 file the record or take the action on behalf of the foreign
57 limited liability company or other entity.
58 (9) "Business day" means Monday through Friday, excluding
59 any day that a national banking association is not open for
60 normal business transactions.
61 (10) "Contribution," except in the phrase "right of
62 contribution," means property or a benefit described in s.
63 605.0402 which is provided by a person to a limited liability
64 company to become a member or which is provided in the person's
65 capacity as a member.
66 (11) "Conversion" means a transaction authorized under ss.
67 605.1041-605.1046.
68 (12) "Converted entity" means the converting entity as it
69 continues in existence after a conversion.
70 (13) "Converting entity" means the domestic entity that
71 approves a plan of conversion pursuant to s. 605.1043 or the

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72 foreign entity that approves a conversion pursuant to the
73 organic law of its jurisdiction of formation.
74 (14) “Day” means a calendar day.
75 (15) “Debtor in bankruptcy” means a person who is the
76 subject of:
77 (a) An order for relief under Title 11 of the United States
78 Code or a successor statute of general application; or
79 (b) A comparable order under federal, state, or foreign law
80 governing insolvency.
81 (16) “Department” means the Department of State.
82 (17) “Distribution” means a transfer of money or other
83 property from a limited liability company to a person on account
84 of a transferable interest or in the person’s capacity as a
85 member.
86 (a) The term includes:
87 1. A redemption or other purchase by a limited liability
88 company of a transferable interest.
89 2. A transfer to a member in return for the member’s
90 relinquishment of any right to participate as a member in the
91 management or conduct of the company’s activities and affairs or
92 a relinquishment of a right to have access to records or other
93 information concerning the company’s activities and affairs.
94 (b) The term does not include amounts constituting
95 reasonable compensation for present or past service or payments
96 made in the ordinary course of business under a bona fide
97 retirement plan or other bona fide benefits program.
98 (18) “Distributional interest” means the right under an
99 unincorporated entity’s organic law and organic rules to receive
100 distributions from the entity.

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101 (19) "Domestic," with respect to an entity, means an entity
102 whose jurisdiction of formation is this state.
103 (20) "Domesticated limited liability company" means the
104 domesticating entity as it continues in existence after a
105 domestication.
106 (21) "Domesticating entity" means a non-United States
107 entity that approves a domestication pursuant to the law of its
108 jurisdiction of formation.
109 (22) "Domestication" means a transaction authorized under
110 ss. 605.1051-605.1056.
111 (23)(a) "Entity" means:
112 1. A business corporation;
113 2. A nonprofit corporation;
114 3. A general partnership, including a limited liability
115 partnership;
116 4. A limited partnership, including a limited liability
117 limited partnership;
118 5. A limited liability company;
119 6. A real estate investment trust; or
120 7. Any other domestic or foreign entity that is organized
121 under an organic law.
122 (b) "Entity" does not include:
123 1. An individual;
124 2. A trust with a predominantly donative purpose or a
125 charitable trust;
126 3. An association or relationship that is not a partnership
127 solely by reason of s. 620.8202(3) or a similar provision of the
128 law of another jurisdiction;
129 4. A decedent's estate; or

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130 5. A government or a governmental subdivision, agency, or
131 instrumentality.
132 (24) "Filing entity" means an entity whose formation
133 requires the filing of a public organic record.
134 (25) "Foreign," with respect to an entity, means an entity
135 whose jurisdiction of formation is a jurisdiction other than
136 this state.
137 (26) "Foreign limited liability company" means an
138 unincorporated entity that was formed in a jurisdiction other
139 than this state and is denominated by that law as a limited
140 liability company.
141 (27) "Governance interest" means a right under the organic
142 law or organic rules of an unincorporated entity, other than as
143 a governor, agent, assignee, or proxy, to:
144 (a) Receive or demand access to information concerning an
145 entity or its books and records;
146 (b) Vote for or consent to the election of the governors of
147 the entity; or
148 (c) Receive notice of, vote on, or consent to an issue
149 involving the internal affairs of the entity.
150 (28) "Governor" means:
151 (a) A director of a business corporation;
152 (b) A director or trustee of a nonprofit corporation;
153 (c) A general partner of a general partnership;
154 (d) A general partner of a limited partnership;
155 (e) A manager of a manager-managed limited liability
156 company;
157 (f) A member of a member-managed limited liability company;
158 (g) A director or a trustee of a real estate investment

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159 trust; or
160 (h) Any other person under whose authority the powers of an
161 entity are exercised and under whose direction the activities
162 and affairs of the entity are managed pursuant to the organic
163 law and organic rules of the entity.
164 (29) "Interest" means:
165 (a) A share in a business corporation;
166 (b) A membership in a nonprofit corporation;
167 (c) A partnership interest in a general partnership;
168 (d) A partnership interest in a limited partnership;
169 (e) A membership interest in a limited liability company;
170 (f) A share or beneficial interest in a real estate
171 investment trust;
172 (g) A member's interest in a limited cooperative
173 association;
174 (h) A beneficial interest in a statutory trust, business
175 trust, or common law business trust; or
176 (i) A governance interest or distributional interest in
177 another entity.
178 (30) "Interest exchange" means a transaction authorized
179 under ss. 605.1031-605.1036.
180 (31) "Interest holder" means:
181 (a) A shareholder of a business corporation;
182 (b) A member of a nonprofit corporation;
183 (c) A general partner of a general partnership;
184 (d) A general partner of a limited partnership;
185 (e) A limited partner of a limited partnership;
186 (f) A member of a limited liability company;
187 (g) A shareholder or beneficial owner of a real estate

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188 investment trust;
189 (h) A beneficiary or beneficial owner of a statutory trust,
190 business trust, or common law business trust; or
191 (i) Another direct holder of an interest.
192 (32) "Interest holder liability" means:
193 (a) Personal liability for a liability of an entity which
194 is imposed on a person:
195 1. Solely by reason of the status of the person as an
196 interest holder; or
197 2. By the organic rules of the entity which make one or
198 more specified interest holders or categories of interest
199 holders liable in their capacity as interest holders for all or
200 specified liabilities of the entity.
201 (b) An obligation of an interest holder under the organic
202 rules of an entity to contribute to the entity.
203 (33) "Jurisdiction," if used to refer to a political
204 entity, means the United States, a state, a foreign country, or
205 a political subdivision of a foreign country.
206 (34) "Jurisdiction of formation" means, with respect to an
207 entity:
208 (a) The jurisdiction under whose organic law the entity is
209 formed, incorporated, or created or otherwise comes into being;
210 however, for these purposes, if an entity exists under the law
211 of a jurisdiction different from the jurisdiction under which
212 the entity originally was formed, incorporated, or created or
213 otherwise came into being, then the jurisdiction under which the
214 entity then exists is treated as the jurisdiction of formation;
215 or
216 (b) In the case of a limited liability partnership or

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217 foreign limited liability partnership, the jurisdiction in which
218 the partnership's statement of qualification or equivalent
219 document is filed.
220 (35) "Legal representative" means, with respect to a
221 natural person, the personal representative, executor, guardian,
222 or conservator or any other person who is empowered by
223 applicable law with the authority to act on behalf of the
224 natural person, and, with respect to a person other than a
225 natural person, a person who is empowered by applicable law with
226 the authority to act on behalf of the person.
227 (36) "Limited liability company" or "company," except in
228 the phrase "foreign limited liability company," means an entity
229 formed or existing under this chapter or an entity that becomes
230 subject to this chapter pursuant to ss. 605.1001-605.1072.
231 (37) "Majority-in-interest" means those members who hold
232 more than 50 percent of the then-current percentage or other
233 interest in the profits of the limited liability company and who
234 have the right to vote; however, as used in ss. 605.1001-
235 605.1072, the term means:
236 (a) In the case of a limited liability company with only
237 one class or series of members, the holders of more than 50
238 percent of the then-current percentage or other interest in the
239 profits of the company who have the right to approve a merger,
240 interest exchange, or conversion under the organic law or the
241 organic rules of the company; and
242 (b) In the case of a limited liability company having more
243 than one class or series of members, the holders in each class
244 or series of more than 50 percent of the then-current percentage
245 or other interest in the profits of that class or series who

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246 have the right to approve a merger, interest exchange, or
247 conversion under the organic law or the organic rules of the
248 company, unless the company's organic rules provide for the
249 approval of the transaction in a different manner.
250 (38) "Manager" means a person who, under the operating
251 agreement of a manager-managed limited liability company, is
252 responsible, alone or in concert with others, for performing the
253 management functions stated in ss. 605.0407(3) and 605.04073(2).
254 (39) "Manager-managed limited liability company" means a
255 limited liability company that is manager-managed by virtue of
256 the operation of s. 605.0407(1).
257 (40) "Member" means a person who:
258 (a) Is a member of a limited liability company under s.
259 605.0401 or was a member in a company when the company became
260 subject to this chapter; and
261 (b) Has not dissociated from the company under s. 605.0602.
262 (41) "Member-managed limited liability company" means a
263 limited liability company that is not a manager-managed limited
264 liability company.
265 (42) "Merger" means a transaction authorized under ss.
266 605.1021-605.1026.
267 (43) "Merging entity" means an entity that is a party to a
268 merger and exists immediately before the merger becomes
269 effective.
270 (44) "Non-United States entity" means a foreign entity
271 other than an entity with a jurisdiction of formation that is
272 not a state.
273 (45) "Operating agreement" means an agreement, whether
274 referred to as an operating agreement or not, which may be oral,

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275 implied, in a record, or in any combination thereof, of the
276 members of a limited liability company, including a sole member,
277 concerning the matters described in s. 605.0105(1). The term
278 includes the operating agreement as amended or restated.
279 (46) "Organic law" means the law of the jurisdiction in
280 which an entity was formed.
281 (47) "Organic rules" means the public organic record and
282 private organic rules of an entity.
283 (48) "Person" means an individual, business corporation,
284 nonprofit corporation, partnership, limited partnership, limited
285 liability company, limited cooperative association,
286 unincorporated nonprofit association, statutory trust, business
287 trust, common law business trust, estate, trust, association,
288 joint venture, public corporation, government or governmental
289 subdivision, agency, or instrumentality, or another legal or
290 commercial entity.
291 (49) "Plan" means a plan of merger, plan of interest
292 exchange, plan of conversion, or plan of domestication, as
293 appropriate in the particular context.
294 (50) "Plan of conversion" means a plan under s. 605.1042
295 and includes the plan of conversion as amended or restated.
296 (51) "Plan of domestication" means a plan under s. 605.1052
297 and includes the plan of domestication as amended or restated.
298 (52) "Plan of interest exchange" means a plan under s.
299 605.1032 and includes the plan of interest exchange as amended
300 or restated.
301 (53) "Plan of merger" means a plan under s. 605.1022 and
302 includes the plan of merger as amended or restated.
303 (54) "Principal office" means the principal executive

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304 office of a limited liability company or foreign limited
305 liability company, regardless of whether the office is located
306 in this state.
307 (55) "Private organic rules" means the rules, whether or
308 not in a record, which govern the internal affairs of an entity,
309 are binding on all its interest holders, and are not part of its
310 public organic record, if any. The term includes:
311 (a) The bylaws of a business corporation.
312 (b) The bylaws of a nonprofit corporation.
313 (c) The partnership agreement of a general partnership.
314 (d) The partnership agreement of a limited partnership.
315 (e) The operating agreement of a limited liability company.
316 (f) The bylaws, trust instrument, or similar rules of a
317 real estate investment trust.
318 (g) The trust instrument of a statutory trust or similar
319 rules of a business trust or common law business trust.
320 (56) "Property" means all property, whether real, personal,
321 mixed, tangible, or intangible, or a right or interest therein.
322 (57) "Protected agreement" means:
323 (a) A record evidencing indebtedness and any related
324 agreement in effect on January 1, 2014;
325 (b) An agreement that is binding on an entity on January 1,
326 2014;
327 (c) The organic rules of an entity in effect on January 1,
328 2014; or
329 (d) An agreement that is binding on any of the governors or
330 interest holders of an entity on January 1, 2014.
331 (58) "Public organic record" means a record, the filing of
332 which by a governmental body is required to form an entity, and

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333 an amendment to or restatement of that record. The term includes
334 the following:
335 (a) The articles of incorporation of a business
336 corporation.
337 (b) The articles of incorporation of a nonprofit
338 corporation.
339 (c) The certificate of limited partnership of a limited
340 partnership.
341 (d) The articles of organization of a limited liability
342 company.
343 (e) The articles of incorporation of a general cooperative
344 association or a limited cooperative association.
345 (f) The certificate of trust of a statutory trust or
346 similar record of a business trust.
347 (g) The articles of incorporation of a real estate
348 investment trust.
349 (59) "Record," if used as a noun, means information that is
350 inscribed on a tangible medium or that is stored in an
351 electronic or other medium and is retrievable in perceivable
352 form.
353 (60) "Registered foreign entity" means a foreign entity
354 that is authorized to transact business in this state pursuant
355 to a record filed with the department.
356 (61) "Registered foreign limited liability company" means a
357 foreign limited liability company that has a certificate of
358 authority to transact business in this state pursuant to a
359 record filed with the department.
360 (62) "Sign" means, with present intent to authenticate or
361 adopt a record:

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362 (a) To execute or adopt a tangible symbol; or
363 (b) To attach or logically associate an electronic symbol,
364 sound, or process to or with a record, and includes a manual,
365 facsimile, conformed, or electronic signature.
366
367 The terms “signed” and “signature” have the corresponding
368 meanings.
369 (63) “State” means a state of the United States, the
370 District of Columbia, Puerto Rico, the United States Virgin
371 Islands, or a territory or insular possession subject to the
372 jurisdiction of the United States.
373 (64) “Surviving entity” means the entity that continues in
374 existence after or is created by a merger.
375 (65) “Transfer” includes:
376 (a) An assignment.
377 (b) A conveyance.
378 (c) A sale.
379 (d) A lease.
380 (e) An encumbrance, including a mortgage or security
381 interest.
382 (f) A gift.
383 (g) A transfer by operation of law.
384 (66) “Transferable interest” means the right, as initially
385 owned by a person in the person’s capacity as a member, to
386 receive distributions from a limited liability company in
387 accordance with the operating agreement, whether the person
388 remains a member or continues to own a part of the right. The
389 term applies to any fraction of the interest, by whomever owned.
390 (67) “Transferee” means a person to which all or part of a

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391 transferable interest is transferred, whether or not the
392 transferor is a member. The term includes a person who owns a
393 transferable interest under s. 605.0603(1)(c).
394 (68) "Type of entity" means a generic form of entity that
395 is:
396 (a) Recognized at common law; or
397 (b) Formed under an organic law, whether or not some of the
398 entities formed under that organic law are subject to provisions
399 of that law which create different categories of the form of
400 entity.
401 (69) "Writing" means printing, typewriting, electronic
402 communication, or other intentional communication that is
403 reducible to a tangible form. The term "written" has the
404 corresponding meaning.
405 605.0103 Knowledge; notice.—
406 (1) A person knows a fact if the person:
407 (a) Has actual knowledge of the fact; or
408 (b) Is deemed to know the fact under paragraph (4)(b), or a
409 law other than this chapter.
410 (2) A person has notice of a fact when the person:
411 (a) Has reason to know the fact from all of the facts known
412 to the person at the time in question; or
413 (b) Is deemed to have notice of the fact under paragraph
414 (4)(b).
415 (3) Subject to s. 605.0210(8), a person notifies another
416 person of a fact by taking steps reasonably required to inform
417 the other person in the ordinary course of events, regardless of
418 whether those steps actually cause the other person to know of
419 the fact.

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420 (4) A person who is not a member is deemed to:
421 (a) Know of a limitation on authority to transfer real
422 property as provided in s. 605.0302(7); and
423 (b) Have notice of a limited liability company's:
424 1. Dissolution, 90 days after the articles of dissolution
425 filed under s. 605.0707 become effective;
426 2. Termination, 90 days after a statement of termination
427 filed under s. 605.0709(7) becomes effective;
428 3. Participation in a merger, interest exchange,
429 conversion, or domestication, 90 days after the articles of
430 merger, articles of interest exchange, articles of conversion,
431 or articles of domestication under s. 605.1025, s. 605.1035, s.
432 605.1045, or s. 605.1055, respectively, become effective;
433 4. Declaration in its articles of organization that it is
434 manager-managed in accordance with s. 605.0201(3)(a); however,
435 if such a declaration has been added or changed by an amendment
436 or amendment and restatement of the articles of organization,
437 notice of the addition or change may not become effective until
438 90 days after the effective date of such amendment or amendment
439 and restatement; and
440 5. Grant of authority to or limitation imposed on the
441 authority of a person holding a position or having a specified
442 status in a company, or grant of authority to or limitation
443 imposed on the authority of a specific person, if the grant of
444 authority or limitation imposed on the authority is described in
445 the articles of organization in accordance with s.
446 605.0201(3)(d); however, if that description has been added or
447 changed by an amendment or an amendment and restatement of the
448 articles of organization, notice of the addition or change may

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449 not become effective until 90 days after the effective date of
450 such amendment or amendment and restatement.
451 605.0104 Governing law.—The law of this state governs:
452 (1) The internal affairs of a limited liability company.
453 (2) The liability of a member as member, and a manager as
454 manager, for the debts, obligations, or other liabilities of a
455 limited liability company.
456 605.0105 Operating agreement; scope, function, and
457 limitations.—
458 (1) Except as otherwise provided in subsections (3) and
459 (4), the operating agreement governs the following:
460 (a) Relations among the members as members and between the
461 members and the limited liability company.
462 (b) The rights and duties under this chapter of a person in
463 the capacity of manager.
464 (c) The activities and affairs of the company and the
465 conduct of those activities and affairs.
466 (d) The means and conditions for amending the operating
467 agreement.
468 (2) To the extent the operating agreement does not
469 otherwise provide for a matter described in subsection (1), this
470 chapter governs the matter.
471 (3) An operating agreement may not do any of the following:
472 (a) Vary a limited liability company's capacity under s.
473 605.0109 to sue and be sued in its own name.
474 (b) Vary the law applicable under s. 605.0104.
475 (c) Vary the requirement, procedure, or other provision of
476 this chapter pertaining to:
477 1. Registered agents; or

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478 2. The department, including provisions pertaining to
479 records authorized or required to be delivered to the department
480 for filing under this chapter.
481 (d) Vary the provisions of s. 605.0204.
482 (e) Eliminate the duty of loyalty or the duty of care under
483 s. 605.04091, except as otherwise provided in subsection (4).
484 (f) Eliminate the obligation of good faith and fair dealing
485 under s. 605.04091, but the operating agreement may prescribe
486 the standards by which the performance of the obligation is to
487 be measured if the standards are not manifestly unreasonable.
488 (g) Relieve or exonerate a person from liability for
489 conduct involving bad faith, willful or intentional misconduct,
490 or a knowing violation of law.
491 (h) Unreasonably restrict the duties and rights stated in
492 s. 605.0410, but the operating agreement may impose reasonable
493 restrictions on the availability and use of information obtained
494 under that section and may define appropriate remedies,
495 including liquidated damages, for a breach of a reasonable
496 restriction on use.
497 (i) Vary the power of a person to dissociate under s.
498 605.0601, except to require that the notice under s. 605.0602(1)
499 be in a record.
500 (j) Vary the grounds for dissolution specified in s.
501 605.0702.
502 (k) Vary the requirement to wind up the company's business,
503 activities, and affairs as specified in s. 605.0709(1), (2)(a),
504 and (5).
505 (l) Unreasonably restrict the right of a member to maintain
506 an action under ss. 605.0801-605.0806.

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507 (m) Vary the provisions of s. 605.0804, but the operating
508 agreement may provide that the company may not appoint a special
509 litigation committee. However, the operating agreement may not
510 prevent a court from appointing a special litigation committee.
511 (n) Vary the right of a member to approve a merger,
512 interest exchange, or conversion under s. 605.1023(1)(b), s.
513 605.1033(1)(b), or s. 605.1043(1)(b), respectively.
514 (o) Vary the required contents of plan of merger under s.
515 605.1022, a plan of interest exchange under s. 605.1032, a plan
516 of conversion under s. 605.1042, or a plan of domestication
517 under s. 605.1052.
518 (p) Except as otherwise provided in ss. 605.0106 and
519 605.0107(2), restrict the rights under this chapter of a person
520 other than a member or manager.
521 (q) Provide for indemnification for a member or manager
522 under s. 605.0408 for any of the following:
523 1. Conduct involving bad faith, willful or intentional
524 misconduct, or a knowing violation of law.
525 2. A transaction from which the member or manager derived
526 an improper personal benefit.
527 3. A circumstance under which the liability provisions of
528 s. 605.0406 are applicable.
529 4. A breach of duties or obligations under s. 605.04091,
530 taking into account a variation of such duties and obligations
531 provided for in the operating agreement to the extent allowed by
532 subsection (4).
533 (4) Subject to paragraph (3)(g), without limiting other
534 terms that may be included in an operating agreement, the
535 following rules apply:

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536 (a) The operating agreement may:
537 1. Specify the method by which a specific act or
538 transaction that would otherwise violate the duty of loyalty may
539 be authorized or ratified by one or more disinterested and
540 independent persons after full disclosure of all material facts;
541 or
542 2. Alter the prohibition stated in s. 605.0405(1)(b) so
543 that the prohibition requires solely that the company's total
544 assets not be less than the sum of its total liabilities.
545 (b) To the extent the operating agreement of a member-
546 managed limited liability company expressly relieves a member of
547 responsibility that the member would otherwise have under this
548 chapter and imposes the responsibility on one or more other
549 members, the operating agreement may, to the benefit of the
550 member that the operating agreement relieves of the
551 responsibility, also eliminate or limit a duty or obligation
552 that would have pertained to the responsibility.
553 (c) If not manifestly unreasonable, the operating agreement
554 may:
555 1. Alter or eliminate the aspects of the duty of loyalty
556 under s. 605.04091(2);
557 2. Identify specific types or categories of activities that
558 do not violate the duty of loyalty; and
559 3. Alter the duty of care, but may not authorize willful or
560 intentional misconduct or a knowing violation of law.
561 (5) The court shall decide as a matter of law whether a
562 term of an operating agreement is manifestly unreasonable under
563 paragraph (3)(f) or paragraph (4)(c). The court:
564 (a) Shall make its determination as of the time the

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565 challenged term became part of the operating agreement and shall
566 consider only circumstances existing at that time; and
567 (b) May invalidate the term only if, in light of the
568 purposes, activities, and affairs of the limited liability
569 company, it is readily apparent that:
570 1. The objective of the term is unreasonable; or
571 2. The term is an unreasonable means to achieve the
572 provision's objective.
573 (6) An operating agreement may provide for specific
574 penalties or specified consequences, including those described
575 in s. 605.0403(5), if a member or transferee fails to comply
576 with the terms and conditions of the operating agreement or if
577 other events specified in the operating agreement occur.
578 605.0106 Operating agreement; effect on limited liability
579 company and person becoming member; preformation agreement;
580 other matters involving operating agreement.—
581 (1) A limited liability company is bound by and may enforce
582 the operating agreement, regardless of whether the company has
583 itself manifested assent to the operating agreement.
584 (2) A person who becomes a member of a limited liability
585 company is deemed to assent to, is bound by, and may enforce the
586 operating agreement, regardless of whether the member executes
587 the operating agreement.
588 (3) Two or more persons who intend to become the initial
589 members of a limited liability company may make an agreement
590 providing that, upon the formation of the company, the agreement
591 will become the operating agreement. One person who intends to
592 become the initial member of a limited liability company may
593 assent to terms that will become the operating agreement upon

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594 formation of the company.
595 (4) A manager of a limited liability company or a
596 transferee is bound by the operating agreement, regardless of
597 whether the manager or transferee has agreed to the operating
598 agreement.
599 (5) An operating agreement of a limited liability company
600 that has only one member is not unenforceable simply because
601 there is only one person who is a party to the operating
602 agreement.
603 (6) Except as provided in s. 605.0403(1), an operating
604 agreement is not subject to a statute of frauds.
605 (7) An operating agreement may provide rights to a person,
606 including a person who is not a party to the operating
607 agreement, to the extent provided in the operating agreement.
608 (8) A written operating agreement or other record:
609 (a) May provide that a person be admitted as a member of a
610 limited liability company, become a transferee of a limited
611 liability company interest, or have other rights or powers of a
612 member to the extent assigned:
613 1. If the person or a representative authorized by that
614 person orally, in writing, or by other action such as payment
615 for a limited liability company interest, executes the operating
616 agreement or another record evidencing the intent of the person
617 to become a member or transferee; or
618 2. Without the execution of the operating agreement, if the
619 person or a representative authorized by the person orally, in
620 writing, or by other action such as payment for a limited
621 liability company interest complies with the conditions for
622 becoming a member or transferee as provided in the operating

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623 agreement or another record; and
624 (b) Is not unenforceable by reason of its not being signed
625 by a person being admitted as a member or becoming a transferee
626 as provided in paragraph (a), or by reason of its being signed
627 by a representative as provided in this chapter.
628 605.0107 Operating agreement; effect on third parties and
629 relationship to records effective on behalf of limited liability
630 company.—
631 (1) An operating agreement may specify that its amendment
632 requires the approval of a person who is not a party to the
633 agreement or upon the satisfaction of a condition. An amendment
634 is ineffective if its adoption does not include the required
635 approval or satisfy the specified condition.
636 (2) The obligations of a limited liability company and its
637 members to a person in the person's capacity as a transferee or
638 a person dissociated as a member are governed by the operating
639 agreement. An amendment to the operating agreement made after a
640 person becomes a transferee or is dissociated as a member:
641 (a) Is effective with regard to a debt, obligation, or
642 other liability of the limited liability company or its members
643 to the person in the person's capacity as a transferee or person
644 dissociated as a member; and
645 (b) Is not effective to the extent the amendment imposes a
646 new debt, obligation, or other liability on the transferee or
647 person dissociated as a member.
648 (3) If a record delivered to the department for filing
649 becomes effective under this chapter and contains a provision
650 that would be ineffective under s. 605.0105(3) or (4)(c) if
651 contained in the operating agreement, the provision is

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652 ineffective in the record.
653 (4) Subject to subsection (3), if a record delivered to the
654 department for filing which has become effective under this
655 chapter but conflicts with a provision of the operating
656 agreement:
657 (a) The operating agreement prevails as to members,
658 dissociated members, transferees, and managers; and
659 (b) The record prevails as to other persons to the extent
660 the other persons reasonably rely on the record.
661 605.0108 Nature, purpose, and duration of limited liability
662 company.-
663 (1) A limited liability company is an entity distinct from
664 its members.
665 (2) A limited liability company may have any lawful
666 purpose, regardless of whether the company is a for-profit
667 company.
668 (3) A limited liability company has an indefinite duration.
669 605.0109 Powers.—A limited liability company has the
670 powers, rights, and privileges granted by this chapter, any
671 other law, or by its operating agreement to do all things
672 necessary or convenient to carry out its activities and affairs,
673 including the power to do all of the following:
674 (1) Sue, be sued, and defend in its name.
675 (2) Purchase, receive, lease, or otherwise acquire, own,
676 hold, improve, use, and otherwise deal with real or personal
677 property or any legal or equitable interest in property,
678 wherever located.
679 (3) Sell, convey, mortgage, grant a security interest in,
680 lease, exchange, and otherwise encumber or dispose of all or a

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681 part of its property.
682 (4) Purchase, receive, subscribe for, or otherwise acquire,
683 own, hold, vote, use, sell, mortgage, lend, grant a security
684 interest in, or otherwise dispose of and deal in and with,
685 shares or other interests in or obligations of another entity.
686 (5) Make contracts or guarantees or incur liabilities;
687 borrow money; issue notes, bonds, or other obligations, which
688 may be convertible into or include the option to purchase other
689 securities of the limited liability company; or make contracts
690 of guaranty and suretyship which are necessary or convenient to
691 the conduct, promotion, or attainment of the purposes,
692 activities, and affairs of the limited liability company.
693 (6) Lend money, invest or reinvest its funds, and receive
694 and hold real or personal property as security for repayment.
695 (7) Conduct its business, locate offices, and exercise the
696 powers granted by this chapter within or without this state.
697 (8) Select managers and appoint officers, directors,
698 employees, and agents of the limited liability company, define
699 their duties, fix their compensation, and lend them money and
700 credit.
701 (9) Make donations for the public welfare or for
702 charitable, scientific, or educational purposes.
703 (10) Pay pensions and establish pension plans, pension
704 trusts, profit-sharing plans, bonus plans, option plans, and
705 benefit or incentive plans for any or all of its current or
706 former managers, members, officers, agents, and employees.
707 (11) Be a promoter, incorporator, shareholder, partner,
708 member, associate, or manager of a corporation, partnership,
709 joint venture, trust, or other entity.

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710 (12) Make payments or donations or conduct any other act
711 not inconsistent with applicable law which furthers the business
712 of the limited liability company.
713 (13) Enter into interest rate, basis, currency, hedge or
714 other swap agreements, or cap, floor, put, call, option,
715 exchange or collar agreements, derivative agreements, or similar
716 agreements.
717 (14) Grant, hold, or exercise a power of attorney,
718 including an irrevocable power of attorney.
719 605.0110 Limited liability company property.—
720 (1) All property originally contributed to the limited
721 liability company or subsequently acquired by a limited
722 liability company by purchase or other method is limited
723 liability company property.
724 (2) Property acquired with limited liability company funds
725 is limited liability company property.
726 (3) Instruments and documents providing for the
727 acquisition, mortgage, or disposition of property of the limited
728 liability company are valid and binding upon the limited
729 liability company if they are executed in accordance with this
730 chapter.
731 (4) A member of a limited liability company has no interest
732 in any specific limited liability company property.
733 605.0111 Rules of construction and supplemental principles
734 of law.—
735 (1) It is the intent of this chapter to give the maximum
736 effect to the principle of freedom of contract and to the
737 enforceability of operating agreements, including the purposes
738 of ss. 605.0105-605.0107.

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739 (2) Unless displaced by particular provisions of this
740 chapter, the principles of law and equity supplement this
741 chapter.
742 605.0112 Name.—
743 (1) The name of a limited liability company:
744 (a) Must contain the words "limited liability company" or
745 the abbreviation "L.L.C." or "LLC";
746 (b) Must be distinguishable in the records of the Division
747 of Corporations of the department from the names of all other
748 entities or filings, except fictitious name registrations
749 pursuant to s. 865.09, organized, registered, or reserved under
750 the laws of this state, which names are on file with the
751 division; however, a limited liability company may register
752 under a name that is not otherwise distinguishable on the
753 records of the division with the written consent of the owner
754 entity, provided the consent is filed with the division at the
755 time of registration of such name;
756 (c) May not contain language stating or implying that the
757 limited liability company is organized for a purpose other than
758 a purpose authorized in this chapter and its articles of
759 organization; and
760 (d) May not contain language stating or implying that the
761 limited liability company is connected with a state or federal
762 government agency or a corporation or other entity chartered
763 under the laws of the United States.
764 (2) Subject to s. 605.0905, this section applies to a
765 foreign limited liability company transacting business in this
766 state which has a certificate of authority to transact business
767 in this state or which has applied for a certificate of

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768 authority.
769 (3) In the case of a limited liability company in existence
770 before July 1, 2007, and registered with the department, the
771 requirement in this section that the name of a limited liability
772 company be distinguishable from the names of other entities and
773 filings applies only if the limited liability company files
774 documents on or after July 1, 2007, which would otherwise have
775 affected its name.
776 (4) A limited liability company in existence before January
777 1, 2014, which was registered with the department and is using
778 an abbreviation or designation in its name authorized under
779 previous law, may continue using the abbreviation or designation
780 in its name until it dissolves or amends its name in the records
781 of the department.
782 (5) The name of the limited liability company must be filed
783 with the department for public notice only, and the act of
784 filing alone does not create any presumption of ownership beyond
785 that which is created under the common law.
786 605.0113 Registered agent.—
787 (1) Each limited liability company and each foreign limited
788 liability company that has a certificate of authority under s.
789 605.0902 shall designate and continuously maintain in this
790 state:
791 (a) A registered office, which may be the same as its place
792 of business in this state; and
793 (b) A registered agent, who must be:
794 1. An individual who resides in this state and whose
795 business address is identical to the address of the registered
796 office; or

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797 2. A foreign or domestic entity authorized to transact
798 business in this state whose business address is identical to
799 the address of the registered office.
800 (2) Each initial registered agent, and each successor
801 registered agent that is appointed, shall file a statement in
802 writing with the department, in the form and manner prescribed
803 by the department, accepting the appointment as registered agent
804 while simultaneously being designated as the registered agent.
805 The statement of acceptance must provide that the registered
806 agent is familiar with and accepts the obligations of that
807 position.
808 (3) The duties of a registered agent are as follows:
809 (a) To forward to the limited liability company or
810 registered foreign limited liability company, at the address
811 most recently supplied to the agent by the company or foreign
812 limited liability company, a process, notice, or demand
813 pertaining to the company or foreign limited liability company
814 which is served on or received by the agent.
815 (b) If the registered agent resigns, to provide the notice
816 required under s. 605.0115(2) to the company or foreign limited
817 liability company at the address most recently supplied to the
818 agent by the company or foreign limited liability company.
819 (4) The department shall maintain an accurate record of the
820 registered agent and registered office for service of process
821 and shall promptly furnish information disclosed thereby upon
822 request and payment of the required fee.
823 (5) A limited liability company and each foreign limited
824 liability company that has a certificate of authority under s.
825 605.0902 may not prosecute, maintain, or defend an action in a

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826 court until the limited liability company complies with this
827 section and pays to the department a penalty of $5 for each day
828 it has failed to comply or $500, whichever is less, and pays any
829 other amounts required under this chapter.
830 605.0114 Change of registered agent or registered office.—
831 (1) In order to change its registered agent or registered
832 office address, a limited liability company or a foreign limited
833 liability company may deliver to the department for filing a
834 statement of change containing the following:
835 (a) The name of the limited liability company or foreign
836 limited liability company.
837 (b) The name of its current registered agent.
838 (c) If the registered agent is to be changed, the name of
839 the new registered agent.
840 (d) The street address of its current registered office for
841 its registered agent.
842 (e) If the street address of the registered office is to be
843 changed, the new street address of the registered office in this
844 state.
845 (2) If the registered agent is changed, the written
846 acceptance of the successor registered agent described in s.
847 605.0113(2) must also be included in or attached to the
848 statement of change.
849 (3) A statement of change is effective when filed by the
850 department or when authorized under s. 605.0207.
851 (4) The changes described in this section may also be made
852 on the limited liability company's or foreign limited liability
853 company's annual report, in an application for reinstatement
854 filed with the department under s. 605.0715(1), in an amendment

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855 to or restatement of a company's articles of organization in
856 accordance with s. 605.0202, or in an amendment to a foreign
857 limited liability company's certificate of authority in
858 accordance with s. 605.0907.
859 605.0115 Resignation of registered agent.—
860 (1) A registered agent may resign as agent for a limited
861 liability company or foreign limited liability company by
862 delivering for filing to the department a signed statement of
863 resignation containing the name of the limited liability company
864 or foreign limited liability company.
865 (2) After delivering the statement of resignation with the
866 department for filing, the registered agent shall mail a copy to
867 the limited liability company's or foreign limited liability
868 company's current mailing address.
869 (3) A registered agent is terminated upon the earlier of:
870 (a) The 31st day after the department files the statement
871 of resignation; or
872 (b) When a statement of change or other record designating
873 a new registered agent is filed by the department.
874 (4) When a statement of resignation takes effect, the
875 registered agent ceases to have responsibility for a matter
876 thereafter tendered to it as agent for the limited liability
877 company or foreign limited liability company. The resignation
878 does not affect contractual rights that the company or foreign
879 limited liability company has against the agent or that the
880 agent has against the company or foreign limited liability
881 company.
882 (5) A registered agent may resign from a limited liability
883 company or foreign limited liability company regardless of

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884 whether the company or foreign limited liability company has
885 active status.
886 605.0116 Change of name or address by registered agent.—
887 (1) If a registered agent changes his or her name or
888 address, the agent may deliver to the department for filing a
889 statement of change that provides the following:
890 (a) The name of the limited liability company or foreign
891 limited liability company represented by the registered agent.
892 (b) The name of the agent as currently shown in the records
893 of the department for the company or foreign limited liability
894 company.
895 (c) If the name of the agent has changed, its new name.
896 (d) If the address of the agent has changed, the new
897 address.
898 (e) That the registered agent has given the notice required
899 under subsection (2).
900 (2) A registered agent shall promptly furnish notice of the
901 statement of change and the changes made by the statement filed
902 with the department to the represented limited liability company
903 or foreign limited liability company.
904 605.0117 Service of process, notice, or demand.—
905 (1) A limited liability company or registered foreign
906 limited liability company may be served with process, notice, or
907 a demand required or authorized by law by serving on its
908 registered agent.
909 (2) If a limited liability company or registered foreign
910 limited liability company ceases to have a registered agent or
911 if its registered agent cannot with reasonable diligence be
912 served, the process, notice, or demand required or permitted by

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913 law may instead be served:
914 (a) On a member of a member-managed limited liability
915 company or registered foreign limited liability company; or
916 (b) On a manager of a manager-managed limited liability
917 company or registered foreign limited liability company.
918 (3) If the process, notice, or demand cannot be served on a
919 limited liability company or registered foreign limited
920 liability company pursuant to subsection (1) or subsection (2),
921 the process, notice, or demand may be served on the department
922 as an agent of the company.
923 (4) Service with process, notice, or a demand on the
924 department may be made by delivering to and leaving with the
925 department duplicate copies of the process, notice, or demand.
926 (5) Service is effectuated under subsection (3) on the date
927 shown as received by the department.
928 (6) The department shall keep a record of each process,
929 notice, and demand served pursuant to this section and record
930 the time of and the action taken regarding the service.
931 (7) This section does not affect the right to serve
932 process, notice, or a demand in any other manner provided by
933 law.
934 605.0118 Delivery of record.—
935 (1) Except as otherwise provided in this chapter,
936 permissible means of delivery of a record include delivery by
937 hand, the United States Postal Service, a commercial delivery
938 service, and electronic transmission.
939 (2) Except as provided in subsection (3), delivery to the
940 department is effective only when a record is received by the
941 department.

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942 (3) If a check is mailed to the department for payment of
943 an annual report fee or the annual fee required under s.
944 607.193, the check shall be deemed to have been received by the
945 department as of the postmark date appearing on the envelope or
946 package transmitting the check if the envelope or package is
947 received by the department.
948 605.0119 Waiver of notice.—If, pursuant to this chapter or
949 the articles of organization or operating agreement of a limited
950 liability company, notice is required to be given to a member of
951 a limited liability company or to a manager of a limited
952 liability company having a manager or managers, a waiver in
953 writing signed by the person or persons entitled to the notice,
954 whether made before or after the time for notice to be given, is
955 equivalent to the giving of notice.
956 605.0201 Formation of limited liability company; articles
957 of organization.—
958 (1) One or more persons may act as authorized
959 representatives to form a limited liability company by signing
960 and delivering articles of organization to the department for
961 filing.
962 (2) The articles of organization must state the following:
963 (a) The name of the limited liability company, which must
964 comply with s. 605.0112.
965 (b) The street and mailing addresses of the company's
966 principal office.
967 (c) The name, street address in this state, and written
968 acceptance of the company's initial registered agent.
969 (3) The articles of organization may contain statements on
970 matters other than those required under subsection (2), but may

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971 not vary from or otherwise affect the provisions specified in s.
972 605.0105(3) in a manner inconsistent with that subsection.
973 Additional statements may include one or more of the following:
974 (a) A declaration as to whether the limited liability
975 company is manager-managed for purposes of s. 605.0407 and other
976 relevant provisions of this chapter.
977 (b) For a manager-managed limited liability company, the
978 names and addresses of one or more of the managers of the
979 company.
980 (c) For a member-managed limited liability company, the
981 names and addresses of one or more of the members of the
982 company.
983 (d) A description of the authority or limitation on the
984 authority of a specific person in the company or a person
985 holding a position or having a specified status in the company.
986 (e) Any other relevant matters.
987 (4) A limited liability company is formed when the
988 company's articles of organization become effective under s.
989 605.0207 and when at least one person becomes a member at the
990 time the articles of organization become effective. By signing
991 the articles of organization, the person who signs the articles
992 of organization affirms that the company has or will have at
993 least one member as of the time the articles of organization
994 become effective.
995 605.0202 Amendment or restatement of articles of
996 organization.—
997 (1) The articles of organization may be amended or restated
998 at any time.
999 (2) To amend the articles of organization, a limited

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1000 liability company must deliver to the department for filing an
1001 amendment, designated as such in its heading, which contains the
1002 following:
1003 (a) The present name of the company.
1004 (b) The date of filing of the company's articles of
1005 organization.
1006 (c) The amendment to the articles of organization.
1007 (d) The delayed effective date, as provided under s.
1008 605.0207, if the amendment is not effective on the date the
1009 department files the amendment.
1010 (3) To restate its articles of organization, a limited
1011 liability company must deliver to the department for filing an
1012 instrument, entitled "Restatement of Articles of Organization,"
1013 which contains the following:
1014 (a) The present name of the company.
1015 (b) The date of the filing of its articles of organization.
1016 (c) All of the provisions of its articles of organization
1017 in effect, as restated.
1018 (d) The delayed effective date, as provided under s.
1019 605.0207, if the restatement is not effective on the date the
1020 department files the restatement.
1021 (4) A restatement of the articles of organization of a
1022 limited liability company may also contain one or more
1023 amendments to the articles of organization, in which case the
1024 instrument must be entitled "Amended and Restated Articles of
1025 Organization."
1026 (5) If a member of a member-managed limited liability
1027 company or a manager of a manager-managed limited liability
1028 company knew that information contained in filed articles of

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1029 organization was inaccurate when the articles of organization
1030 were filed or became inaccurate due to changed circumstances,
1031 the member or manager shall promptly:
1032 (a) Cause the articles of organization to be amended; or
1033 (b) If appropriate, deliver to the department for filing a
1034 statement of change under s. 605.0114 or a statement of
1035 correction under s. 605.0209.
1036 605.0203 Signing of records to be delivered for filing to
1037 department.—
1038 (1) A record delivered to the department for filing
1039 pursuant to this chapter must be signed as follows:
1040 (a) Except as otherwise provided in paragraphs (b) and (c),
1041 a record signed on behalf of a limited liability company must be
1042 signed by a person authorized by the company.
1043 (b) A company's initial articles of organization must be
1044 signed by at least one person acting as an authorized
1045 representative. The articles of organization must also include
1046 or have attached a statement signed by the company's initial
1047 registered agent in the form described in s. 605.0113(2).
1048 (c) A record delivered on behalf of a dissolved company
1049 that has no member must be signed by the person winding up the
1050 company's activities and affairs under s. 605.0709(3) or a
1051 person appointed under s. 605.0709(4) or (5) to wind up the
1052 activities and affairs.
1053 (d) A statement of denial by a person under s. 605.0303
1054 must be signed by that person.
1055 (e) A record changing the registered agent must also
1056 include or be accompanied by a statement signed by the successor
1057 registered agent in the form described in s. 605.0113(2).

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1058 (f) Any other record delivered on behalf of a person to the
1059 department must be signed by that person.
1060 (2) A record may also be signed by an agent, legal
1061 representative, or attorney-in-fact, as applicable, if such
1062 person is duly appointed and authorized to sign the record and
1063 the record states that such person possesses that authority.
1064 (3) A person who signs a record as an agent, legal
1065 representative, or attorney-in-fact affirms as a fact that the
1066 person is authorized to sign the record.
1067 605.0204 Signing and filing pursuant to judicial order.—
1068 (1) If a person who is required under this chapter to sign
1069 a record or deliver a record to the department for filing under
1070 this chapter does not do so, another person who is aggrieved may
1071 petition the circuit court to order:
1072 (a) The person to sign the record;
1073 (b) The person to deliver the record to the department for
1074 filing; or
1075 (c) The department to file the record unsigned.
1076 (2) If a petitioner under subsection (1) is not the limited
1077 liability company or foreign limited liability company to which
1078 the record pertains, the petitioner shall make the limited
1079 liability company or foreign limited liability company a party
1080 to the action. The petitioner may seek the remedies provided in
1081 subsection (1) in the same action, in combination or in the
1082 alternative.
1083 (3) A record filed pursuant to paragraph (1)(c) is
1084 effective without being signed.
1085 605.0205 Liability for inaccurate information in filed
1086 record.—

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1087 (1) If a record delivered to the department for filing
1088 under this chapter and filed by the department contains
1089 inaccurate information, a person who suffers a loss by reliance
1090 on such information may recover damages for the loss from:
1091 (a) A person who signed the record, or caused another to
1092 sign it on the person's behalf, and knew the information was
1093 inaccurate at the time the record was signed; and
1094 (b) Subject to subsection (2), a member of a member-managed
1095 limited liability company or a manager of a manager-managed
1096 limited liability company if:
1097 1. The record was delivered for filing on behalf of the
1098 company; and
1099 2. The member or manager had notice of the inaccuracy for a
1100 reasonably sufficient time before the information was relied
1101 upon so that, before the reliance, the member or manager
1102 reasonably could have:
1103 a. Effected an amendment pursuant to s. 605.0202;
1104 b. Filed a petition pursuant to s. 605.0204; or
1105 c. Delivered to the department for filing a statement of
1106 change pursuant to s. 605.0114 or a statement of correction
1107 under s. 605.0209.
1108 (2) To the extent that the operating agreement of a member-
1109 managed limited liability company expressly relieves a member of
1110 responsibility for maintaining the accuracy of information
1111 contained in records delivered on behalf of the company to the
1112 department for filing and imposes that responsibility on one or
1113 more other members, the liability stated in paragraph (1)(b)
1114 applies to those other members and not to the member that the
1115 operating agreement relieves of the responsibility.

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1116 (3) An individual who signs a record authorized or required
1117 to be filed under this chapter affirms under penalty of perjury
1118 that the information stated in the record is accurate.
1119 605.0206 Filing requirements.—
1120 (1) A record authorized or required to be delivered to the
1121 department for filing under this chapter must be captioned to
1122 describe the record's purpose, be in a medium authorized by the
1123 department, and be delivered to the department. If all filing
1124 fees are paid, the department shall file the record unless the
1125 department determines that the record does not comply with the
1126 filing requirements.
1127 (2) Upon request and payment of the applicable fee, the
1128 department shall send to the requester a certified copy of the
1129 requested record.
1130 (3) If the department has prescribed a mandatory medium or
1131 form for the record being filed, the record must be in the
1132 prescribed medium or on the prescribed form.
1133 (4) Except as otherwise provided by the department, a
1134 document to be filed with the department must be typewritten or
1135 printed, legible, and written in the English language. A limited
1136 liability company name does not need to be in English if written
1137 in English letters or Arabic or Roman numerals, and the
1138 certificate of existence required of a foreign limited liability
1139 company does not need to be in English if accompanied by a
1140 reasonably authenticated English translation. The department may
1141 prescribe forms in electronic format which comply with this
1142 chapter. The department may also use electronic transmissions
1143 for the purposes of notice and communication in the performance
1144 of its duties and may require filers and registrants to furnish

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1145 e-mail addresses when presenting a document for filing.
1146 605.0207 Effective date and time.—Except as otherwise
1147 provided in s. 605.0208, and subject to s. 605.0209(3), any
1148 document delivered to the department for filing under this
1149 chapter may specify an effective time and a delayed effective
1150 date. In the case of initial articles of organization, a prior
1151 effective date may be specified in the articles of organization
1152 if such date is within 5 business days before the date of
1153 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
1154 605.0209, a record filed by the department is effective:
1155 (1) If the record does not specify an effective time and
1156 does not specify a prior or a delayed effective date, on the
1157 date and at the time the record is filed as evidenced by the
1158 department's endorsement of the date and time on the record.
1159 (2) If the record specifies an effective time, but not a
1160 prior or delayed effective date, on the date the record is filed
1161 at the time specified in the record.
1162 (3) If the record specifies a delayed effective date, but
1163 not an effective time, at 12:01 a.m. on the earlier of:
1164 (a) The specified date; or
1165 (b) The 90th day after the record is filed.
1166 (4) If the record is the initial articles of organization
1167 and specifies a date before the effective date, but no effective
1168 time, at 12:01 a.m. on the later of:
1169 (a) The specified date; or
1170 (b) The 5th business day before the record is filed.
1171 (5) If the record is the initial articles of organization
1172 and specifies an effective time and a delayed effective date, at
1173 the specified time on the earlier of:

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1174 (a) The specified date; or
1175 (b) The 90th day after the record is filed.
1176 (6) If the record specifies an effective time and a prior
1177 effective date, at the specified time on the later of:
1178 (a) The specified date; or
1179 (b) The 5th business day before the record is filed.
1180 605.0208 Withdrawal of filed record before effectiveness.—
1181 (1) Except as otherwise provided in ss. 605.1001-605.1072,
1182 a record delivered to the department for filing may be withdrawn
1183 before it takes effect by delivering to the department for
1184 filing a withdrawal statement.
1185 (2) A withdrawal statement must:
1186 (a) Be signed by each person who signed the record being
1187 withdrawn, except as otherwise agreed by those persons;
1188 (b) Identify the record to be withdrawn; and
1189 (c) If not signed by all the persons who signed the record
1190 being withdrawn, state that the record is withdrawn in
1191 accordance with the agreement of all the persons who signed the
1192 record.
1193 (3) On the filing by the department of a withdrawal
1194 statement, the action or transaction evidenced by the original
1195 record does not take effect.
1196 605.0209 Correcting filed record.—
1197 (1) A person on whose behalf a filed record was delivered
1198 to the department for filing may correct the record if:
1199 (a) The record at the time of filing was inaccurate;
1200 (b) The record was defectively signed; or
1201 (c) The electronic transmission of the record to the
1202 department was defective.

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1203 (2) To correct a filed record, a person on whose behalf the
1204 record was delivered to the department must deliver to the
1205 department for filing a statement of correction.
1206 (3) A statement of correction:
1207 (a) May not state a delayed effective date;
1208 (b) Must be signed by the person correcting the filed
1209 record;
1210 (c) Must identify the filed record to be corrected;
1211 (d) Must specify the inaccuracy or defect to be corrected;
1212 and
1213 (e) Must correct the inaccuracy or defect.
1214 (4) A statement of correction is effective as of the
1215 effective date of the filed record that it corrects, except for
1216 purposes of s. 605.0103(4) and as to persons relying on the
1217 uncorrected filed record and adversely affected by the
1218 correction. For those purposes and as to those persons, the
1219 statement of correction is effective when filed.
1220 605.0210 Duty of department to file; review of refusal to
1221 file; transmission of information by department.—
1222 (1) The department files a document by stamping or
1223 otherwise endorsing the document as "filed," together with the
1224 department's official title and the date and time of receipt.
1225 (2) After filing a record, the department shall deliver an
1226 acknowledgment of the filing or certified copy of the document
1227 to the company or foreign limited liability company or its
1228 authorized representative.
1229 (3) If the department refuses to file a record, the
1230 department shall, within 15 days after the record is delivered:
1231 (a) Return the record or notify the person who submitted

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1232 the record of the refusal; and
1233 (b) Provide a brief explanation in a record of the reason
1234 for the refusal.
1235 (4) If the applicant returns the document with corrections
1236 in accordance with the rules of the department within 60 days
1237 after it was mailed to the applicant by the department and, if
1238 at the time of return, the applicant so requests in writing, the
1239 filing date of the document shall be the filing date that would
1240 have been applied had the original document not been deficient,
1241 except as to persons who relied on the record before correction
1242 and were adversely affected thereby.
1243 (5) The department's duty to file documents under this
1244 section is ministerial. Filing or refusing to file a document
1245 does not:
1246 (a) Affect the validity or invalidity of the document in
1247 whole or part;
1248 (b) Relate to the correctness or incorrectness of
1249 information contained in the document; or
1250 (c) Create a presumption that the document is valid or
1251 invalid or that information contained in the document is correct
1252 or incorrect.
1253 (6) If not otherwise provided by law and this chapter, the
1254 department shall determine by rule the appropriate format for
1255 any document placed under its jurisdiction, and the number of
1256 copies, manner of execution, method of electronic transmission,
1257 and amount and method of payment of fees for such document.
1258 (7) If the department refuses to file a record, the person
1259 who submitted the record may petition the circuit court to
1260 compel filing of the record. The record and the explanation of

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1261 the department of the refusal to file must be attached to the
1262 petition. The court may decide the matter in a summary
1263 proceeding.
1264 (8) Except as otherwise provided under s. 605.0117 or by
1265 any law other than this chapter, the department may deliver a
1266 record to a person by delivering it:
1267 (a) In person to the person who submitted it;
1268 (b) To the address of the person's registered agent;
1269 (c) To the principal office of the person; or
1270 (d) To another address that the person provides to the
1271 department for delivery.
1272 605.0211 Certificate of status.—
1273 (1) The department, upon request and payment of the
1274 requisite fee, shall issue a certificate of status for a limited
1275 liability company if the records filed in the department show
1276 that the department has accepted and filed the company's
1277 articles of organization. A certificate of status must state the
1278 following:
1279 (a) The company's name.
1280 (b) That the company was organized under the laws of this
1281 state and the date of organization.
1282 (c) Whether all fees due to the department under this
1283 chapter have been paid.
1284 (d) If the company's most recent annual report required
1285 under s. 605.0212 has not been filed by the department.
1286 (e) If the department has administratively dissolved the
1287 company or received a record notifying the department that the
1288 company has been dissolved by judicial action pursuant to s.
1289 605.0705.

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1290 (f) If the department has filed articles of dissolution for
1291 the company.
1292 (g) If the department has accepted and filed a statement of
1293 termination.
1294 (2) The department, upon request and payment of the
1295 requisite fee, shall furnish a certificate of status for a
1296 foreign limited liability company if the records filed show that
1297 the department has filed a certificate of authority. A
1298 certificate of status for a foreign limited liability company
1299 must state the following:
1300 (a) The foreign limited liability company's name and a
1301 current alternate name adopted under s. 605.0906(1) for use in
1302 this state.
1303 (b) That the foreign limited liability company is
1304 authorized to transact business in this state.
1305 (c) Whether all fees and penalties due to the department
1306 under this chapter or other law have been paid.
1307 (d) If the foreign limited liability company's most recent
1308 annual report required under s. 605.0212 has not been filed by
1309 the department.
1310 (e) If the department has:
1311 1. Revoked the foreign limited liability company's
1312 certificate of authority; or
1313 2. Filed a notice of withdrawal of certificate of
1314 authority.
1315 (3) Subject to any qualification stated in the certificate
1316 of status, a certificate of status issued by the department is
1317 conclusive evidence that the limited liability company is in
1318 existence or the foreign limited liability company is authorized

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1319 to transact business in this state.
1320 605.0212 Annual report for department.—
1321 (1) A limited liability company or a registered foreign
1322 limited liability company shall deliver to the department for
1323 filing an annual report that states the following:
1324 (a) The name of the limited liability company or, if a
1325 foreign limited liability company, the name under which the
1326 foreign limited liability company is registered to transact
1327 business in this state.
1328 (b) The street address of its principal office and its
1329 mailing address.
1330 (c) The date of its organization and, if a foreign limited
1331 liability company, the jurisdiction of its formation and the
1332 date on which it became qualified to transact business in this
1333 state.
1334 (d) The company's federal employer identification number
1335 or, if none, whether one has been applied for.
1336 (e) The name, title or capacity, and address of at least
1337 one person who has the authority to manage the company.
1338 (f) Any additional information that is necessary or
1339 appropriate to enable the department to carry out this chapter.
1340 (2) Information in the annual report must be current as of
1341 the date the report is delivered to the department for filing.
1342 (3) The first annual report must be delivered to the
1343 department between January 1 and May 1 of the year following the
1344 calendar year in which the limited liability company's articles
1345 of organization became effective or the foreign limited
1346 liability company obtained a certificate of authority to
1347 transact business in this state. Subsequent annual reports must

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1348 be delivered to the department between January 1 and May 1 of
1349 each calendar year thereafter. If one or more forms of annual
1350 report are submitted for a calendar year, the department shall
1351 file each of them and make the information contained in them
1352 part of the official record. The first form of annual report
1353 filed in a calendar year shall be considered the annual report
1354 for that calendar year, and each report filed after that one in
1355 the same calendar year shall be treated as an amended report for
1356 that calendar year.
1357 (4) If an annual report does not contain the information
1358 required in this section, the department shall promptly notify
1359 the reporting limited liability company or registered foreign
1360 limited liability company. If the report is corrected to contain
1361 the information required in subsection (1) and delivered to the
1362 department within 30 days after the effective date of the
1363 notice, it is timely delivered.
1364 (5) If an annual report contains the name or address of a
1365 registered agent which differs from the information shown in the
1366 records of the department immediately before the annual report
1367 becomes effective, the differing information in the annual
1368 report is considered a statement of change under s. 605.0114.
1369 (6) A limited liability company or foreign limited
1370 liability company that fails to file an annual report that
1371 complies with the requirements of this section may not maintain
1372 or defend any action in a court of this state until the report
1373 is filed and all fees and penalties due under this chapter are
1374 paid, and shall be subject to dissolution or cancellation of its
1375 certificate of authority to transact business as provided in
1376 this chapter.

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1377 (7) The department shall prescribe the forms, which may be
1378 in an electronic format, on which to make the annual report
1379 called for in this section and may substitute the uniform
1380 business report pursuant to s. 606.06 as a means of satisfying
1381 the requirement of this chapter.
1382 (8) As a condition of a merger under s. 605.1021, each
1383 party to a merger which exists under the laws of this state, and
1384 each party to the merger which exists under the laws of another
1385 jurisdiction and has a certificate of authority to transact
1386 business or conduct its affairs in this state, must be active
1387 and current in filing its annual reports in the records of the
1388 department through December 31 of the calendar year in which the
1389 articles of merger are submitted to the department for filing.
1390 (9) As a condition of a conversion of an entity to a
1391 limited liability company under s. 605.1041, the entity, if it
1392 exists under the laws of this state, or if it exists under the
1393 laws of another jurisdiction and has a certificate of authority
1394 to transact business or conduct its affairs in this state, must
1395 be active and current in filing its annual reports in the
1396 records of the department through December 31 of the calendar
1397 year in which the articles of conversion are submitted to the
1398 department for filing.
1399 (10) As a condition of a conversion of a limited liability
1400 company to another type of entity under s. 605.1041, the limited
1401 liability company converting to the other type of entity must be
1402 active and current in filing its annual reports in the records
1403 of the department through December 31 of the calendar year in
1404 which the articles of conversion are submitted to the department
1405 for filing.

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1406 (11) As a condition of an interest exchange between a
1407 limited liability company and another entity under s. 605.1031,
1408 the limited liability company and each other entity that is a
1409 party to the interest exchange which exists under the laws of
1410 this state, and each party to the interest exchange which exists
1411 under the laws of another jurisdiction and has a certificate of
1412 authority to transact business or conduct its affairs in this
1413 state, must be active and current in filing its annual reports
1414 in the records of the department through December 31 of the
1415 calendar year in which the articles of interest exchange are
1416 submitted to the department for filing.
1417 605.0213 Fees of the department.—The fees of the department
1418 under this chapter are as follows:
1419 (1) For furnishing a certified copy, $30.
1420 (2) For filing original articles of organization, $100.
1421 (3) For filing articles of merger of limited liability
1422 companies or other business entities, $25 per constituent party
1423 to the merger, unless a specific fee is required for a party
1424 under other applicable law.
1425 (4) For filing an annual report, $50, plus the annual fee
1426 imposed pursuant to s. 607.193 in the amount of $88.75.
1427 (5) For filing an application for reinstatement after an
1428 administrative or judicial dissolution or a revocation of
1429 authority to transact business, $100.
1430 (6) For designating a registered agent or changing a
1431 registered agent or registered office address, $25.
1432 (7) For filing a registered agent’s statement of
1433 resignation from an active limited liability company, $85.
1434 (8) For filing a registered agent’s statement of

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1435 resignation from a dissolved or revoked limited liability
1436 company, $25.
1437 (9) For filing a statement of change of name of registered
1438 agent or change of registered office address, $25.
1439 (10) For filing articles of conversion of a limited
1440 liability company, $25.
1441 (11) For filing articles of domestication, $25.
1442 (12) For furnishing a certificate of status, $5.
1443 (13) For filing restated articles of organization, amended
1444 and restated articles of organization, an amendment to the
1445 articles of organization, or an amendment to a restated or an
1446 amended and restated articles of organization, $25.
1447 (14) For filing an amendment to a certificate of authority,
1448 $25.
1449 (15) For filing a notice of withdrawal of certificate of
1450 authority, $25.
1451 (16) For filing a statement of dissociation, $25.
1452 (17) For filing a manager’s statement of resignation, $25.
1453 (18) For filing articles of dissolution, $25.
1454 (19) For filing a statement of revocation of dissolution,
1455 $100.
1456 (20) For filing a statement of termination, $25.
1457 (21) For filing a withdrawal statement, $25.
1458 (22) For filing a statement of authority, $25.
1459 (23) For filing an amendment to a statement of authority,
1460 $25.
1461 (24) For filing a statement of denial, $25.
1462 (25) For filing a cancellation of a statement of authority,
1463 $25.

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1464 (26) For filing a statement of correction, $25.
1465 (27) For filing a foreign limited liability company's
1466 application for a certificate of authority to transact business,
1467 $100.
1468 (28) For filing an amended annual report, $50.
1469 (29) For filing a withdrawal statement of delivered record
1470 before effectiveness, $25.
1471 (30) For filing a notice of withdrawal of certificate of
1472 authority, $25.
1473 (31) For filing any other limited liability company
1474 document or foreign limited liability company document, $25.
1475 605.0214 Powers of department.—The department has the
1476 authority reasonably necessary to administer this chapter
1477 efficiently, to perform the duties imposed upon it, and to adopt
1478 reasonable rules necessary to carry out its duties and functions
1479 under this chapter.
1480 605.0215 Certificates to be received in evidence and
1481 evidentiary effect of copy of filed document.—All certificates
1482 issued by the department in accordance with this chapter shall
1483 be taken and received in all courts, public offices, and
1484 official bodies as prima facie evidence of the facts stated. A
1485 certificate from the department delivered with a copy of a
1486 document filed by the department is conclusive evidence that the
1487 original document is on file with the department.
1488 605.0216 Statement of dissociation or resignation.—
1489 (1) A member of a limited liability company may file a
1490 statement of dissociation with the department containing the
1491 following:
1492 (a) The name of the limited liability company.

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1493 (b) The name and signature of the dissociating member.
1494 (c) The date the member withdrew or will withdraw.
1495 (d) A statement that the company has been notified of the
1496 dissociation in writing.
1497 (2) A manager in a manager-managed limited liability
1498 company may file a statement of resignation with the department
1499 containing the following:
1500 (a) The name of the limited liability company.
1501 (b) The name and signature of the resigning manager.
1502 (c) The date the resigning manager resigned or will resign.
1503 (d) A statement that the limited liability company has been
1504 notified of the resignation in writing.
1505 605.0301 Power to bind limited liability company.—A person
1506 does not have the power to bind a limited liability company,
1507 except to the extent the person:
1508 (1) Is an agent of the company by virtue of s. 605.04074;
1509 (2) Has the authority to do so under the articles of
1510 organization or operating agreement of the company;
1511 (3) Has the authority to do so by a statement of authority
1512 filed under s. 605.0302; or
1513 (4) Has the status of an agent of the company or the
1514 authority or power to bind the company under a law other than
1515 this chapter.
1516 605.0302 Statement of authority.—
1517 (1) A limited liability company may file a statement of
1518 authority. The statement:
1519 (a) Must include the name of the company as it appears on
1520 the records of the department, and the street and mailing
1521 addresses of its principal office;

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1522 (b) With respect to a specified status or position of a
1523 person in a company, whether as a member, transferee, manager,
1524 officer, or otherwise, may state the authority or limitations on
1525 the authority of all persons having such status or holding such
1526 position to:
1527 1. Execute an instrument transferring real property held in
1528 the name of the company; or
1529 2. Enter into other transactions on behalf of, or otherwise
1530 act for or bind, the company; and
1531 (c) May state the authority or limitations on the authority
1532 of a specific person to:
1533 1. Execute an instrument transferring real property held in
1534 the name of the company; or
1535 2. Enter into other transactions on behalf of, or otherwise
1536 act for or bind, the company.
1537 (2) To amend or cancel a statement of authority filed by
1538 the department, a limited liability company must deliver to the
1539 department for filing an amendment or cancellation stating the
1540 following:
1541 (a) The name of the company as it appears on the records of
1542 the department.
1543 (b) The street and mailing addresses of the limited
1544 liability company's principal office.
1545 (c) The date the statement being affected became effective.
1546 (d) The contents of the amendment or a declaration that the
1547 affected statement is canceled.
1548 (3) A statement of authority affects only the power of a
1549 person to bind a limited liability company to persons who are
1550 not members.

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1551 (4) Subject to subsection (3) and s. 605.0103(4) and except
1552 as otherwise provided in subsections (6)-(8), a limitation on
1553 the authority of a person or a status or position contained in
1554 an effective statement of authority is not by itself evidence of
1555 knowledge or notice of the limitation.
1556 (5) Subject to subsection (3) and ss. 605.0407-605.04074, a
1557 grant of authority not pertaining to transfers of real property
1558 and contained in an effective statement of authority is
1559 conclusive in favor of a person who gives value in reliance on
1560 the grant, except to the extent that when the person gives
1561 value:
1562 (a) The person has knowledge to the contrary;
1563 (b) The statement has been canceled or restrictively
1564 amended under subsection (2); or
1565 (c) A limitation on the grant is contained in another
1566 statement of authority that became effective after the statement
1567 containing the grant became effective.
1568 (6) Subject to subsection (3), an effective statement of
1569 authority that grants authority to transfer real property held
1570 in the name of the limited liability company, a certified copy
1571 of which statement is recorded in the office for recording
1572 transfers of the real property, is conclusive in favor of a
1573 person who gives value in reliance on the grant without
1574 knowledge to the contrary, except to the extent that when the
1575 person gives value:
1576 (a) The statement has been canceled or restrictively
1577 amended under subsection (2) and a certified copy of the
1578 cancellation or restrictive amendment has been recorded in the
1579 office for recording transfers of the real property; or

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1580 (b) A limitation on the grant is contained in another
1581 statement of authority that became effective after the statement
1582 containing the grant became effective and a certified copy of
1583 the later effective statement is recorded in the office for
1584 recording transfers of the real property.
1585 (7) Subject to subsection (3), if a certified copy of an
1586 effective statement of authority containing a limitation on the
1587 authority to transfer real property held in the name of a
1588 limited liability company is recorded in the office for
1589 recording transfers of that real property, all persons are
1590 deemed to know of the limitation.
1591 (8) Subject to subsection (9), effective articles of
1592 dissolution or termination effectuate a cancellation of a filed
1593 statement of authority for the purposes of subsection (6) and
1594 limit authority for the purposes of subsection (7).
1595 (9) After a company's articles of dissolution become
1596 effective, a limited liability company may deliver to the
1597 department for filing and, if appropriate, may record a
1598 statement of authority in accordance with subsection (1) which
1599 is designated as a post-dissolution statement of authority. The
1600 statement operates as provided in subsections (6) and (7).
1601 (10) Unless earlier canceled, an effective statement of
1602 authority is canceled by operation of law 5 years after the date
1603 on which the statement, or its most recent amendment, becomes
1604 effective. This cancellation operates without need for a
1605 recording under subsection (6) or subsection (7). An effective
1606 statement of denial operates as a restrictive amendment under
1607 this section and may be recorded by certified copy for the
1608 purposes of paragraph (6)(a).

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1609 (11) A statement of dissociation or a statement of
1610 resignation filed pursuant to s. 605.0216 terminates the
1611 authority of the person who filed the statement.
1612 605.0303 Statement of denial.—A person who is named in a
1613 filed statement of authority granting that person authority may
1614 deliver to the department for filing a statement of denial
1615 signed by that person which:
1616 (1) Provides the name of the limited liability company and
1617 the caption of the statement of authority to which the statement
1618 of denial pertains; and
1619 (2) Denies the grant of authority.
1620 605.0304 Liability of members and managers.—
1621 (1) A debt, obligation, or other liability of a limited
1622 liability company is solely the debt, obligation, or other
1623 liability of the company. A member or manager is not personally
1624 liable, directly or indirectly, by way of contribution or
1625 otherwise, for a debt, obligation, or other liability of the
1626 company solely by reason of being or acting as a member or
1627 manager. This subsection applies regardless of the dissolution
1628 of the company.
1629 (2) The failure of a limited liability company to observe
1630 formalities relating to the exercise of its powers or management
1631 of its activities and affairs is not a ground for imposing
1632 liability on a member or manager of the company for a debt,
1633 obligation, or other liability of the company.
1634 (3) The limitation of liability in this section is in
1635 addition to the limitations of liability provided for in s.
1636 605.04093.
1637 605.0401 Becoming a member.—

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1638 (1) If a limited liability company is to have only one
1639 member upon formation, the person becomes a member as agreed by
1640 that person and the authorized representative of the company.
1641 That person and the authorized representative may be, but need
1642 not be, different persons. If different persons, the authorized
1643 representative acts on behalf of the initial member.
1644 (2) If a limited liability company is to have more than one
1645 member upon formation, those persons become members as agreed by
1646 the persons before the formation of the company. The authorized
1647 representative acts on behalf of the persons in forming the
1648 company and may be, but need not be, one of the persons.
1649 (3) After formation of a limited liability company, a
1650 person becomes a member:
1651 (a) As provided in the operating agreement;
1652 (b) As the result of a merger, interest exchange
1653 conversion, or domestication under ss. 605.1001-605.1072, as
1654 applicable;
1655 (c) With the consent of all the members; or
1656 (d) As provided in s. 605.0701(3).
1657 (4) A person may become a member without acquiring a
1658 transferable interest and without making or being obligated to
1659 make a contribution to the limited liability company.
1660 605.0402 Form of contribution.—A contribution may consist
1661 of tangible or intangible property or other benefit to a limited
1662 liability company, including money, services performed,
1663 promissory notes, other agreements to contribute money or
1664 property, and contracts for services to be performed.
1665 605.0403 Liability for contributions.—
1666 (1) A promise by a person to contribute to the limited

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1667 liability company is not enforceable unless it is set out in a
1668 writing signed by the person.
1669 (2) A person's obligation to make a contribution to a
1670 limited liability company is not excused by the person's death,
1671 disability, or other inability to perform personally.
1672 (3) If a person does not fulfill an obligation to make a
1673 contribution other than money, the person is obligated at the
1674 option of the limited liability company to contribute money
1675 equal to the value of the part of the contribution that has not
1676 been made. The foregoing option is in addition to and not in
1677 lieu of other rights, including the right to specific
1678 performance, that the limited liability company may have against
1679 the person under the articles of organization or operating
1680 agreement or applicable law.
1681 (4) The obligation of a person to make a contribution may
1682 be compromised only by consent of all members. If a creditor of
1683 a limited liability company extends credit or otherwise acts in
1684 reliance on an obligation described in subsection (1) without
1685 notice of a compromise under this subsection, the creditor may
1686 enforce the obligation.
1687 (5) An operating agreement may provide that the limited
1688 liability company interest of a member who fails to make a
1689 contribution that the member is obligated to make is subject to
1690 specified penalties for or specified consequences of the
1691 failure. The penalty or consequence may take the form of
1692 reducing or eliminating the defaulting member's proportionate
1693 interest in a limited liability company, subordinating the
1694 defaulting member's limited liability company interest to that
1695 of nondefaulting members, a forced sale of that limited

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1696 liability company interest, forfeiture of the defaulting
1697 member's limited liability company interest, the lending by
1698 other members of the amount necessary to meet the defaulting
1699 member's commitment, a fixing of the value of the defaulting
1700 member's limited liability company interest by appraisal or by
1701 formula and redemption or sale of the defaulting member's
1702 limited liability company interest at such value, or other
1703 penalty or consequence.
1704 605.0404 Sharing of distributions before dissolution and
1705 profits and losses.—
1706 (1) Distributions made by a limited liability company
1707 before its dissolution and winding up must be shared by the
1708 members and persons dissociated as members on the basis of the
1709 agreed value, as stated in the company's records, of the
1710 contributions made by each of members and persons dissociated as
1711 members to the extent that the contributions have been received
1712 by the company, except to the extent necessary to comply with a
1713 transfer effective under s. 605.0502 or charging order in effect
1714 under s. 605.0503.
1715 (2) A person has a right to a distribution before the
1716 dissolution and winding up of a limited liability company only
1717 if the company decides to make an interim distribution. A
1718 person's dissociation does not entitle the person to a
1719 distribution.
1720 (3) A person does not have a right to demand or receive a
1721 distribution from a limited liability company in a form other
1722 than money. Except as otherwise provided in s. 605.0710(4), a
1723 limited liability company may distribute an asset in kind only
1724 if each part of the asset is fungible with each other part and

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1725 each person receives a percentage of the asset equal in value to
1726 the person's share of distributions.
1727 (4) If a member or transferee becomes entitled to receive a
1728 distribution, the member or transferee has the status of and is
1729 entitled to all remedies available to a creditor of the limited
1730 liability company with respect to the distribution.
1731 (5) Profits and losses of a limited liability company must
1732 be allocated among the members and persons dissociated as
1733 members on the basis of the agreed value, as stated in the
1734 company's records, of the contributions made by each of the
1735 members and persons dissociated as members to the extent that
1736 the contributions have been received by the company.
1737 605.0405 Limitations on distributions.—
1738 (1) A limited liability company may not make a
1739 distribution, including a distribution under s. 605.0710, if
1740 after the distribution:
1741 (a) The company would not be able to pay its debts as they
1742 become due in the ordinary course of the company's activities
1743 and affairs; or
1744 (b) The company's total assets would be less than the sum
1745 of its total liabilities, plus the amount that would be needed
1746 if the company were to be dissolved and wound up at the time of
1747 the distribution, to satisfy the preferential rights upon
1748 dissolution and winding up of members and transferees whose
1749 preferential rights are superior to those of persons receiving
1750 the distribution.
1751 (2) A limited liability company may base a determination
1752 that a distribution is not prohibited under subsection (1) on:
1753 (a) Financial statements prepared on the basis of

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1754 accounting practices and principles that are reasonable under
1755 the circumstances; or
1756 (b) A fair valuation or other method that is reasonable
1757 under the circumstances.
1758 (3) Except as otherwise provided in subsection (5), the
1759 effect of a distribution under subsection (1) is measured:
1760 (a) In the case of a distribution by purchase, redemption,
1761 or other acquisition of a transferable interest in the company,
1762 as of the earlier of the date on which:
1763 1. Money or other property is transferred or the debt is
1764 incurred by the company; and
1765 2. The person entitled to distribution ceases to own the
1766 interest or right being acquired by the company in return for
1767 the distribution.
1768 (b) In the case of a distribution of indebtedness, as of
1769 the date on which the indebtedness is distributed.
1770 (c) In all other cases, as of the date on which:
1771 1. The distribution is authorized if the payment occurs
1772 within 120 days after that date; or
1773 2. The payment is made if the payment occurs more than 120
1774 days after the distribution is authorized.
1775 (4) A limited liability company’s indebtedness to a member
1776 or transferee incurred by reason of a distribution made in
1777 accordance with this section is at parity with the company’s
1778 indebtedness to its general, unsecured creditors, except to the
1779 extent subordinated by agreement.
1780 (5) A limited liability company’s indebtedness, including
1781 indebtedness issued as a distribution, is not a liability for
1782 purposes of subsection (1) if the terms of the indebtedness

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1783 provide that payment of principal and interest is made only if
1784 and to the extent that a distribution could then be made under
1785 this section. If the indebtedness is issued as a distribution,
1786 and by its terms provides that the payments of principal and
1787 interest are made only to the extent a distribution could be
1788 made under this section, then each payment of principal or
1789 interest of that indebtedness is treated as a distribution, the
1790 effect of which is measured on the date the payment is actually
1791 made.
1792 (6) In measuring the effect of a distribution under s.
1793 605.0710, the liabilities of a dissolved limited liability
1794 company do not include a claim that is disposed of under ss.
1795 605.0710-605.0713.
1796 605.0406 Liability for improper distributions.—
1797 (1) Except as otherwise provided in subsection (2), if a
1798 member of a member-managed limited liability company or manager
1799 of a manager-managed limited liability company consents to a
1800 distribution made in violation of s. 605.0405 and, in consenting
1801 to the distribution, fails to comply with s. 605.04091, the
1802 member or manager is personally liable to the company for the
1803 amount of the distribution which exceeds the amount that could
1804 have been distributed without the violation of s. 605.0405.
1805 (2) To the extent the operating agreement of a member-
1806 managed limited liability company expressly relieves a member of
1807 the authority and responsibility to consent to distributions and
1808 imposes that authority and responsibility on one or more other
1809 members, the liability in subsection (1) applies to the other
1810 members and not the member that the operating agreement relieves
1811 of authority and responsibility.

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1812 (3) A person who receives a distribution knowing that the
1813 distribution violated s. 605.0405 is personally liable to the
1814 limited liability company, but only to the extent that the
1815 distribution received by the person exceeded the amount that
1816 could have been properly paid under s. 605.0405.
1817 (4) A person against whom an action is commenced because
1818 that person is or may be liable under subsection (1) may:
1819 (a) Implead another person who is or may be liable under
1820 subsection (1) and seek to enforce a right of contribution from
1821 the person; or
1822 (b) Implead a person who received a distribution in
1823 violation of subsection (3) and seek to enforce a right of
1824 contribution from an impleaded person in the amount the person
1825 received in violation of subsection (3).
1826 (5) An action under this section is barred unless commenced
1827 within 2 years after the distribution.
1828 605.0407 Management of limited liability company.—
1829 (1) A limited liability company is a member-managed limited
1830 liability company unless the operating agreement or articles of
1831 organization:
1832 (a) Expressly provide that:
1833 1. The company is or will be manager-managed;
1834 2. The company is or will be managed by managers; or
1835 3. Management of the company is or will be vested in
1836 managers; or
1837 (b) Include words of similar import to those in 1.-3.
1838 except that, unless the context in which the expression is used
1839 otherwise requires, the terms “managing member” and “managing
1840 members” do not, in and of themselves, constitute words of

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1841 similar import for this purpose.
1842 (2) In a member-managed limited liability company, the
1843 management and conduct of the company are vested in the members,
1844 except as expressly provided in this chapter.
1845 (3) In a manager-managed limited liability company, a
1846 matter relating to the activities and affairs of the company is
1847 decided exclusively by the manager, or if there is more than one
1848 manager, by the managers, except as expressly provided in this
1849 chapter.
1850 (4) A member is not entitled to remuneration for services
1851 performed for a member-managed limited liability company, except
1852 for reasonable compensation for services rendered in winding up
1853 the activities and affairs of the company, in the absence of an
1854 agreement to the contrary.
1855 (5) A limited liability company shall reimburse a member
1856 for an advance to the company beyond the amount of capital the
1857 member agreed to contribute.
1858 (6) The dissolution of a limited liability company does not
1859 affect the applicability of ss. 605.0407-605.04074. However, a
1860 person who wrongfully causes dissolution of the company loses
1861 the right to participate in management as a member and a
1862 manager.
1863 605.04071 Delegation of rights and powers to manage.—A
1864 member or manager of a limited liability company has the power
1865 and authority to delegate to one or more other persons the
1866 member's or manager's, as the case may be, rights and powers to
1867 manage and control the business and affairs of the limited
1868 liability company, including the power and authority to delegate
1869 to agents, boards of managers, members, or directors, officers

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1870 and assistant officers, and employees of a member or manager of
1871 the limited liability company, and the power and authority to
1872 delegate by a management agreement or similar agreement with, or
1873 otherwise to other persons. The delegation by a member or
1874 manager will not cause the member or manager to cease to be a
1875 member or manager, as the case may be, of the limited liability
1876 company.
1877 605.04072 Selection and terms of managers in a manager-
1878 managed limited liability company.—In a manager-managed limited
1879 liability company, the following rules apply:
1880 (1) A manager may be chosen at any time by the consent of
1881 the member or members holding more than 50 percent of the then-
1882 current percentage or other interest in the profits of the
1883 limited liability company owned by all of its members.
1884 (2) A person need not be a member to be a manager.
1885 (3) A person chosen as a manager continues as a manager
1886 until a successor is chosen, unless the manager at an earlier
1887 time resigns, is removed, or dies or, in the case of a manager
1888 that is not an individual, terminates.
1889 (4) A manager may be removed at any time without notice or
1890 cause by the consent of the member or members holding more than
1891 50 percent of the then-current percentage or other interest in
1892 the profits of the limited liability company owned by all of its
1893 members.
1894 (5) The dissociation of a member who is also a manager
1895 removes the person as a manager.
1896 (6) If a person who is both a manager and a member ceases
1897 to be a manager, that cessation does not, by itself, dissociate
1898 the person as a member.

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1899 (7) A person's ceasing to be a manager does not discharge a
1900 debt, obligation, or other liability to the limited liability
1901 company or members which the person incurred while a manager.
1902 605.04073 Voting rights of members and managers.—
1903 (1) In a member-managed limited liability company, the
1904 following rules apply:
1905 (a) Each member has the right to vote with respect to the
1906 management and conduct of the company's activities and affairs.
1907 (b) Each member's vote is proportionate to that member's
1908 then-current percentage or other interest in the profits of the
1909 limited liability company owned by all members.
1910 (c) Except as otherwise provided in this chapter, the
1911 affirmative vote or consent of a majority-in-interest of the
1912 members is required to undertake an act, whether within or
1913 outside the ordinary course of the company's activities and
1914 affairs, including a transaction under ss. 605.1001-605.1072.
1915 (d) The operating agreement and articles of organization
1916 may be amended only with the affirmative vote or consent of all
1917 members.
1918 (2) In a manager-managed limited liability company, the
1919 following rules apply:
1920 (a) Each manager has equal rights in the management and
1921 conduct of the company's activities and affairs.
1922 (b) Except as expressly provided in this chapter, a matter
1923 relating to the activities and affairs of the company shall be
1924 decided by the manager; if there is more than one manager, by
1925 the affirmative vote or consent of a majority of the managers;
1926 or if the action is taken without a meeting, by the managers'
1927 unanimous consent in a record.

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1928 (c) Each member's vote is proportionate to that member's
1929 then-current percentage or other interest in the profits of the
1930 limited liability company owned by all members.
1931 (d) Except as otherwise provided in this chapter, the
1932 affirmative vote or consent of a majority-in-interest of the
1933 members is required to undertake an act outside the ordinary
1934 course of the company's activities and affairs, including a
1935 transaction under ss. 605.1001-605.1072.
1936 (e) The operating agreement and articles of organization
1937 may be amended only with the affirmative vote or consent of all
1938 members.
1939 (3) If a member has transferred all or a portion of the
1940 member's transferable interest in the limited liability company
1941 to a person who is not admitted as a member and if the
1942 transferring member has not been dissociated in accordance with
1943 s. 605.0602(5)(b), the transferring member continues to be
1944 entitled to vote on an action reserved to the members, with the
1945 vote of the transferring member being proportionate to the then-
1946 current percentage or other interest in the profits of the
1947 limited liability company owned by all members that the
1948 transferring member would have if the transfer had not occurred.
1949 (4) An action requiring the vote or consent of members
1950 under this chapter may be taken without a meeting, and a member
1951 may appoint a proxy or other agent to vote or consent for the
1952 member by signing an appointing record, personally or by the
1953 member's agent. On an action taken by fewer than all of the
1954 members without a meeting, notice of the action must be given to
1955 those members who did not consent in writing to the action or
1956 who were not entitled to vote on the action within 10 days after

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1957 the action was taken.
1958 (5) An action requiring the vote or consent of managers
1959 under this chapter may be taken without a meeting if the action
1960 is unanimously approved by the managers in a record. A manager
1961 may appoint a proxy or other agent to vote or consent for the
1962 manager by signing an appointing record, personally or by the
1963 manager's agent.
1964 (6) Meetings of members and meetings of managers may be
1965 held by a conference telephone call or other communications
1966 equipment if all persons participating in the meeting can hear
1967 each other. Participation in a meeting pursuant to this
1968 subsection constitutes presence in person at the meeting.
1969 605.04074 Agency rights of members and managers.—
1970 (1) In a member-managed limited liability company, the
1971 following rules apply:
1972 (a) Except as provided in subsection (3), each member is an
1973 agent of the limited liability company for the purpose of its
1974 activities and affairs. An act of a member, including signing an
1975 agreement or instrument of transfer in the name of the company
1976 for apparently carrying on in the ordinary course of the
1977 company's activities and affairs or activities and affairs of
1978 the kind carried on by the company, binds the company unless the
1979 member had no authority to act for the company in the particular
1980 matter and the person with whom the member was dealing knew or
1981 had notice that the member lacked authority.
1982 (b) An act of a member which is not done for apparently
1983 carrying on in the ordinary course of the limited liability
1984 company's activities and affairs or activities and affairs of
1985 the kind carried on by the company, binds the company only if

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1986 the act was authorized by appropriate vote of the members.
1987 (2) In a manager-managed limited liability company, the
1988 following rules apply:
1989 (a) A member is not an agent of the limited liability
1990 company for the purpose of its business solely by reason of
1991 being a member.
1992 (b) Except as provided in subsection (3), each manager is
1993 an agent of the limited liability company for the purpose of its
1994 activities and affairs, and an act of a manager, including
1995 signing an agreement or instrument of transfer in the name of
1996 the company, for apparently carrying on in the ordinary course
1997 of the company's activities and affairs or activities and
1998 affairs of the kind carried on by the company, binds the company
1999 unless the manager had no authority to act for the company in
2000 the particular matter and the person with whom the manager was
2001 dealing knew or had notice that the manager lacked authority.
2002 (c) An act of a manager which is not apparently for
2003 carrying on in the ordinary course of the limited liability
2004 company's activities and affairs or activities and affairs of
2005 the kind carried on by the company, binds the company only if
2006 the act was authorized by appropriate vote of the members.
2007 (3) Unless a certified statement of authority recorded in
2008 the applicable real estate records limits the authority of a
2009 member or a manager, a member of a member-managed company or a
2010 manager of a manager-managed company may sign and deliver an
2011 instrument transferring or affecting the limited liability
2012 company's interest in real property. The instrument is
2013 conclusive in favor of a person who gives value without
2014 knowledge of the lack of the authority of the person signing and

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2015 delivering the instrument.
2016 605.0408 Reimbursement, indemnification, advancement, and
2017 insurance.—
2018 (1) A limited liability company may reimburse a member of a
2019 member-managed company or a manager of a manager-managed company
2020 for any payment made by the member or manager in the course of
2021 the member's or manager's activities on behalf of the company if
2022 the member or manager complied with ss. 605.0407-605.04074, this
2023 section, and s. 605.04091 in making the payment.
2024 (2) A limited liability company may indemnify and hold
2025 harmless a person with respect to a claim or demand against the
2026 person and a debt, obligation, or other liability incurred by
2027 the person by reason of the person's former or present capacity
2028 as a member or manager if the claim, demand, debt, obligation,
2029 or other liability does not arise from the person's breach of s.
2030 605.0405, s. 605.0407, s. 605.04071, s. 605.04072, s. 605.04073,
2031 s. 605.04074, or s. 605.04091.
2032 (3) In the ordinary course of its activities and affairs, a
2033 limited liability company may advance reasonable expenses,
2034 including attorney fees and costs, incurred by a person in
2035 connection with a claim or demand against the person by reason
2036 of the person's former or present capacity as a member or
2037 manager if the person promises to repay the company in the event
2038 that the person ultimately is determined not to be entitled to
2039 be indemnified under subsection (2).
2040 (4) A limited liability company may purchase and maintain
2041 insurance on behalf of a member or manager of the company
2042 against liability asserted against or incurred by the member or
2043 manager in that capacity or arising from that status even if:

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2044 (a) Under s. 605.0105(3)(g) the operating agreement could
2045 not eliminate or limit the person's liability to the company for
2046 the conduct giving rise to the liability; and
2047 (b) Under s. 605.0105(3)(p) the operating agreement could
2048 not provide for indemnification for the conduct giving rise to
2049 the liability.
2050 605.04091 Standards of conduct for members and managers.—
2051 (1) Each manager of a manager-managed limited liability
2052 company and member of a member-managed limited liability company
2053 owes fiduciary duties of loyalty and care to the limited
2054 liability company and members of the limited liability company.
2055 (2) The duty of loyalty is limited to:
2056 (a) Accounting to the limited liability company and holding
2057 as trustee for it any property, profit, or benefit derived by
2058 the manager or member, as applicable:
2059 1. In the conduct or winding up of the company's activities
2060 and affairs;
2061 2. From the use by the member or manager of the company's
2062 property; or
2063 3. From the appropriation of a company opportunity;
2064 (b) Refraining from dealing with the company in the conduct
2065 or winding up of the company's activities and affairs as, or on
2066 behalf of, a person having an interest adverse to the company,
2067 except to the extent that a transaction satisfies the
2068 requirements of this section; and
2069 (c) Refraining from competing with the company in the
2070 conduct of the company's activities and affairs before the
2071 dissolution of the company.
2072 (3) The duty of care in the conduct or winding up of the

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2073 company's activities and affairs is limited to refraining from
2074 engaging in grossly negligent or reckless conduct, willful or
2075 intentional misconduct, or a knowing violation of law.
2076 (4) A manager of a manager-managed limited liability
2077 company and a member of a member-managed limited liability
2078 company shall discharge their duties and obligations under this
2079 chapter or under the operating agreement and exercise any rights
2080 consistently with the obligation of good faith and fair dealing.
2081 (5) A manager of a manager-managed limited liability
2082 company or a member of a member-managed limited liability
2083 company does not violate a duty or obligation under this chapter
2084 or under the operating agreement solely because the manager's or
2085 member's conduct furthers the manager's or member's own
2086 interest.
2087 (6) In discharging his, her, or its duties, a manager of a
2088 manager-managed limited liability company or a member of a
2089 member-managed limited liability company is entitled to rely on
2090 information, opinions, reports, or statements, including
2091 financial statements and other financial data, if prepared or
2092 presented by any of the following:
2093 (a) One or more members or employees of the limited
2094 liability company whom the manager or member reasonably believes
2095 to be reliable and competent in the matters presented.
2096 (b) Legal counsel, public accountants, or other persons as
2097 to matters the manager or member reasonably believes are within
2098 the persons' professional or expert competence.
2099 (c) A committee of managers or members of which the
2100 affected manager or member is not a participant, if the manager
2101 or member reasonably believes the committee merits confidence.

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2102 (7) A manager or member, as applicable, is not acting in
2103 good faith if the manager or member has knowledge concerning the
2104 matter in question which makes reliance otherwise authorized
2105 under subsection (6) unwarranted.
2106 (8) In discharging his, her, or its duties, a manager of a
2107 manager-managed limited liability company or member of a member-
2108 managed limited liability company may consider factors that the
2109 manager or member deems relevant, including the long-term
2110 prospects and interests of the limited liability company and its
2111 members, and the social, economic, legal, or other effects of
2112 any action on the employees, suppliers, and customers of the
2113 limited liability company, the communities and society in which
2114 the limited liability company operates, and the economy of this
2115 state and the nation.
2116 (9) This section applies to a person winding up the limited
2117 liability company activities and affairs as the legal
2118 representative of the last surviving member as if such person
2119 were subject to this section.
2120 605.04092 Conflict of interest transactions.—
2121 (1) As used in this section, the following terms and
2122 definitions apply:
2123 (a) A member or manager is "indirectly" a party to a
2124 transaction if that member or manager has a material financial
2125 interest in or is a director, officer, member, manager, or
2126 partner of a person, other than the limited liability company,
2127 who is a party to the transaction.
2128 (b) A member or manager has an "indirect material financial
2129 interest" if a spouse or other family member has a material
2130 financial interest in the transaction, other than having an

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2131 indirect interest as a member or manager of the limited
2132 liability company, or if the transaction is with an entity,
2133 other than the limited liability company, which has a material
2134 financial interest in the transaction and controls, or is
2135 controlled by, the member or manager or another person specified
2136 in this subsection.
2137 (c) "Fair to the limited liability company" means that the
2138 transaction, as a whole, is beneficial to the limited liability
2139 company and its members, taking into appropriate account whether
2140 it is:
2141 1. Fair in terms of the member's or manager's dealings with
2142 the limited liability company in connection with that
2143 transaction; and
2144 2. Comparable to what might have been obtainable in an
2145 arm's length transaction.
2146 (2) If the requirements of this section have been
2147 satisfied, a transaction between a limited liability company and
2148 one or more of its members or managers, or another entity in
2149 which one or more of the limited liability company's members or
2150 managers have a financial or other interest, is not void or
2151 voidable because of that relationship or interest; because the
2152 members or managers are present at the meeting of the members or
2153 managers at which the transaction was authorized, approved,
2154 effectuated, or ratified; or because the votes of the members or
2155 managers are counted for such purpose.
2156 (3) If a transaction is fair to the limited liability
2157 company at the time it is authorized, approved, effectuated, or
2158 ratified, the fact that a member or manager of the limited
2159 liability company is directly or indirectly a party to the

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2160 transaction, other than being an indirect party as a result of
2161 being a member or manager of the limited liability company, or
2162 has a direct or indirect material financial interest or other
2163 interest in the transaction, other than having an indirect
2164 interest as a result of being a member or manager of the limited
2165 liability company, is not grounds for equitable relief and does
2166 not give rise to an award of damages or other sanctions.
2167 (4)(a) In a proceeding challenging the validity of a
2168 transaction described in subsection (3), the person challenging
2169 the validity has the burden of proving the lack of fairness of
2170 the transaction if:
2171 1. In a manager-managed limited liability company, the
2172 material facts of the transaction and the member's or manager's
2173 interest in the transaction were disclosed or known to the
2174 managers or a committee of managers who voted upon the
2175 transaction and the transaction was authorized, approved, or
2176 ratified by a majority of the disinterested managers even if the
2177 disinterested managers constitute less than a quorum; however,
2178 the transaction cannot be authorized, approved, or ratified
2179 under this subsection solely by a single manager; and
2180 2. In a member-managed limited liability company, or a
2181 manager-managed limited liability company in which the managers
2182 have failed to or cannot act under subparagraph 1., the material
2183 facts of the transaction and the member's or manager's interest
2184 in the transaction were disclosed or known to the members who
2185 voted upon such transaction and the transaction was authorized,
2186 approved, or ratified by a majority-in-interest of the
2187 disinterested members even if the disinterested members
2188 constitute less than a quorum; however, the transaction cannot

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2189 be authorized, approved, or ratified under this subsection
2190 solely by a single member; or
2191 (b) If neither of the conditions provided in paragraph (a)
2192 has been satisfied, the person defending or asserting the
2193 validity of a transaction described in subsection (3) has the
2194 burden of proving its fairness in a proceeding challenging the
2195 validity of the transaction.
2196 (5) The presence of or a vote cast by a manager or member
2197 with an interest in the transaction does not affect the validity
2198 of an action taken under paragraph (4)(a) if the transaction is
2199 otherwise authorized, approved, or ratified as provided in that
2200 subsection, but the presence or vote of the manager or member
2201 may be counted for purposes of determining whether the
2202 transaction is approved under other sections of this chapter.
2203 (6) In addition to other grounds for challenge, a party
2204 challenging the validity of the transaction is not precluded
2205 from asserting and proving that a particular member or manager
2206 was not disinterested on grounds of financial or other interest
2207 for purposes of the vote on, consent to, or approval of the
2208 transaction.
2209 605.04093 Limitation of liability of managers and members.—
2210 (1) A manager in a manager-managed limited liability
2211 company or a member in a member-managed limited liability
2212 company is not personally liable for monetary damages to the
2213 limited liability company, its members, or any other person for
2214 any statement, vote, decision, or failure to act regarding
2215 management or policy decisions by a manager in a manager-managed
2216 limited liability company or a member in a member-managed
2217 limited liability company unless:

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2218 (a) The manager or member breached or failed to perform the
2219 duties as a manager in a manager-managed limited liability
2220 company or a member in a member-managed limited liability
2221 company; and
2222 (b) The manager's or member's breach of, or failure to
2223 perform, those duties constitutes any of the following:
2224 1. A violation of the criminal law unless the manager or
2225 member had a reasonable cause to believe his, her, or its
2226 conduct was lawful or had no reasonable cause to believe such
2227 conduct was unlawful. A judgment or other final adjudication
2228 against a manager or member in any criminal proceeding for a
2229 violation of the criminal law estops that manager or member from
2230 contesting the fact that such breach, or failure to perform,
2231 constitutes a violation of the criminal law, but does not estop
2232 the manager or member from establishing that he, she, or it had
2233 reasonable cause to believe that his, her, or its conduct was
2234 lawful or had no reasonable cause to believe that such conduct
2235 was unlawful.
2236 2. A transaction from which the manager or member derived
2237 an improper personal benefit, directly or indirectly.
2238 3. A distribution in violation of s. 605.0406.
2239 4. In a proceeding by or in the right of the limited
2240 liability company to procure a judgment in its favor or by or in
2241 the right of a member, conscious disregard of the best interest
2242 of the limited liability company, or willful misconduct.
2243 5. In a proceeding by or in the right of someone other than
2244 the limited liability company or a member, recklessness or an
2245 act or omission that was committed in bad faith or with
2246 malicious purpose or in a manner exhibiting wanton and willful

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2247 disregard of human rights, safety, or property.
2248 (2) As used in this section, the term "recklessness" means
2249 acting or failing to act in conscious disregard of a risk known,
2250 or a risk so obvious that it should have been known, to the
2251 manager in a manager-managed limited liability company or the
2252 member in a member-managed limited liability company, and known
2253 to the manager or member, or so obvious that it should have been
2254 known, to be so great as to make it highly probable that harm
2255 would follow from such action or failure to act.
2256 (3) A manager in a manager-managed limited liability
2257 company or a member in a member-managed limited liability
2258 company is deemed not to have derived an improper personal
2259 benefit from any transaction if the transaction has been
2260 approved in the manner as is provided in s. 605.04092 or is fair
2261 to the limited liability company as defined in s.
2262 605.04092(1)(c).
2263 (4) The circumstances set forth in subsection (3) are not
2264 exclusive and do not preclude the existence of other
2265 circumstances under which a manager in a manager-managed limited
2266 liability company or a member in a member-managed limited
2267 liability company will be deemed not to have derived an improper
2268 benefit.
2269 605.0410 Records to be kept; rights of member, manager, and
2270 person dissociated to information.—
2271 (1) A limited liability company shall keep at its principal
2272 office or another location the following records:
2273 (a) A current list of the full names and last known
2274 business, residence, or mailing addresses of each member and
2275 manager.

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2276 (b) A copy of the then-effective operating agreement, if
2277 made in a record, and all amendments thereto if made in a
2278 record.
2279 (c) A copy of the articles of organization, articles of
2280 merger, articles of interest exchange, articles of conversion,
2281 and articles of domestication, and other documents and all
2282 amendments thereto, concerning the limited liability company
2283 which were filed with the department, together with executed
2284 copies of any powers of attorney pursuant to which any articles
2285 of organization or such other documents were executed.
2286 (d) Copies of the limited liability company's federal,
2287 state, and local income tax returns and reports, if any, for the
2288 3 most recent years.
2289 (e) Copies of the financial statements of the limited
2290 liability company, if any, for the 3 most recent years.
2291 (f) Unless contained in an operating agreement made in a
2292 record, a record stating the amount of cash and a description
2293 and statement of the agreed value of the property or other
2294 benefits contributed and agreed to be contributed by each
2295 member, and the times at which or occurrence of events upon
2296 which additional contributions agreed to be made by each member
2297 are to be made.
2298 (2) In a member-managed limited liability company, the
2299 following rules apply:
2300 (a) Upon reasonable notice, a member may inspect and copy
2301 during regular business hours, at a reasonable location
2302 specified by the company:
2303 1. The records described in subsection (1); and
2304 2. Each other record maintained by the company regarding

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2305 the company's activities, affairs, financial condition, and
2306 other circumstances, to the extent the information is material
2307 to the member's rights and duties under the operating agreement
2308 or this chapter.
2309 (b) The company shall furnish to each member:
2310 1. Without demand, any information concerning the company's
2311 activities, affairs, financial condition, and other
2312 circumstances that the company knows and are material to the
2313 proper exercise of the member's rights and duties under the
2314 operating agreement or this chapter, except to the extent the
2315 company can establish that it reasonably believes the member
2316 already knows the information; and
2317 2. On demand, other information concerning the company's
2318 activities, affairs, financial condition, and other
2319 circumstances, except to the extent the demand or information
2320 demanded is unreasonable or otherwise improper under the
2321 circumstances.
2322 (c) The duty to furnish information under this subsection
2323 also applies to each member to the extent the member knows any
2324 of the information described in this subsection.
2325 (3) In a manager-managed limited liability company, the
2326 following rules apply:
2327 (a) The informational rights stated in subsection (2) and
2328 the duty stated in paragraph (2)(c) apply to the managers and
2329 not to the members.
2330 (b) During regular business hours and at a reasonable
2331 location specified by the company, a member may inspect and
2332 copy:
2333 1. The records described in subsection (1);

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2334 2. Full information regarding the activities, affairs,
2335 financial condition, and other circumstances of the company as
2336 is just and reasonable if:
2337 a. The member seeks the information for a purpose
2338 reasonably related to the member's interest as a member; or
2339 b. The member makes a demand in a record received by the
2340 company, describing with reasonable particularity the
2341 information sought and the purpose for seeking the information,
2342 and if the information sought is directly connected to the
2343 member's purpose.
2344 (c) Within 10 days after receiving a demand pursuant to
2345 subparagraph (2)(b)2., the company shall, in a record, inform
2346 the member who made the demand of:
2347 1. The information that the company will provide in
2348 response to the demand and when and where the company will
2349 provide the information; and
2350 2. The company's reasons for declining, if the company
2351 declines to provide any demanded information.
2352 (d) If this chapter or an operating agreement provides for
2353 a member to give or withhold consent to a matter, before the
2354 consent is given or withheld, the company shall, without demand,
2355 provide the member with all information that is known to the
2356 company and is material to the member's decision.
2357 (4) Subject to subsection (9), on 10 days' demand made in a
2358 record received by a limited liability company, a person
2359 dissociated as a member may have access to information to which
2360 the person was entitled while a member if:
2361 (a) The information pertains to the period during which the
2362 person was a member;

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2363 (b) The person seeks the information in good faith; and
2364 (c) The person satisfies the requirements imposed on a
2365 member by paragraph (3)(b).
2366 (5) A limited liability company shall respond to a demand
2367 made pursuant to subsection (4) in the manner provided in
2368 paragraph (3)(c).
2369 (6) A limited liability company may charge a person who
2370 makes a demand under this section the reasonable costs of
2371 copying, which costs are limited to the costs of labor and
2372 materials.
2373 (7) A member or person dissociated as a member may exercise
2374 rights under this section through an agent or, in the case of an
2375 individual under legal disability or an entity that is dissolved
2376 or its existence terminated, through a legal representative. A
2377 restriction or condition imposed by the operating agreement or
2378 under subsection (10) applies both to the agent or legal
2379 representative and the member or person dissociated as a member.
2380 (8) Subject to subsection (9), the rights under this
2381 section do not extend to a person as transferee.
2382 (9) If a member dies, s. 605.0504 applies.
2383 (10) In addition to a restriction or condition stated in
2384 the operating agreement, a limited liability company, as a
2385 matter within the ordinary course of its activities and affairs,
2386 may impose reasonable restrictions and conditions on access to
2387 and use of information to be furnished under this section,
2388 including designating information confidential and imposing
2389 nondisclosure and safeguarding obligations on the recipient. In
2390 a dispute concerning the reasonableness of a restriction under
2391 this subsection, the company has the burden of proving

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2392 reasonableness. This subsection does not apply to the request by
2393 a member for the records described in subsection (1).
2394 605.0411 Court-ordered inspection.—
2395 (1) If a limited liability company does not allow a member,
2396 manager, or other person who complies with s. 605.0410(2)(a),
2397 (3)(a), (3)(b), or (4), as applicable, to inspect and copy any
2398 records required by that section to be available for inspection,
2399 the circuit court in the county where the limited liability
2400 company's principal office is or was last located, as shown by
2401 the records of the department or, if there is no principal
2402 office in this state, where its registered office is or was last
2403 located, may summarily order inspection and copying of the
2404 records demanded, at the limited liability company's expense,
2405 upon application of the member, manager, or other person.
2406 (2) If the court orders inspection or copying of the
2407 records demanded, it shall also order the limited liability
2408 company to pay the costs, including reasonable attorney fees,
2409 reasonably incurred by the member, manager, or other person
2410 seeking the records to obtain the order and enforce its rights
2411 under this section unless the limited liability company proves
2412 that it refused inspection in good faith because the company had
2413 a reasonable basis for doubt about the right of the member,
2414 manager, or such other person to inspect or copy the records
2415 demanded.
2416 (3) If the court orders inspection or copying of the
2417 records demanded, it may impose reasonable restrictions on the
2418 use or distribution of the records by the member, manager, or
2419 other person demanding such records.
2420 605.0501 Nature of transferable interest.—A transferable

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2421 interest is personal property.
2422 605.0502 Transfer of transferable interest.—
2423 (1) Subject to s. 605.0503, a transfer, in whole or in
2424 part, of a transferable interest:
2425 (a) Is permissible;
2426 (b) Does not by itself cause a member's dissociation or a
2427 dissolution and winding up of the limited liability company's
2428 activities and affairs; and
2429 (c) Does not entitle the transferee to:
2430 1. Participate in the management or conduct of the
2431 company's activities and affairs; or
2432 2. Except as otherwise provided in subsection (3), have
2433 access to records or other information concerning the company's
2434 activities and affairs.
2435 (2) A transferee has the right to receive, in accordance
2436 with the transfer, distributions to which the transferor would
2437 otherwise be entitled.
2438 (3) In a dissolution and winding up of a limited liability
2439 company, a transferee is entitled to an account of the company's
2440 transactions only from the date of dissolution.
2441 (4) A transferable interest may be evidenced by a
2442 certificate of the interest issued by the limited liability
2443 company in a record, and, subject to this section, the interest
2444 represented by the certificate may be transferred by a transfer
2445 of the certificate.
2446 (5) A limited liability company need not give effect to a
2447 transferee's rights under this section until the company knows
2448 or has notice of the transfer.
2449 (6) A transfer of a transferable interest in violation of a

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2450 restriction on transfer contained in the operating agreement is
2451 ineffective as to a person who has knowledge or notice of the
2452 restriction at the time of transfer.
2453 (7) Except as otherwise provided in s. 605.0602(5)(b), if a
2454 member transfers a transferable interest, the transferor retains
2455 the rights of a member other than the transferable interest
2456 transferred and retains all the duties and obligations of a
2457 member.
2458 (8) If a member transfers a transferable interest to a
2459 person who becomes a member with respect to the transferred
2460 interest, the transferee is liable for the member's obligations
2461 under ss. 605.0403 and 605.0406(3) which are known to the
2462 transferee at the time the transferee becomes a member.
2463 605.0503 Charging order.—
2464 (1) On application to a court of competent jurisdiction by
2465 a judgment creditor of a member or a transferee, the court may
2466 enter a charging order against the transferable interest of the
2467 member or transferee for payment of the unsatisfied amount of
2468 the judgment with interest. Except as provided in subsection
2469 (5), a charging order constitutes a lien upon a judgment
2470 debtor's transferable interest and requires the limited
2471 liability company to pay over to the judgment creditor a
2472 distribution that would otherwise be paid to the judgment
2473 debtor.
2474 (2) This chapter does not deprive a member or transferee of
2475 the benefit of any exemption law applicable to the transferable
2476 interest of the member or transferee.
2477 (3) Except as provided in subsections (4) and (5), a
2478 charging order is the sole and exclusive remedy by which a

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2479 judgment creditor of a member or member's transferee may satisfy
2480 a judgment from the judgment debtor's interest in a limited
2481 liability company or rights to distributions from the limited
2482 liability company.
2483 (4) In the case of a limited liability company that has
2484 only one member, if a judgment creditor of a member or member's
2485 transferee establishes to the satisfaction of a court of
2486 competent jurisdiction that distributions under a charging order
2487 will not satisfy the judgment within a reasonable time, a
2488 charging order is not the sole and exclusive remedy by which the
2489 judgment creditor may satisfy the judgment against a judgment
2490 debtor who is the sole member of a limited liability company or
2491 the transferee of the sole member, and upon such showing, the
2492 court may order the sale of that interest in the limited
2493 liability company pursuant to a foreclosure sale. A judgment
2494 creditor may make a showing to the court that distributions
2495 under a charging order will not satisfy the judgment within a
2496 reasonable time at any time after the entry of the judgment and
2497 may do so at the same time that the judgment creditor applies
2498 for the entry of a charging order.
2499 (5) If a limited liability company has only one member and
2500 the court orders a foreclosure sale of a judgment debtor's
2501 interest in the limited liability company or of a charging order
2502 lien against the sole member of the limited liability company
2503 pursuant to subsection (4):
2504 (a) The purchaser at the court-ordered foreclosure sale
2505 obtains the member's entire limited liability company interest,
2506 not merely the rights of a transferee;
2507 (b) The purchaser at the sale becomes the member of the

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2508 limited liability company; and
2509 (c) The person whose limited liability company interest is
2510 sold pursuant to the foreclosure sale or is the subject of the
2511 foreclosed charging order ceases to be a member of the limited
2512 liability company.
2513 (6) In the case of a limited liability company that has
2514 more than one member, the remedy of foreclosure on a judgment
2515 debtor's interest in the limited liability company or against
2516 rights to distribution from the limited liability company is not
2517 available to a judgment creditor attempting to satisfy the
2518 judgment and may not be ordered by a court.
2519 (7) This section does not limit any of the following:
2520 (a) The rights of a creditor who has been granted a
2521 consensual security interest in a limited liability company
2522 interest to pursue the remedies available to the secured
2523 creditor under other law applicable to secured creditors.
2524 (b) The principles of law and equity which affect
2525 fraudulent transfers.
2526 (c) The availability of the equitable principles of alter
2527 ego, equitable lien, or constructive trust or other equitable
2528 principles not inconsistent with this section.
2529 (d) The continuing jurisdiction of the court to enforce its
2530 charging order in a manner consistent with this section.
2531 605.0504 Power of legal representative.—If a member who is
2532 an individual dies or a court of competent jurisdiction adjudges
2533 the member to be incompetent to manage the member's person or
2534 property, the member's legal representative may exercise all of
2535 the member's rights for the purpose of settling the member's
2536 estate or administering the member's property, including any

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2537 power the member had to give a transferee the right to become a
2538 member. If a member is a corporation, trust, or other entity and
2539 is dissolved or terminated, the powers of that member may be
2540 exercised by its legal representative.
2541 605.0601 Power to dissociate as member; wrongful
2542 dissociation.—
2543 (1) A person has the power to dissociate as a member at any
2544 time, rightfully or wrongfully, by withdrawing as a member by
2545 express will under s. 605.0602(1).
2546 (2) A person's dissociation as a member is wrongful only if
2547 the dissociation:
2548 (a) Is in breach of an express provision of the operating
2549 agreement; or
2550 (b) Occurs before completion of the winding up of the
2551 company, and:
2552 1. The person withdraws as a member by express will;
2553 2. The person is expelled as a member by judicial order
2554 under s. 605.0602(6);
2555 3. The person is dissociated under s. 605.0602(8); or
2556 4. In the case of a person that is not a trust other than a
2557 business trust, an estate, or an individual, the person is
2558 expelled or otherwise dissociated as a member because it
2559 willfully dissolved or terminated.
2560 (3) A person who wrongfully dissociates as a member is
2561 liable to the limited liability company and, subject to s.
2562 605.0801, to the other members for damages caused by the
2563 dissociation. The liability is in addition to each debt,
2564 obligation, or other liability of the member to the company or
2565 the other members.

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2566 (4) Notwithstanding anything to the contrary under
2567 applicable law, the articles of organization or operating
2568 agreement may provide that a limited liability company interest
2569 may not be assigned before the dissolution and winding up of the
2570 limited liability company.
2571 605.0602 Events causing dissociation.—A person is
2572 dissociated as a member if any of the following occur:
2573 (1) The company has notice of the person's express will to
2574 withdraw as a member, but if the person specified a withdrawal
2575 date later than the date the company had notice, on that later
2576 date.
2577 (2) An event stated in the operating agreement as causing
2578 the person's dissociation occurs.
2579 (3) The person's entire interest is transferred in a
2580 foreclosure sale under s. 605.0503(5).
2581 (4) The person is expelled as a member pursuant to the
2582 operating agreement.
2583 (5) The person is expelled as a member by the unanimous
2584 consent of the other members if any of the following occur:
2585 (a) It is unlawful to carry on the company's activities and
2586 affairs with the person as a member.
2587 (b) There has been a transfer of the person's entire
2588 transferable interest in the company other than:
2589 1. A transfer for security purposes; or
2590 2. A charging order in effect under s. 605.0503 which has
2591 not been foreclosed.
2592 (c) The person is a corporation and:
2593 1. The company notifies the person that it will be expelled
2594 as a member because the person has filed articles or a

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2595 certificate of dissolution or the equivalent, the person has
2596 been administratively dissolved, its charter or equivalent has
2597 been revoked, or the person's right to conduct business has been
2598 suspended by the person's jurisdiction of its formation; and
2599 2. Within 90 days after the notification, the articles or
2600 certificate of dissolution or the equivalent has not been
2601 revoked or its charter or right to conduct business has not been
2602 reinstated.
2603 (d) The person is an unincorporated entity that has been
2604 dissolved and whose business is being wound up.
2605 (6) On application by the company or a member in a direct
2606 action under s. 605.0801, the person is expelled as a member by
2607 judicial order because the person:
2608 (a) Has engaged or is engaging in wrongful conduct that has
2609 affected adversely and materially, or will affect adversely and
2610 materially, the company's activities and affairs;
2611 (b) Has committed willfully or persistently, or is
2612 committing willfully and persistently, a material breach of the
2613 operating agreement or a duty or obligation under s. 605.04091;
2614 or
2615 (c) Has engaged or is engaging in conduct relating to the
2616 company's activities and affairs which makes it not reasonably
2617 practicable to carry on the activities and affairs with the
2618 person as a member.
2619 (7) In the case of an individual:
2620 (a) The individual dies; or
2621 (b) In a member-managed limited liability company:
2622 1. A guardian or general conservator for the individual is
2623 appointed; or

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2624 2. There is a judicial order that the individual has
2625 otherwise become incapable of performing the individual's duties
2626 as a member under this chapter or the operating agreement.
2627 (8) In a member-managed limited liability company, the
2628 person:
2629 (a) Becomes a debtor in bankruptcy;
2630 (b) Executes an assignment for the benefit of creditors; or
2631 (c) Seeks, consents to, or acquiesces in the appointment of
2632 a trustee, receiver, or liquidator of the person or of all or
2633 substantially all the person's property.
2634 (9) In the case of a person that is a testamentary or inter
2635 vivos trust or is acting as a member by virtue of being a
2636 trustee of such a trust, the trust's entire transferable
2637 interest in the company is distributed.
2638 (10) In the case of a person that is an estate or is acting
2639 as a member by virtue of being a legal representative of an
2640 estate, the estate's entire transferable interest in the company
2641 is distributed.
2642 (11) In the case of a person that is not an individual, the
2643 existence of the person terminates.
2644 (12) The company participates in a merger under ss.
2645 605.1021-605.1026 and:
2646 (a) The company is not the surviving entity; or
2647 (b) Otherwise as a result of the merger, the person ceases
2648 to be a member.
2649 (13) The company participates in an interest exchange under
2650 ss. 605.1031-605.1036, and the person ceases to be a member.
2651 (14) The company participates in a conversion under ss.
2652 605.1041-605.1046, and the person ceases to be member.

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2653 (15) The company dissolves and completes winding up.
2654 605.0603 Effect of dissociation.—
2655 (1) If a person is dissociated as a member:
2656 (a) The person's right to participate as a member in the
2657 management and conduct of the company's activities and affairs
2658 terminates;
2659 (b) If the company is member-managed, the person's duties
2660 and obligations under s. 605.04091 as a member end with regard
2661 to matters arising and events occurring after the person's
2662 dissociation; and
2663 (c) Subject to s. 605.0504 and ss. 605.1001-605.1072, a
2664 transferable interest owned by the person in the person's
2665 capacity immediately before dissociation as a member is owned by
2666 the person solely as a transferee.
2667 (2) A person's dissociation as a member does not, of
2668 itself, discharge the person from a debt, obligation, or other
2669 liability to the company or the other members which the person
2670 incurred while a member.
2671 605.0701 Events causing dissolution.—A limited liability
2672 company is dissolved and its activities and affairs must be
2673 wound up upon the occurrence of the following:
2674 (1) An event or circumstance that the operating agreement
2675 states causes dissolution.
2676 (2) The consent of all the members.
2677 (3) The passage of 90 consecutive days during which the
2678 company has no members, unless:
2679 (a) Consent to admit at least one specified person as a
2680 member is given by transferees owning the rights to receive a
2681 majority of distributions as transferees at the time the consent

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2682 is to be effective; and
2683 (b) At least one person becomes a member in accordance with
2684 the consent.
2685 (4) The entry of a decree of judicial dissolution in
2686 accordance with s. 605.0705.
2687 (5) The filing of a statement of administrative dissolution
2688 by the department pursuant to s. 605.0714.
2689 605.0702 Grounds for judicial dissolution.—
2690 (1) A circuit court may dissolve a limited liability
2691 company:
2692 (a) In a proceeding by the Department of Legal Affairs if
2693 it is established that:
2694 1. The limited liability company obtained its articles of
2695 organization through fraud; or
2696 2. The limited liability company has continued to exceed or
2697 abuse the authority conferred upon it by law.
2698
2699 The enumeration in subparagraphs 1. and 2. of grounds for
2700 involuntary dissolution does not exclude actions or special
2701 proceedings by the Department of Legal Affairs or a state
2702 official for the annulment or dissolution of a limited liability
2703 company for other causes as provided in another law of this
2704 state.
2705 (b) In a proceeding by a manager or member if it is
2706 established that:
2707 1. The conduct of all or substantially all of the company's
2708 activities and affairs is unlawful;
2709 2. It is not reasonably practicable to carry on the
2710 company's activities and affairs in conformity with the articles

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2711 of organization and the operating agreement;
2712 3. The managers or members in control of the company have
2713 acted, are acting, or are reasonably expected to act in a manner
2714 that is illegal or fraudulent;
2715 4. The limited liability company's assets are being
2716 misappropriated or wasted, causing injury to the limited
2717 liability company, or in a proceeding by a member, causing
2718 injury to one or more of its members; or
2719 5. The managers or the members of the limited liability
2720 company are deadlocked in the management of the limited
2721 liability company's activities and affairs, the members are
2722 unable to break the deadlock, and irreparable injury to the
2723 limited liability company is threatened or being suffered.
2724 (c) In a proceeding by the limited liability company to
2725 have its voluntary dissolution continued under court
2726 supervision.
2727 (2) If the managers or the members of the limited liability
2728 company are deadlocked in the management of the limited
2729 liability company's activities and affairs, the members are
2730 unable to break the deadlock, and irreparable injury to the
2731 limited liability company is threatened or being suffered, if
2732 the operating agreement contains a deadlock sale provision that
2733 has been initiated before the time that the court determines
2734 that the grounds for judicial dissolution exist under
2735 subparagraph (1)(b)5., then such deadlock sale provision applies
2736 to the resolution of such deadlock instead of the court entering
2737 an order of judicial dissolution or an order directing the
2738 purchase of petitioner's interest under s. 605.0706, so long as
2739 the provisions of such deadlock sale provision are thereafter

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2740 initiated and effectuated in accordance with the terms of such
2741 deadlock sale provision or otherwise pursuant to an agreement of
2742 the members of the company. As used in this section, the term
2743 “deadlock sale provision” means a provision in an operating
2744 agreement which is or may be applicable in the event of a
2745 deadlock among the managers or the members of the limited
2746 liability company which the members of the company are unable to
2747 break and which provides for a deadlock breaking mechanism,
2748 including, but not limited to: a purchase and sale of interests
2749 or a governance change, among or between members; the sale of
2750 all or substantially all of the assets of the company; or a
2751 similar provision that, if initiated and effectuated, breaks the
2752 deadlock by causing the transfer of interests, a governance
2753 change, or the sale of all or substantially all of the company’s
2754 assets. A deadlock sale provision in an operating agreement
2755 which is not initiated and effectuated before the court enters
2756 an order of judicial dissolution under subparagraph (1)(b)5. or
2757 an order directing the purchase of petitioner’s interest under
2758 s. 605.0706 does not adversely affect the rights of members and
2759 managers to seek judicial dissolution under subparagraph
2760 (1)(b)5. or the rights of the company or one or more members to
2761 purchase the petitioner’s interest under s. 605.0706. The filing
2762 of an action for judicial dissolution on the grounds described
2763 in subparagraph (1)(b)5. or an election to purchase the
2764 petitioner’s interest under s. 605.0706 does not adversely
2765 affect the right of a member to initiate an available deadlock
2766 sale provision under the operating agreement or to enforce a
2767 member-initiated or an automatically-initiated deadlock sale
2768 provision if the deadlock sale provision is initiated and

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2769 effectuated before the court enters an order of judicial
2770 dissolution under subparagraph (1)(b)5. or an order directing
2771 the purchase of petitioner's interest under s. 605.0706.
2772 605.0703 Procedure for judicial dissolution; alternative
2773 remedies.—
2774 (1) Venue for a proceeding brought under s. 605.0702 lies
2775 in the circuit court of the county where the limited liability
2776 company's principal office is or was last located, as shown by
2777 the records of the department, or, if there is or was no
2778 principal office in this state, in the circuit court of the
2779 county where the company's registered office is or was last
2780 located.
2781 (2) It is not necessary to make members parties to a
2782 proceeding to dissolve a limited liability company unless relief
2783 is sought against such members individually.
2784 (3) A court in a proceeding brought to dissolve a limited
2785 liability company may issue injunctions, appoint a receiver or
2786 custodian pendente lite with all powers and duties the court
2787 directs, take other action required to preserve the limited
2788 liability company's assets wherever located, and carry on the
2789 business of the limited liability company until a full hearing
2790 can be held.
2791 (4) In a proceeding brought under s. 605.0702, the court
2792 may, upon a showing of sufficient merit to warrant such a
2793 remedy:
2794 (a) Appoint a receiver or custodian under s. 605.0704;
2795 (b) Order a purchase of a petitioning member's interest
2796 pursuant to s. 605.0706; or
2797 (c) Upon a showing of good cause, order another remedy the

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2798 court deems appropriate in its discretion, including an
2799 equitable remedy.
2800 (5) Section 57.105 applies to a proceeding brought under s.
2801 605.0702.
2802 605.0704 Receivership or custodianship.—
2803 (1) A court in a judicial proceeding brought to dissolve a
2804 limited liability company may appoint one or more receivers to
2805 wind up and liquidate or one or more custodians to manage the
2806 business and affairs of the limited liability company. The court
2807 shall hold a hearing, after notifying all parties to the
2808 proceeding and an interested person designated by the court,
2809 before appointing a receiver or custodian. The court appointing
2810 a receiver or custodian has exclusive jurisdiction over the
2811 limited liability company and all of its property, wherever
2812 located.
2813 (2) The court may appoint a person authorized to act as a
2814 receiver or custodian. The court may require the receiver or
2815 custodian to post bond, with or without sureties, in an amount
2816 the court directs.
2817 (3) The court shall describe the powers and duties of the
2818 receiver or custodian in its appointing order, which may be
2819 amended. Among other powers:
2820 (a) The receiver :
2821 1. May dispose of all or a part of the assets of the
2822 limited liability company wherever located, at a public or
2823 private sale, if authorized by the court; and
2824 2. May sue and defend in the receiver’s own name, as
2825 receiver of the limited liability company, in all courts of this
2826 state; and

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2827 (b) The custodian may exercise all of the powers of the
2828 limited liability company, through or in place of its managers
2829 or members, to the extent necessary to manage the activities and
2830 affairs of the limited liability company in the best interest of
2831 its members and creditors.
2832 (4) During a receivership, the court may redesignate the
2833 receiver as a custodian and, during a custodianship, may
2834 redesignate the custodian as a receiver if doing so is in the
2835 best interests of the limited liability company and its members
2836 and creditors.
2837 (5) During the receivership or custodianship the court may
2838 order compensation paid and expense disbursements or
2839 reimbursements made to the receiver or custodian and the
2840 receiver's or custodian's counsel from the assets of the limited
2841 liability company or proceeds from the sale of part or all of
2842 those assets.
2843 (6) The court has jurisdiction to appoint an ancillary
2844 receiver for the assets and business of a limited liability
2845 company. The ancillary receiver shall serve ancillary to a
2846 receiver located in another state if the court deems that
2847 circumstances exist requiring the appointment of such a
2848 receiver. The court may appoint a receiver for a foreign limited
2849 liability company even though a receiver has not been appointed
2850 elsewhere. The receivership shall be converted into an ancillary
2851 receivership if an order entered by a court of competent
2852 jurisdiction in the other state provides for a receivership of
2853 the foreign limited liability company.
2854 605.0705 Decree of dissolution.—
2855 (1) If, after a hearing, the court determines that one or

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2856 more grounds for judicial dissolution described in s. 605.0702
2857 exist, the court may enter a decree dissolving the limited
2858 liability company and specifying the effective date of the
2859 dissolution, and the clerk of the court shall deliver a
2860 certified copy of the decree to the department, which shall file
2861 the decree.
2862 (2) After entering the decree of dissolution, the court
2863 shall direct the winding up and liquidation of the limited
2864 liability company's activities and affairs in accordance with
2865 ss. 605.0709-605.0713, subject to subsection (3).
2866 (3) In a proceeding for judicial dissolution, the court may
2867 require all creditors of the limited liability company to file
2868 with the clerk of the court or with the receiver, in a form as
2869 the court may prescribe, proofs under oath of their respective
2870 claims. If the court requires the filing of claims, the court
2871 shall fix a date, which may not be earlier than 4 months after
2872 the date of the order, as the last day for filing claims. The
2873 court shall prescribe the deadline for filing claims which shall
2874 be given to creditors and claimants. Before the date so fixed,
2875 the court may extend the time for the filing of claims by court
2876 order. Creditors and claimants failing to file proofs of claim
2877 on or before the date so fixed may be barred, by order of court,
2878 from participating in the distribution of the assets of the
2879 limited liability company. This section does not affect the
2880 enforceability of a recorded mortgage or lien or the perfected
2881 security interest or rights of a person in possession of real or
2882 personal property.
2883 605.0706 Election to purchase instead of dissolution.—
2884 (1) In a proceeding initiated by a member of a limited

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2885 liability company under s. 605.0702(1)(b) to dissolve the
2886 company, the company may elect, or, if it fails to elect, one or
2887 more other members may elect, to purchase the entire interest of
2888 the petitioner in the company at the fair value of the interest.
2889 An election pursuant to this section is irrevocable unless the
2890 court determines that it is equitable to set aside or modify the
2891 election.
2892 (2) An election to purchase pursuant to this section may be
2893 filed with the court within 90 days after the filing of the
2894 petition by the petitioning member under s. 605.0702(1)(b) or
2895 (2) or at such later time as the court may allow. If the
2896 election to purchase is filed, the company shall within 10 days
2897 thereafter, give written notice to all members, other than the
2898 petitioning member. The notice must describe the interest in the
2899 company owned by each petitioning member and must advise the
2900 recipients of their right to join in the election to purchase
2901 the petitioning member’s interest in accordance with this
2902 section. Members who wish to participate must file notice of
2903 their intention to join in the purchase within 30 days after the
2904 effective date of the notice. A member who has filed an election
2905 or notice of the intent to participate in the election to
2906 purchase thereby becomes a party to the proceeding and shall
2907 participate in the purchase in proportion to the ownership
2908 interest as of the date the first election was filed unless the
2909 members otherwise agree or the court otherwise directs. After an
2910 election to purchase has been filed by the limited liability
2911 company or one or more members, the proceeding under s.
2912 605.0702(1)(b) or (2) may not be discontinued or settled, and
2913 the petitioning member may not sell or otherwise dispose of

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2914 interest of the petitioner in the company unless the court
2915 determines that it would be equitable to the company and the
2916 members, other than the petitioner, to authorize such
2917 discontinuance, settlement, sale, or other disposition or the
2918 sale is pursuant to a deadlock sale provision described in s.
2919 605.0702(1)(b).
2920 (3) If, within 60 days after the filing of the first
2921 election, the parties reach an agreement as to the fair value
2922 and terms of the purchase of the petitioner's interest, the
2923 court shall enter an order directing the purchase of the
2924 petitioner's interest upon the terms and conditions agreed to by
2925 the parties, unless the petitioner's interest has been acquired
2926 pursuant to a deadlock sale provision before the order.
2927 (4) If the parties are unable to reach an agreement as
2928 provided for in subsection (3), the court, upon application of a
2929 party, shall stay the proceedings and determine the fair value
2930 of the petitioner's interest as of the day before the date on
2931 which the petition was filed or as of such other date as the
2932 court deems appropriate under the circumstances.
2933 (5) Upon determining the fair value of the petitioner's
2934 interest in the company, unless the petitioner's interest has
2935 been acquired pursuant to a deadlock sale provision before the
2936 order, the court shall enter an order directing the purchase
2937 upon such terms and conditions as the court deems appropriate,
2938 which may include: payment of the purchase price in
2939 installments, when necessary in the interests of equity; a
2940 provision for security to ensure payment of the purchase price
2941 and additional costs, fees, and expenses as may have been
2942 awarded; and, if the interest is to be purchased by members, the

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2943 allocation of the interest among those members. In allocating
2944 petitioner's interest among holders of different classes or
2945 series of interests in the company, the court shall attempt to
2946 preserve the existing distribution of voting rights among
2947 holders of different classes insofar as practicable and may
2948 direct that holders of a specific class or classes or series not
2949 participate in the purchase. Interest may be allowed at the rate
2950 and from the date determined by the court to be equitable;
2951 however, if the court finds that the refusal of the petitioning
2952 member to accept an offer of payment was arbitrary or otherwise
2953 not in good faith, payment of interest is not allowed. If the
2954 court finds that the petitioning member had probable grounds for
2955 relief under s. 605.0702(1)(b)3. or 4., it may award to the
2956 petitioning member reasonable fees and expenses of counsel and
2957 of experts employed by petitioner.
2958 (6) Upon entry of an order under subsection (3) or
2959 subsection (5), the court shall dismiss the petition to dissolve
2960 the limited liability company, and the petitioning member shall
2961 no longer have rights or status as a member of the limited
2962 liability company except the right to receive the amounts
2963 awarded by the order of the court, which shall be enforceable in
2964 the same manner as any other judgment.
2965 (7) The purchase ordered pursuant to subsection (5) must be
2966 made within 10 days after the date the order becomes final
2967 unless, before that time, the limited liability company files
2968 with the court a notice of its intention to dissolve pursuant to
2969 s. 605.0701(2), in which case articles of dissolution for the
2970 company must be filed within 50 days thereafter. Upon filing of
2971 such articles of dissolution, the limited liability company

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2972 shall be wound up in accordance with ss. 605.0709-605.0713, and
2973 the order entered pursuant to subsection (5) shall no longer be
2974 of force or effect except that the court may award the
2975 petitioning member reasonable fees and expenses of counsel and
2976 experts in accordance with subsection (5), and the petitioner
2977 may continue to pursue any claims previously asserted on behalf
2978 of the limited liability company.
2979 (8) A payment by the limited liability company pursuant to
2980 an order under subsection (3) or subsection (5), other than an
2981 award of fees and expenses pursuant to subsection (5), is
2982 subject to s. 605.0405.
2983 605.0707 Articles of dissolution; filing of articles of
2984 dissolution.—
2985 (1) Upon the occurrence of an event described in s.
2986 605.0701(1)-(3), the limited liability company shall deliver for
2987 filing articles of dissolution as provided in this section.
2988 (2) The articles of dissolution must state the following:
2989 (a) The name of the limited liability company.
2990 (b) The delayed effective date of the limited liability
2991 company's dissolution if the dissolution is not to be effective
2992 on the date the articles of dissolution are filed by the
2993 department.
2994 (c) The occurrence that resulted in the limited liability
2995 company's dissolution.
2996 (d) If there are no members, the name, address, and
2997 signature of the person appointed in accordance with this
2998 subsection to wind up the company.
2999 (3) The articles of dissolution of the limited liability
3000 company shall be delivered to the department. If the department

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3001 finds that the articles of dissolution conform to law, it shall,
3002 when all fees have been paid as prescribed in this chapter, file
3003 the articles of dissolution and issue a certificate of
3004 dissolution.
3005 (4) Upon the filing of the articles of dissolution, the
3006 limited liability company shall cease conducting its business
3007 and shall continue solely for the purpose of winding up its
3008 affairs in accordance with s. 605.0709, except for the purpose
3009 of lawsuits, other proceedings, and appropriate action as
3010 provided in this chapter.
3011 605.0708 Revocation of articles of dissolution.—
3012 (1) A limited liability company that has dissolved as the
3013 result of an event described in s. 605.0701(1)-(3) and filed
3014 articles of dissolution with the department, but has not filed a
3015 statement of termination which has become effective, may revoke
3016 its dissolution at any time before 120 days after the effective
3017 date of its articles of dissolution.
3018 (2) The revocation of the dissolution shall be authorized
3019 in the same manner as the dissolution was authorized.
3020 (3) After the revocation of dissolution is authorized, the
3021 limited liability company shall deliver a statement of
3022 revocation of dissolution to the department for filing, together
3023 with a copy of its articles of dissolution, which must include
3024 the following:
3025 (a) The name of the limited liability company.
3026 (b) The effective date of the dissolution which was
3027 revoked.
3028 (c) The date that the statement of revocation of
3029 dissolution was authorized.

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3030 (4) If there has been substantial compliance with
3031 subsection (3), the revocation of dissolution is effective when
3032 the department files the statement of revocation of dissolution.
3033 (5) When the revocation of dissolution becomes effective:
3034 (a) The company resumes carrying on its activities and
3035 affairs as if dissolution had never occurred;
3036 (b) Subject to paragraph (c), a liability incurred by the
3037 company after the dissolution and before the revocation is
3038 effective is determined as if dissolution had never occurred;
3039 and
3040 (c) The rights of a third party arising out of conduct in
3041 reliance on the dissolution before the third party knew or had
3042 notice of the revocation may not be adversely affected.
3043 605.0709 Winding up.—
3044 (1) A dissolved limited liability company shall wind up its
3045 activities and affairs and, except as otherwise provided in ss.
3046 605.0708 and 605.0715, the company continues after dissolution
3047 only for the purpose of winding up.
3048 (2) In winding up its activities and affairs, a limited
3049 liability company:
3050 (a) Shall discharge or make provision for the company's
3051 debts, obligations, and other liabilities as provided in ss.
3052 605.0710-605.0713, settle and close the company's activities and
3053 affairs, and marshal and distribute the assets of the company;
3054 and
3055 (b) May:
3056 1. Preserve the company's activities, affairs, and property
3057 as a going concern for a reasonable time;
3058 2. Prosecute and defend actions and proceedings, whether

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3059 civil, criminal, or administrative;
3060 3. Transfer title to the company's real estate and other
3061 property;
3062 4. Settle disputes by mediation or arbitration;
3063 5. Dispose of its properties that will not be distributed
3064 in kind to its members; and
3065 6. Perform other acts necessary or appropriate to the
3066 winding up.
3067 (3) If a dissolved limited liability company has no
3068 members, the legal representative of the last person to have
3069 been a member may wind up the activities and affairs of the
3070 company. If the legal representative does so, the person has the
3071 powers of a sole manager under s. 605.0407(3) and is deemed to
3072 be a manager for the purposes of s. 605.0304(1).
3073 (4) If the legal representative under subsection (3)
3074 declines or fails to wind up the company's activities and
3075 affairs, a person may be appointed to do so by the consent of
3076 the transferees owning a majority of the rights to receive
3077 distributions as transferees at the time the consent is to be
3078 effective. A person appointed under this subsection has the
3079 powers of a sole manager under s. 605.0407(3) and is deemed to
3080 be a manager for the purposes of s. 605.0304(1).
3081 (5) A circuit court may order judicial supervision of the
3082 winding up of a dissolved limited liability company, including
3083 the appointment of one or more persons to wind up the company's
3084 activities and affairs:
3085 (a) On application of a member or manager if the applicant
3086 establishes good cause;
3087 (b) On the application of a transferee if:

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3088 1. The company does not have any members;
3089 2. The legal representative of the last person to have been
3090 a member declines or fails to wind up the company's activities
3091 and affairs; or
3092 3. Within a reasonable time following the dissolution a
3093 person has not been appointed pursuant to subsection (3);
3094 (c) On application of a creditor of the company if the
3095 applicant establishes good cause, but only if a receiver,
3096 custodian, or another person has not already been appointed for
3097 that purpose under this chapter; or
3098 (d) In connection with a proceeding under s. 605.0702 if a
3099 receiver, custodian, or another person has not already been
3100 appointed for that purpose under s. 605.0704.
3101 (6) The person or persons appointed by a court under
3102 subsection (5) may also be designated trustees for or receivers
3103 of the company with the authority to take charge of the limited
3104 liability company's property; to collect the debts and property
3105 due and belonging to the limited liability company; to prosecute
3106 and defend, in the name of the limited liability company, or
3107 otherwise, all such suits as may be necessary or proper for the
3108 purposes described above; to appoint an agent or agents under
3109 them; and to do all other acts that might be done by the limited
3110 liability company, if in being, which may be necessary for the
3111 final settlement of the unfinished activities and affairs of the
3112 limited liability company. The powers of the trustees or
3113 receivers may be continued as long as the court determines is
3114 necessary for the above purposes.
3115 (7) A dissolved limited liability company that has
3116 completed winding up may deliver to the department for filing a

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3117 statement of termination that provides the following:
3118 (a) The name of the limited liability company.
3119 (b) The date of filing of its initial articles of
3120 organization.
3121 (c) The date of the filing of its articles of dissolution.
3122 (d) The limited liability company has completed winding up
3123 its activities and affairs and has determined that it will file
3124 a statement of termination.
3125 (e) Other information as determined by the authorized
3126 representative.
3127 (8) The manager or managers in office at the time of
3128 dissolution or the survivors of such manager or managers, or, if
3129 none, the members, shall thereafter be trustees for the members
3130 and creditors of the dissolved limited liability company. The
3131 trustees may distribute property of the limited liability
3132 company discovered after dissolution, convey real estate and
3133 other property, and take such other action as may be necessary
3134 on behalf of and in the name of the dissolved limited liability
3135 company.
3136 605.0710 Disposition of assets in winding up.—
3137 (1) In winding up its activities and affairs, a limited
3138 liability company must apply its assets to discharge its
3139 obligations to creditors, including members who are creditors.
3140 (2) After a limited liability company complies with
3141 subsection (1), the surplus must be distributed in the following
3142 order, subject to a charging order in effect under s. 605.0503:
3143 (a) To each person owning a transferable interest that
3144 reflects contributions made and not previously returned, an
3145 amount equal to the value of the unreturned contributions; then

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3146 (b) To members and persons dissociated as members, in the
3147 proportions in which they shared in distributions before
3148 dissolution, except to the extent necessary to comply with a
3149 transfer effective under s. 605.0502.
3150 (3) If the limited liability company does not have
3151 sufficient surplus to comply with paragraph (2)(a), any surplus
3152 must be distributed among the owners of transferable interests
3153 in proportion to the value of their respective unreturned
3154 contributions.
3155 (4) All distributions made under subsections (2) and (3)
3156 must be paid in money.
3157 605.0711 Known claims against dissolved limited liability
3158 company.—
3159 (1) A dissolved limited liability company or successor
3160 entity, as defined in subsection (14), may dispose of the known
3161 claims against it by following the procedures described in
3162 subsections (2)-(7).
3163 (2) A dissolved limited liability company or successor
3164 entity shall deliver to each of its known claimants written
3165 notice of the dissolution after its effective date. The written
3166 notice must do the following:
3167 (a) Provide a reasonable description of the claim that the
3168 claimant may be entitled to assert.
3169 (b) State whether the claim is admitted or not admitted, in
3170 whole or in part, and, if admitted:
3171 1. The amount that is admitted, which may be as of a given
3172 date; and
3173 2. An interest obligation if fixed by an instrument of
3174 indebtedness.

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3175 (c) Provide a mailing address to which a claim may be sent.
3176 (d) State the deadline, which may not be less than 120 days
3177 after the effective date of the written notice, by which
3178 confirmation of the claim must be delivered to the dissolved
3179 limited liability company or successor entity.
3180 (e) State that the dissolved limited liability company or
3181 successor entity may make distributions to other claimants and
3182 to the members or transferees of the limited liability company
3183 or persons interested without further notice.
3184 (3) A dissolved limited liability company or successor
3185 entity may reject, in whole or in part, a claim made by a
3186 claimant pursuant to this subsection by mailing notice of the
3187 rejection to the claimant within 90 days after receipt of the
3188 claim and, in all events, at least 150 days before the
3189 expiration of the 3-year period after the effective date of
3190 dissolution. A notice sent by the dissolved limited liability
3191 company or successor entity pursuant to this subsection must be
3192 accompanied by a copy of this section.
3193 (4) A dissolved limited liability company or successor
3194 entity electing to follow the procedures described in
3195 subsections (2) and (3) shall also give notice of the
3196 dissolution of the limited liability company to persons who have
3197 known claims that are contingent upon the occurrence or
3198 nonoccurrence of future events or otherwise conditional or
3199 unmatured and request that the persons present the claims in
3200 accordance with the terms of the notice. The notice must be in
3201 substantially the same form and sent in the same manner as
3202 described in subsection (2).
3203 (5) A dissolved limited liability company or successor

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3204 entity shall offer a claimant whose known claim is contingent,
3205 conditional, or unmatured such security as the limited liability
3206 company or entity determines is sufficient to provide
3207 compensation to the claimant if the claim matures. The dissolved
3208 limited liability company or successor entity shall deliver such
3209 offer to the claimant within 90 days after receipt of the claim
3210 and, in all events, at least 150 days before expiration of 3
3211 years after the effective date of dissolution. If the claimant
3212 that is offered the security does not deliver in writing to the
3213 dissolved limited liability company or successor entity a notice
3214 rejecting the offer within 120 days after receipt of the offer
3215 for security, the claimant is deemed to have accepted such
3216 security as the sole source from which to satisfy his, her, or
3217 its claim against the limited liability company.
3218 (6) A dissolved limited liability company or successor
3219 entity that gives notice in accordance with subsections (2) and
3220 (4) shall petition the circuit court in the applicable county to
3221 determine the amount and form of security that are sufficient to
3222 provide compensation to a claimant that has rejected the offer
3223 for security made pursuant to subsection (5).
3224 (7) A dissolved limited liability company or successor
3225 entity that has given notice in accordance with subsection (2)
3226 shall petition the circuit court in the applicable county to
3227 determine the amount and form of security that will be
3228 sufficient to provide compensation to claimants whose claims are
3229 known to the limited liability company or successor entity but
3230 whose identities are unknown. The court shall appoint a guardian
3231 ad litem to represent all claimants whose identities are unknown
3232 in a proceeding brought under this subsection. The reasonable

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3233 fees and expenses of the guardian, including all reasonable
3234 expert witness fees, shall be paid by the petitioner in the
3235 proceeding.
3236 (8) The giving of notice or making of an offer pursuant to
3237 this section does not revive a claim then barred, extend an
3238 otherwise applicable statute of limitations, or constitute
3239 acknowledgment by the dissolved limited liability company or
3240 successor entity that a person to whom such notice is sent is a
3241 proper claimant, and does not operate as a waiver of a defense
3242 or counterclaim in respect of a claim asserted by a person to
3243 whom such notice is sent.
3244 (9) A dissolved limited liability company or successor
3245 entity that followed the procedures described in subsections
3246 (2)-(7) must:
3247 (a) Pay the claims admitted or made and not rejected in
3248 accordance with subsection (3);
3249 (b) Post the security offered and not rejected pursuant to
3250 subsection (5);
3251 (c) Post a security ordered by the circuit court in a
3252 proceeding under subsections (6) and (7); and
3253 (d) Pay or make provision for all other known obligations
3254 of the limited liability company or the successor entity.
3255
3256 If there are sufficient funds, such claims or obligations must
3257 be paid in full, and a provision for payments must be made in
3258 full. If there are insufficient funds, the claims and
3259 obligations shall be paid or provided for according to their
3260 priority and, among claims of equal priority, ratably to the
3261 extent of funds that are legally available therefor. Remaining

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3262 funds shall be distributed to the members and transferees of the
3263 dissolved limited liability company. However, the distribution
3264 may not be made before the expiration of 150 days after the date
3265 of the last notice of a rejection given pursuant to subsection
3266 (3). In the absence of actual fraud, the judgment of the
3267 managers of a dissolved manager-managed limited liability
3268 company or the members of a dissolved member-managed limited
3269 liability company, or other person or persons winding up the
3270 limited liability company or the governing persons of the
3271 successor entity, as to the provisions made for the payment of
3272 all obligations under paragraph (d), is conclusive.
3273 (10) A dissolved limited liability company or successor
3274 entity that has not followed the procedures described in
3275 subsections (2) and (3) shall pay or make reasonable provision
3276 to pay all known claims and obligations, including all
3277 contingent, conditional, or unmatured claims known to the
3278 dissolved limited liability company or the successor entity and
3279 all claims that are known to the dissolved limited liability
3280 company or the successor entity but for which the identity of
3281 the claimant is unknown. If there are sufficient funds, the
3282 claims must be paid in full, and a provision made for payment
3283 must be made in full. If there are insufficient funds, the
3284 claims and obligations shall be paid or provided for according
3285 to their priority and, among claims of equal priority, ratably
3286 to the extent of funds that are legally available. Remaining
3287 funds shall be distributed to the members and transferees of the
3288 dissolved limited liability company.
3289 (11) A member or transferee of a dissolved limited
3290 liability company to which the assets were distributed pursuant

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3291 to subsection (9) or subsection (10) is not liable for a claim
3292 against the limited liability company in an amount in excess of
3293 the member's or transferee's pro rata share of the claim or the
3294 amount distributed to the member or transferee, whichever is
3295 less.
3296 (12) A member or transferee of a dissolved limited
3297 liability company to whom the assets were distributed pursuant
3298 to subsection (9) is not liable for a claim against the limited
3299 liability company, which claim is known to the limited liability
3300 company or successor entity and on which a proceeding is not
3301 begun before the expiration of 3 years after the effective date
3302 of dissolution.
3303 (13) The aggregate liability of a person for claims against
3304 the dissolved limited liability company arising under this
3305 section or s. 605.0710 may not exceed the amount distributed to
3306 the person in dissolution.
3307 (14) As used in this section and s. 605.0710, the term
3308 "successor entity" includes a trust, receivership, or other
3309 legal entity governed by the laws of this state to which the
3310 remaining assets and liabilities of a dissolved limited
3311 liability company are transferred and which exists solely for
3312 the purposes of prosecuting and defending suits by or against
3313 the dissolved limited liability company, thereby enabling the
3314 dissolved limited liability company to settle and close the
3315 activities and affairs of the dissolved limited liability
3316 company, to dispose of and convey the property of the dissolved
3317 limited liability company, to discharge the liabilities of the
3318 dissolved limited liability company, and to distribute to the
3319 dissolved limited liability company's members or transferees any

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3320 remaining assets, but not for the purpose of continuing the
3321 activities and affairs for which the dissolved limited liability
3322 company was organized.
3323 (15) As used in this section and ss. 605.0712 and 605.0713,
3324 the term "applicable county" means the county in this state in
3325 which the limited liability company's principal office is
3326 located or was located at the effective date of dissolution; if
3327 the company has, and at the effective date of dissolution had,
3328 no principal office in this state, then in the county in which
3329 the company has, or at the effective date of dissolution had, an
3330 office in this state; or if none in this state, then in the
3331 county in which the company's registered office is or was last
3332 located.
3333 (16) As used in this section, the term "known claim" or
3334 "claim" includes unliquidated claims, but does not include a
3335 contingent liability that has not matured so that there is no
3336 immediate right to bring suit or a claim based on an event
3337 occurring after the effective date of dissolution.
3338 605.0712 Other claims against a dissolved limited liability
3339 company.—
3340 (1) A dissolved limited liability company or successor
3341 entity, as defined in s. 605.0711(14), may choose to execute one
3342 of the following procedures to resolve payment of unknown
3343 claims:
3344 (a) The company or successor entity may file notice of its
3345 dissolution with the department on the form prescribed by the
3346 department and request that persons who have claims against the
3347 company which are not known to the company or successor entity
3348 present them in accordance with the notice. The notice must:

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3349 1. State the name of the company and the date of
3350 dissolution;
3351 2. Describe the information that must be included in a
3352 claim, state that the claim must be in writing, and provide a
3353 mailing address to which the claim may be sent; and
3354 3. State that a claim against the company is barred unless
3355 an action to enforce the claim is commenced within 4 years after
3356 the filing of the notice.
3357 (b) The company or successor entity may publish notice of
3358 its dissolution and request persons who have claims against the
3359 company to present them in accordance with the notice. The
3360 notice must:
3361 1. Be published in a newspaper of general circulation in
3362 the county in which the dissolved limited liability company's
3363 principal office is located or, if the principal office is not
3364 located in this state, in the county in which the office of the
3365 company's registered agent is or was last located;
3366 2. Describe the information that must be included in a
3367 claim, state that the claim must be in writing, and provide a
3368 mailing address to which the claim is to be sent; and
3369 3. State that a claim against the company is barred unless
3370 an action to enforce the claim is commenced within 4 years after
3371 publication of the notice.
3372 (2) If a dissolved limited liability company complies with
3373 paragraph (1)(a) or paragraph (1)(b), unless sooner barred by
3374 another statute limiting actions, the claim of each of the
3375 following claimants is barred unless the claimant commences an
3376 action to enforce the claim against the dissolved limited
3377 liability company within 4 years after the publication date of

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3378 the notice:
3379 (a) A claimant that did not receive notice in a record
3380 under s. 605.0711;
3381 (b) A claimant whose claim was timely sent to the dissolved
3382 limited liability company but not acted on; and
3383 (c) A claimant whose claim is contingent at or based on an
3384 event occurring after the effective date of dissolution.
3385 (3) A claim that is not barred by this section, s.
3386 608.0711, or another statute limiting actions, may be enforced:
3387 (a) Against a dissolved limited liability company, to the
3388 extent of its undistributed assets; and
3389 (b) Except as otherwise provided in s. 605.0713, if assets
3390 of the limited liability company have been distributed after
3391 dissolution, against a member or transferee to the extent of
3392 that person’s proportionate share of the claim or of the
3393 company’s assets distributed to the member or transferee after
3394 dissolution, whichever is less, but a person’s total liability
3395 for all claims under this subsection may not exceed the total
3396 amount of assets distributed to the person after dissolution.
3397 (4) This section does not extend an otherwise applicable
3398 statute of limitations.
3399 605.0713 Court proceedings.—
3400 (1) A dissolved limited liability company that has filed or
3401 published a notice under s. 605.0712(1)(a) or (1)(b) may file an
3402 application with the circuit court in the applicable county, as
3403 defined in s. 605.0711(15), for a determination of the amount
3404 and form of security to be provided for payment of claims that
3405 are contingent, have not been made known to the company, or are
3406 based on an event occurring after the effective date of

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3407 dissolution but which, based on the facts known to the dissolved
3408 company, are reasonably expected to arise after the effective
3409 date of dissolution. Security is not required for a claim that
3410 is, or is reasonably anticipated to be, barred under s.
3411 605.0712.
3412 (2) Within 10 days after filing an application under
3413 subsection (1), the dissolved limited liability company must
3414 give notice of the proceeding to each claimant holding a
3415 contingent claim known to the company.
3416 (3) In a proceeding under this section, the court may
3417 appoint a guardian ad litem to represent all claimants whose
3418 identities are unknown. The reasonable fees and expenses of the
3419 guardian ad litem, including all reasonable expert witness fees,
3420 must be paid by the dissolved limited liability company.
3421 (4) A dissolved limited liability company that provides
3422 security in the amount and form ordered by the court under
3423 subsection (1) satisfies the company's obligations with respect
3424 to claims that are contingent, have not been made known to the
3425 company, or are based on an event occurring after the effective
3426 date of dissolution, and such claims may not be enforced against
3427 a member or transferee that received assets in liquidation.
3428 605.0714 Administrative dissolution.—
3429 (1) The department may dissolve a limited liability company
3430 administratively if the company does not:
3431 (a) Deliver its annual report to the department by 5:00
3432 p.m. Eastern Time on the third Friday in September of each year;
3433 (b) Pay a fee or penalty due to the department under this
3434 chapter;
3435 (c) Appoint and maintain a registered agent as required

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3436 under s. 605.0113; or
3437 (d) Deliver for filing a statement of a change under s.
3438 605.0114 within 30 days after a change has occurred in the name
3439 or address of the agent unless, within 30 days after the change
3440 occurred:
3441 1. The agent filed a statement of change under s. 605.0116;
3442 or
3443 2. The change was made accordance with s. 605.0114(4).
3444 (2) Administrative dissolution of a limited liability
3445 company for failure to file an annual report must occur on the
3446 fourth Friday in September of each year. The department shall
3447 issue a notice in a record of administrative dissolution to the
3448 limited liability company dissolved for failure to file an
3449 annual report. Issuance of the notice may be by electronic
3450 transmission to a limited liability company that has provided
3451 the department with an e-mail address.
3452 (3) If the department determines that one or more grounds
3453 exist for administratively dissolving a limited liability
3454 company under paragraph (1)(b), paragraph (1)(c), or paragraph
3455 (1)(d), the department shall serve notice in a record to the
3456 limited liability company of its intent to administratively
3457 dissolve the limited liability company. Issuance of the notice
3458 may be by electronic transmission to a limited liability company
3459 that has provided the department with an e-mail address.
3460 (4) If, within 60 days after sending the notice of intent
3461 to administratively dissolve pursuant to subsection (3), a
3462 limited liability company does not correct each ground for
3463 dissolution under paragraph (1)(b), paragraph (1)(c), or
3464 paragraph (1)(d) or demonstrate to the reasonable satisfaction

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3465 of the department that each ground determined by the department
3466 does not exist, the department shall dissolve the limited
3467 liability company administratively and issue to the company a
3468 notice in a record of administrative dissolution that states the
3469 grounds for dissolution. Issuance of the notice of
3470 administrative dissolution may be by electronic transmission to
3471 a limited liability company that has provided the department
3472 with an e-mail address.
3473 (5) A limited liability company that has been
3474 administratively dissolved continues in existence but may only
3475 carry on activities necessary to wind up its activities and
3476 affairs, liquidate and distribute its assets, and notify
3477 claimants under ss. 605.0711 and 605.0712.
3478 (6) The administrative dissolution of a limited liability
3479 company does not terminate the authority of its registered agent
3480 for service of process.
3481 605.0715 Reinstatement.—
3482 (1) A limited liability company that is administratively
3483 dissolved under s. 605.0714 may apply to the department for
3484 reinstatement at any time after the effective date of
3485 dissolution. The company must submit a form of application for
3486 reinstatement prescribed and furnished by the department and
3487 provide all of the information required by the department,
3488 together with all fees and penalties then owed by the company at
3489 the rates provided by law at the time the company applies for
3490 reinstatement.
3491 (2) If the department determines that an application for
3492 reinstatement contains the information required under subsection
3493 (1) and that the information is correct, upon payment of all

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3494 required fees and penalties, the department shall reinstate the
3495 limited liability company.
3496 (3) When reinstatement under this section becomes
3497 effective:
3498 (a) The reinstatement relates back to and takes effect as
3499 of the effective date of the administrative dissolution.
3500 (b) The limited liability company may resume its activities
3501 and affairs as if the administrative dissolution had not
3502 occurred.
3503 (c) The rights of a person arising out of an act or
3504 omission in reliance on the dissolution before the person knew
3505 or had notice of the reinstatement are not affected.
3506 (4) The name of the dissolved limited liability company is
3507 not available for assumption or use by another business entity
3508 until 1 year after the effective date of dissolution unless the
3509 dissolved limited liability company provides the department with
3510 a record executed as required pursuant to s. 605.0203 permitting
3511 the immediate assumption or use of the name by another limited
3512 liability company.
3513 605.0716 Judicial review of denial of reinstatement.—
3514 (1) If the department denies a limited liability company's
3515 application for reinstatement after administrative dissolution,
3516 the department shall serve the company with a notice in a record
3517 that explains the reason or reasons for the denial.
3518 (2) Within 30 days after service of a notice of denial of
3519 reinstatement, a limited liability company may appeal the denial
3520 by petitioning the circuit court in the applicable county, as
3521 defined in s. 605.0711(15), to set aside the dissolution. The
3522 petition must be served on the department and contain a copy of

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3523 the department's notice of administrative dissolution, the
3524 company's application for reinstatement, and the department's
3525 notice of denial.
3526 (3) The court may order the department to reinstate a
3527 dissolved limited liability company or take other action the
3528 court considers appropriate.
3529 605.0717 Effect of dissolution.—
3530 (1) Dissolution of a limited liability company does not:
3531 (a) Transfer title to the limited liability company's
3532 assets;
3533 (b) Prevent commencement of a proceeding by or against the
3534 limited liability company in its name;
3535 (c) Abate or suspend a proceeding pending by or against the
3536 limited liability company on the effective date of dissolution;
3537 or
3538 (d) Terminate the authority of the registered agent of the
3539 limited liability company.
3540 (2) Except as provided in s. 605.0715(4), the name of the
3541 dissolved limited liability company is not available for
3542 assumption or use by another business entity until 120 days
3543 after the effective date of dissolution or filing of a statement
3544 of termination, if earlier.
3545 605.0801 Direct action by member.—
3546 (1) Subject to subsection (2), a member may maintain a
3547 direct action against another member, a manager, or the limited
3548 liability company to enforce the member's rights and otherwise
3549 protect the member's interests, including rights and interests
3550 under the operating agreement or this chapter or arising
3551 independently of the membership relationship.

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3552 (2) A member maintaining a direct action under this section
3553 must plead and prove an actual or threatened injury that is not
3554 solely the result of an injury suffered or threatened to be
3555 suffered by the limited liability company.
3556 605.0802 Derivative action.—A member may maintain a
3557 derivative action to enforce a right of a limited liability
3558 company if:
3559 (1) The member first makes a demand on the other members in
3560 a member-managed limited liability company or the managers of a
3561 manager-managed limited liability company requesting that the
3562 managers or other members cause the company to take suitable
3563 action to enforce the right, and the managers or other members
3564 do not take the action within a reasonable time, not to exceed
3565 90 days; or
3566 (2) A demand under subsection (1) would be futile, or
3567 irreparable injury would result to the company by waiting for
3568 the other members or the managers to take action to enforce the
3569 right in accordance with subsection (1).
3570 605.0803 Proper plaintiff.—A derivative action to enforce a
3571 right of a limited liability company may be maintained only by a
3572 person who is a member at the time the action is commenced and:
3573 (1) Was a member when the conduct giving rise to the action
3574 occurred; or
3575 (2) Whose status as a member devolved on the person by
3576 operation of law or pursuant to the terms of the operating
3577 agreement from a person who was a member at the time of the
3578 conduct.
3579 605.0804 Special litigation committee.—
3580 (1) If a limited liability company is named as or made a

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3581 party in a derivative action, the company may appoint a special
3582 litigation committee to investigate the claims asserted in the
3583 derivative action and determine whether pursuing the action is
3584 in the best interest of the company. If the company appoints a
3585 special litigation committee, on motion, except for good cause
3586 shown, the court may stay any derivative action for the time
3587 reasonably necessary to permit the committee to make its
3588 investigation. This subsection does not prevent the court from:
3589 (a) Enforcing a person's rights under the company's
3590 operating agreement or this chapter, including the person's
3591 rights to information under s. 605.0410; or
3592 (b) Exercising its equitable or other powers, including
3593 granting extraordinary relief in the form of a temporary
3594 restraining order or preliminary injunction.
3595 (2) A special litigation committee must be composed of one
3596 or more disinterested and independent individuals, who may be
3597 members.
3598 (3) A special litigation committee may be appointed:
3599 (a) In a member-managed limited liability company, by the
3600 consent of the members who are not named as parties in the
3601 derivative action, who are otherwise disinterested and
3602 independent, and who hold a majority of the current percentage
3603 or other interest in the profits of the company owned by all of
3604 the members of the company who are not named as parties in the
3605 derivative action and who are otherwise disinterested and
3606 independent;
3607 (b) In a manager-managed limited liability company, by a
3608 majority of the managers not named as parties in the derivative
3609 action and who are otherwise disinterested and independent; or

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3610 (c) Upon motion by the limited liability company,
3611 consisting of a panel of one or more disinterested and
3612 independent persons.
3613 (4) After appropriate investigation, a special litigation
3614 committee shall determine what action is in the best interest of
3615 the limited liability company, including continuing, dismissing,
3616 or settling the derivative action or taking another action that
3617 the special litigation committee deems appropriate.
3618 (5) After making a determination under subsection (4), a
3619 special litigation committee shall file or cause to be filed
3620 with the court a statement of its determination and its report
3621 supporting its determination and shall serve each party to the
3622 derivative action with a copy of the determination and report.
3623 Upon motion to enforce the determination of the special
3624 litigation committee, the court shall determine whether the
3625 members of the committee were disinterested and independent and
3626 whether the committee conducted its investigation and made its
3627 recommendation in good faith, independently, and with reasonable
3628 care, with the committee having the burden of proof. If the
3629 court finds that the members of the committee were disinterested
3630 and independent and that the committee acted in good faith,
3631 independently, and with reasonable care, the court may enforce
3632 the determination of the committee. Otherwise, the court shall
3633 dissolve any stay of derivative action entered under subsection
3634 (1) and allow the derivative action to continue under the
3635 control of the plaintiff.
3636 605.0805 Proceeds and expenses.—
3637 (1) Except as otherwise provided in subsection (2):
3638 (a) Proceeds or other benefits of a derivative action under

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3639 s. 605.0802, whether by judgment, compromise, or settlement,
3640 belong to the limited liability company and not to the
3641 plaintiff; and
3642 (b) If the plaintiff receives any proceeds, the plaintiff
3643 shall remit them immediately to the company.
3644 (2) If a derivative action under s. 608.0802 is successful
3645 in whole or in part, the court may award the plaintiff
3646 reasonable expenses, including reasonable attorney fees and
3647 costs, from the recovery of the limited liability company.
3648 605.0806 Voluntary dismissal or settlement; notice.—
3649 (1) A derivative action on behalf of a limited liability
3650 company may not be voluntarily dismissed or settled without the
3651 court's approval.
3652 (2) If the court determines that a proposed voluntary
3653 dismissal or settlement will substantially affect the interest
3654 of the limited liability company's members or a class, series,
3655 or voting group of members, the court shall direct that notice
3656 be given to the members affected. The court may determine which
3657 party or parties to the derivative action shall bear the expense
3658 of giving the notice.
3659 605.0901 Governing law.—
3660 (1) The law of the state or other jurisdiction under which
3661 a foreign limited liability company exists governs:
3662 (a) The organization and internal affairs of the foreign
3663 limited liability company; and
3664 (b) The liability of a member as member and a manager as
3665 manager for the debts, obligations, or other liabilities of the
3666 foreign limited liability company.
3667 (2) A foreign limited liability company may not be denied a

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3668 certificate of authority by reason of a difference between its
3669 jurisdiction of formation and the laws of this state.
3670 (3) A certificate of authority does not authorize a foreign
3671 limited liability company to engage in any business or exercise
3672 any power that a limited liability company may not engage in or
3673 exercise in this state.
3674 605.0902 Application for certificate of authority.—
3675 (1) A foreign limited liability company may not transact
3676 business in this state until it obtains a certificate of
3677 authority from the department. A foreign limited liability
3678 company may apply for a certificate of authority to transact
3679 business in this state by delivering an application to the
3680 department for filing. Such application must be made on forms
3681 prescribed by the department. The application must contain the
3682 following:
3683 (a) The name of the foreign limited liability company and,
3684 if the name does not comply with s. 605.0112, an alternate name
3685 adopted pursuant to s. 605.0906.
3686 (b) The name of the foreign limited liability company's
3687 jurisdiction of formation.
3688 (c) The principal office and mailing addresses of the
3689 foreign limited liability company.
3690 (d) The name and street address in this state of, and the
3691 written acceptance by, the foreign limited liability company's
3692 initial registered agent in this state.
3693 (e) The name, title or capacity, and address of at least
3694 one person who has the authority to manage the foreign limited
3695 liability company.
3696 (f) Additional information as may be necessary or

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3697 appropriate in order to enable the department to determine
3698 whether the foreign limited liability company is entitled to
3699 file an application for a certificate of authority to transact
3700 business in this state and to determine and assess the fees as
3701 prescribed in this chapter.
3702 (2) A foreign limited liability company shall deliver with
3703 a completed application under subsection (1) a certificate of
3704 existence or a record of similar import signed by the Secretary
3705 of State or other official having custody of the foreign limited
3706 liability company's publicly filed records in its jurisdiction
3707 of formation, dated not more than 90 days before the delivery of
3708 the application to the department.
3709 (3) For purposes of complying with the requirements of this
3710 chapter, the department may require each individual series or
3711 cell of a foreign series limited liability company that
3712 transacts business in this state to make a separate application
3713 for certificate of authority, and to make such other filings as
3714 may be required for purposes of complying with the requirements
3715 of this chapter as if each such series or cell were a separate
3716 foreign limited liability company.
3717 605.0903 Effect of a certificate of authority.—
3718 (1) Unless the department determines that an application
3719 for a certificate of authority of a foreign limited liability
3720 company to transact business in this state does not comply with
3721 the filing requirements of this chapter, the department shall,
3722 upon payment of all filing fees, authorize the foreign limited
3723 liability company to transact business in this state and file
3724 the application for a certificate of authority.
3725 (2) The filing by the department of an application for a

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3726 certificate of authority authorizes the foreign limited
3727 liability company that files the application to transact
3728 business in this state, subject, however, to the right of the
3729 department to suspend or revoke the certificate of authority as
3730 provided in this chapter.
3731 605.0904 Effect of failure to have certificate of
3732 authority.—
3733 (1) A foreign limited liability company transacting
3734 business in this state or its successors may not maintain an
3735 action or proceeding in this state unless it has a certificate
3736 of authority to transact business in this state.
3737 (2) The successor to a foreign limited liability company
3738 that transacted business in this state without a certificate of
3739 authority and the assignee of a cause of action arising out of
3740 that business may not maintain a proceeding based on that cause
3741 of action in a court in this state until the foreign limited
3742 liability company or its successor obtains a certificate of
3743 authority.
3744 (3) A court may stay a proceeding commenced by a foreign
3745 limited liability company or its successor or assignee until it
3746 determines whether the foreign limited liability company or its
3747 successor requires a certificate of authority. If it so
3748 determines, the court may further stay the proceeding until the
3749 foreign limited liability company or its successor obtains the
3750 certificate.
3751 (4) The failure of a foreign limited liability company to
3752 have a certificate of authority to transact business in this
3753 state does not impair the validity of a contract or act of the
3754 foreign limited liability company or prevent the foreign limited

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3755 liability company from defending an action or proceeding in this
3756 state.
3757 (5) A member or manager of a foreign limited liability
3758 company is not liable for the debts, obligations, or other
3759 liabilities of the foreign limited liability company solely
3760 because the foreign limited liability company transacted
3761 business in this state without a certificate of authority.
3762 (6) If a foreign limited liability company transacts
3763 business in this state without a certificate of authority or
3764 cancels its certificate of authority, it appoints the department
3765 as its agent for service of process for rights of action arising
3766 out of the transaction of business in this state.
3767 (7) A foreign limited liability company that transacts
3768 business in this state without obtaining a certificate of
3769 authority is liable to this state for the years or parts thereof
3770 during which it transacted business in this state without
3771 obtaining a certificate of authority in an amount equal to all
3772 fees and penalties that would have been imposed by this chapter
3773 upon the foreign limited liability company had it duly applied
3774 for and received a certificate authority to transact business in
3775 this state as required under this chapter. In addition to the
3776 payments thus prescribed, the foreign limited liability company
3777 is liable for a civil penalty of at least $500 but not more than
3778 $1,000 for each year or part thereof during which it transacts
3779 business in this state without a certificate of authority. The
3780 department may collect all penalties due under this subsection.
3781 605.0905 Activities not constituting transacting business.—
3782 (1) The following activities, among others, do not
3783 constitute transacting business within the meaning of s.

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3784 605.0902(1):
3785 (a) Maintaining, defending, or settling any proceeding.
3786 (b) Holding meetings of the managers or members or carrying
3787 on other activities concerning internal company affairs.
3788 (c) Maintaining bank accounts.
3789 (d) Maintaining managers or agencies for the transfer,
3790 exchange, and registration of the foreign limited liability
3791 company's own securities or maintaining trustees or depositaries
3792 with respect to those securities.
3793 (e) Selling through independent contractors.
3794 (f) Soliciting or obtaining orders, whether by mail or
3795 through employees, agents, or otherwise, if the orders require
3796 acceptance outside this state before they become contracts.
3797 (g) Creating or acquiring indebtedness, mortgages, and
3798 security interests in real or personal property.
3799 (h) Securing or collecting debts or enforcing mortgages and
3800 security interests in property securing the debts.
3801 (i) Transacting business in interstate commerce.
3802 (j) Conducting an isolated transaction that is completed
3803 within 30 days and that is not one in the course of repeated
3804 transactions of a like nature.
3805 (k) Owning and controlling a subsidiary corporation
3806 incorporated in or limited liability company formed in, or
3807 transacting business within, this state; voting the stock of any
3808 such subsidiary corporation; or voting the membership interests
3809 of any such limited liability company, which it has lawfully
3810 acquired.
3811 (l) Owning a limited partner interest in a limited
3812 partnership that is transacting business within this state,

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3813 unless the limited partner manages or controls the partnership
3814 or exercises the powers and duties of a general partner.
3815 (m) Owning, without more, real or personal property.
3816 (2) The list of activities in subsection (1) is not an
3817 exhaustive list of activities that constitute transacting
3818 business within the meaning of s. 605.0902(1).
3819 (3) The ownership in this state of income-producing real
3820 property or tangible personal property, other than property
3821 excluded under subsection (1), constitutes transacting business
3822 in this state for purposes of s. 605.0902(1).
3823 (4) This section does not apply when determining the
3824 contacts or activities that may subject a foreign limited
3825 liability company to service of process, taxation, or regulation
3826 under the law of this state other than this chapter.
3827 605.0906 Noncomplying name of foreign limited liability
3828 company.—
3829 (1) A foreign limited liability company whose name is
3830 unavailable under or whose name does not otherwise comply with
3831 s. 605.0112 may use an alternate name that complies with s.
3832 605.0112 to transact business in this state. An alternate name
3833 adopted for use in this state shall be cross-referenced to the
3834 actual name of the foreign limited liability company in the
3835 records of the department. If the actual name of the foreign
3836 limited liability company subsequently becomes available in this
3837 state or the foreign limited liability company chooses to change
3838 its alternate name, a copy of the record approving the change by
3839 its members, managers, or other persons having the authority to
3840 do so, and executed as required pursuant to s. 605.0203, shall
3841 be delivered to the department for filing.

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3842 (2) A foreign limited liability company that adopts an
3843 alternate name under subsection (1) and obtains a certificate of
3844 authority with the alternate name need not comply with s.
3845 865.09.
3846 (3) After obtaining a certificate of authority with an
3847 alternate name, a foreign limited liability company shall
3848 transact business in this state under the alternate name unless
3849 the company is authorized under s. 865.09 to transact business
3850 in this state under another name.
3851 (4) If a foreign limited liability company authorized to
3852 transact business in this state changes its name to one that
3853 does not comply with s. 605.0112, it may not thereafter transact
3854 business in this state until it complies with subsection (1) and
3855 obtains an amended certificate of authority.
3856 605.0907 Amendment to certificate of authority.—
3857 (1) A foreign limited liability company authorized to
3858 transact business in this state shall deliver for filing an
3859 amendment to its certificate of authority to reflect the change
3860 of any of the following:
3861 (a) Its name on the records of the department.
3862 (b) Its jurisdiction of formation.
3863 (c) The name and street address in this state of the
3864 company's registered agent in this state, unless the change was
3865 timely made in accordance with s. 605.0114 or s. 605.0116.
3866 (d) Any person identified in accordance with s.
3867 605.0902(1)(e), or a change in the title or capacity or address
3868 of that person.
3869 (2) The amendment must be filed within 30 days after the
3870 occurrence of a change described in subsection (1), must be

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3871 signed by an authorized representative of the foreign limited
3872 liability company, and must state the following:
3873 (a) The name of the foreign limited liability company as it
3874 appears on the records of the department.
3875 (b) Its jurisdiction of formation.
3876 (c) The date the foreign limited liability company was
3877 authorized to transact business this state.
3878 (d) If the name of the foreign limited liability company
3879 has been changed, the name relinquished and its new name.
3880 (e) If the amendment changes the jurisdiction of formation
3881 of the foreign limited liability company, a statement of that
3882 change.
3883 (3) Subject to subsection (4), a foreign limited liability
3884 company authorized to do business in this state may make
3885 application to the department to obtain an amended certificate
3886 of authority to add, remove, or change the name, title,
3887 capacity, or address of a person who has the authority to manage
3888 the foreign limited liability company.
3889 (4) The requirements of s. 605.0902(2) for obtaining an
3890 original certificate of authority apply to obtaining an amended
3891 certificate under this section unless the Secretary of State or
3892 other official having custody of the foreign limited liability
3893 company's publicly filed records in its jurisdiction of
3894 formation did not require an amendment to effectuate the change
3895 on its records.
3896 605.0908 Revocation of certificate of authority.—
3897 (1) A certificate of authority of a foreign limited
3898 liability company to transact business in this state may be
3899 revoked by the department if:

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3900 (a) The foreign limited liability company does not deliver
3901 its annual report to the department by 5 p.m. Eastern Time on
3902 the third Friday in September of each year;
3903 (b) The foreign limited liability company does not pay a
3904 fee or penalty due to the department under this chapter;
3905 (c) The foreign limited liability company does not appoint
3906 and maintain a registered agent as required under s. 605.0113;
3907 (d) The foreign limited liability company does not deliver
3908 for filing a statement of a change under s. 605.0114 within 30
3909 days after a change has occurred in the name or address of the
3910 agent, unless, within 30 days after the change occurred, either:
3911 1. The registered agent files a statement of change under
3912 s. 605.0116; or
3913 2. The change was made in accordance with s. 605.0114(4) or
3914 s. 605.0907(1)(d);
3915 (e) The foreign limited liability company has failed to
3916 amend its certificate of authority to reflect a change in its
3917 name on the records of the department or its jurisdiction of
3918 formation;
3919 (f) The department receives a duly authenticated
3920 certificate from the official having custody of records in the
3921 company's jurisdiction of formation stating that it has been
3922 dissolved or is no longer active on the official's records;
3923 (g) The foreign limited liability company's period of
3924 duration has expired;
3925 (h) A member, manager, or agent of the foreign limited
3926 liability company signs a document that the member, manager, or
3927 agent knew was false in a material respect with the intent that
3928 the document be delivered to the department for filing; or

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3929 (i) The foreign limited liability company has failed to
3930 answer truthfully and fully, within the time prescribed in s.
3931 605.1104, interrogatories propounded by the department.
3932 (2) Revocation of a foreign limited liability company's
3933 certificate of authority for failure to file an annual report
3934 shall occur on the 4th Friday in September of each year. The
3935 department shall issue a notice in a record of the revocation to
3936 the revoked foreign limited liability company. Issuance of the
3937 notice may be by electronic transmission to a foreign limited
3938 liability company that has provided the department with an e-
3939 mail address.
3940 (3) If the department determines that one or more grounds
3941 exist under paragraphs (1)(b)-(i) for revoking a foreign limited
3942 liability company's certificate of authority, the department
3943 shall issue a notice in a record to the foreign limited
3944 liability company of the department's intent to revoke the
3945 certificate of authority. Issuance of the notice may be by
3946 electronic transmission to a foreign limited liability company
3947 that has provided the department with an e-mail address.
3948 (4) If, within 60 days after the department sends the
3949 notice of intent to revoke in accordance with subsection (3),
3950 the foreign limited liability company does not correct each
3951 ground for revocation or demonstrate to the reasonable
3952 satisfaction of the department that each ground determined by
3953 the department does not exist, the department shall revoke the
3954 foreign limited liability company's authority to transact
3955 business in this state and issue a notice in a record of
3956 revocation which states the grounds for revocation. Issuance of
3957 the notice may be by electronic transmission to a foreign

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3958 limited liability company that has provided the department with
3959 an e-mail address.
3960 605.0909 Reinstatement following revocation of certificate
3961 of authority.—
3962 (1) A foreign limited liability company whose certificate
3963 of authority has been revoked may apply to the department for
3964 reinstatement at any time after the effective date of the
3965 revocation. The foreign limited liability company applying for
3966 reinstatement must provide information in a form prescribed and
3967 furnished by the department and pay all fees and penalties then
3968 owed by the foreign limited liability company at rates provided
3969 by law at the time the foreign limited liability company applies
3970 for reinstatement.
3971 (2) If the department determines that an application for
3972 reinstatement contains the information required under subsection
3973 (1) and that the information is correct, upon payment of all
3974 required fees and penalties, the department shall reinstate the
3975 foreign limited liability company's certificate of authority.
3976 (3) When a reinstatement becomes effective, it relates back
3977 to and takes effect as of the effective date of the revocation
3978 of authority and the foreign limited liability company may
3979 resume its activities in this state as if the revocation of
3980 authority had not occurred.
3981 (4) The name of the foreign limited liability company whose
3982 certificate of authority has been revoked is not available for
3983 assumption or use by another business entity until 1 year after
3984 the effective date of revocation of authority unless the limited
3985 liability company provides the department with a record executed
3986 pursuant to s. 605.0203 which authorizes the immediate

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3987 assumption or use of its name by another limited liability
3988 company.
3989 (5) If the name of the foreign limited liability company
3990 applying for reinstatement has been lawfully assumed in this
3991 state by another business entity, the department shall require
3992 the foreign limited liability company to comply with s. 605.0906
3993 before accepting its application for reinstatement.
3994 605.0910 Withdrawal and cancellation of certificate of
3995 authority.—To cancel its certificate of authority to transact
3996 business in this state, a foreign limited liability company must
3997 deliver to the department for filing a notice of withdrawal of
3998 certificate of authority. The certificate is canceled when the
3999 notice becomes effective pursuant to s. 605.0207. The notice of
4000 withdrawal of certificate of authority must be signed by an
4001 authorized representative and state the following:
4002 (1) The name of the foreign limited liability company as it
4003 appears on the records of the department.
4004 (2) The name of the foreign limited liability company's
4005 jurisdiction of formation.
4006 (3) The date the foreign limited liability company was
4007 authorized to transact business in this state.
4008 (4) The foreign limited liability company is withdrawing
4009 its certificate of authority in this state.
4010 605.0911 Withdrawal deemed on conversion to domestic filing
4011 entity.—A registered foreign limited liability company that
4012 converts to a domestic limited liability company or to another
4013 domestic entity that is organized, incorporated, registered or
4014 otherwise formed through the delivery of a record to the
4015 department for filing is deemed to have withdrawn its

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4016 certificate of authority on the effective date of the
4017 conversion.
4018 605.0912 Withdrawal on dissolution, merger, or conversion
4019 to nonfiling entity.—
4020 (1) A registered foreign limited liability company that has
4021 dissolved and completed winding up, merged into a foreign entity
4022 that is not registered in this state, or has converted to a
4023 domestic or foreign entity that is not organized, incorporated,
4024 registered or otherwise formed through the public filing of a
4025 record, shall deliver a notice of withdrawal of certificate of
4026 authority to the department for filing in accordance with s.
4027 605.0910.
4028 (2) After a withdrawal under this section of a foreign
4029 entity that has converted to another type of entity is
4030 effective, service of process in any action or proceeding based
4031 on a cause of action arising during the time the foreign limited
4032 liability company was registered to do business in this state
4033 may be made pursuant to s. 605.0117.
4034 605.0913 Action by Department of Legal Affairs.—The
4035 Department of Legal Affairs may maintain an action to enjoin a
4036 foreign limited liability company from transacting business in
4037 this state in violation of this chapter.
4038 605.1001 Relationship of the provisions of ss. 605.1001-
4039 605.1072 to other laws.—
4040 (1) The provisions of ss. 605.1001-605.1072 do not
4041 authorize an act prohibited by, and do not affect the
4042 application or requirements of, law other than the provisions of
4043 ss. 605.1001-605.1072.
4044 (2) A transaction effected under ss. 605.1001-605.1072 may

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4045 not create or impair a right or obligation on the part of a
4046 person under a provision of the law of this state other than ss.
4047 605.1001-605.1072, relating to a change in control, takeover,
4048 business combination, control-share acquisition, or similar
4049 transaction involving a merging, acquiring, or converting
4050 domestic business corporation unless:
4051 (a) If the corporation does not survive the transaction,
4052 the transaction satisfies the requirements of the provision; or
4053 (b) If the corporation survives the transaction, the
4054 approval of the plan is by a vote of the shareholders or
4055 directors which would be sufficient to create or impair the
4056 right or obligation directly under the provision.
4057 605.1002 Charitable and donative provisions.—
4058 (1) Property held for a charitable purpose under the law of
4059 this state by a domestic or foreign entity immediately before a
4060 transaction under this chapter becomes effective may not, as a
4061 result of the transaction, be diverted from the objects for
4062 which it was donated, granted, devised, or otherwise transferred
4063 unless, to the extent required under or pursuant to the law of
4064 this state concerning cy pres or other law dealing with
4065 nondiversion of charitable assets, the entity obtains an
4066 appropriate order of the appropriate court specifying the
4067 disposition of the property.
4068 (2) A bequest, devise, gift, grant, or promise contained in
4069 a will or other instrument of donation, subscription, or
4070 conveyance that is made to a merging entity that is not the
4071 surviving entity and that takes effect or remains payable after
4072 the merger inures to the surviving entity. A trust obligation
4073 that would govern property if transferred to the nonsurviving

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4074 entity applies to property that is transferred to the surviving
4075 entity under this section.
4076 605.1003 Status of filings.—A filing under ss. 605.1001-
4077 605.1072 signed by a domestic entity becomes part of the public
4078 organic record of the entity if the entity's organic law
4079 provides that similar filings under that law become part of the
4080 public organic record of the entity.
4081 605.1004 Nonexclusivity.—The fact that a transaction under
4082 ss. 605.1001-605.1072 produces a certain result does not
4083 preclude the same result from being accomplished in any other
4084 manner authorized under a law other than the provisions of ss.
4085 605.1001-605.1072.
4086 605.1005 Reference to external facts.—A plan may refer to
4087 facts ascertainable outside the plan if the manner in which the
4088 facts will operate upon the plan is specified in the plan. The
4089 facts may include the occurrence of an event or a determination
4090 or action by a person, whether or not the event, determination,
4091 or action is within the control of a party to the transaction.
4092 605.1006 Appraisal rights.—
4093 (1) A member of a limited liability company is entitled to
4094 appraisal rights and to obtain payment of the fair value of that
4095 member's membership interest in the following events:
4096 (a) Consummation of a merger of a limited liability company
4097 pursuant to this chapter where the member possessed the right to
4098 vote upon the merger.
4099 (b) Consummation of a conversion of such limited liability
4100 company pursuant to this chapter where the member possessed the
4101 right to vote upon the conversion.
4102 (c) Consummation of an interest exchange pursuant to this

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4103 chapter where the member possessed the right to vote upon the
4104 interest exchange except that appraisal rights are not available
4105 to any interest holder of the limited liability company whose
4106 interest in the limited liability company is not subject to
4107 exchange in the interest exchange.
4108 (d) Consummation of a sale of substantially all of the
4109 assets of a limited liability company where the member possessed
4110 the right to vote upon the sale unless the sale is pursuant to
4111 court order or the sale is for cash pursuant to a plan under
4112 which all or substantially all of the net proceeds of the sale
4113 will be distributed to the interest holders within 1 year after
4114 the date of sale.
4115 (e) An amendment to the organic rules of the entity which
4116 reduces the interest of the holder to a fraction of an interest,
4117 if the limited liability company will be obligated to or will
4118 have the right to repurchase the fractional interest so created.
4119 (f) An amendment to the organic rules of an entity, the
4120 effect of which is to alter or abolish voting or other rights
4121 with respect to such interest in a manner that is adverse to the
4122 interest of such member, except as the right may be affected by
4123 the voting or other rights of new interests then being
4124 authorized of a new class or series of interests.
4125 (g) An amendment to the organic rules of an entity the
4126 effect of which is to adversely affect the interest of the
4127 member by altering or abolishing appraisal rights under this
4128 section.
4129 (h) To the extent otherwise expressly authorized by the
4130 organic rules of the limited liability company.
4131 (2) A limited liability company may modify, restrict, or

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4132 eliminate the appraisal rights provided in this section in its
4133 organic rules if the provision modifying, restricting, or
4134 eliminating the appraisal rights is authorized by each member
4135 whose appraisal rights are being modified, restricted, or
4136 eliminated. Organic rules containing an express waiver of
4137 appraisal rights that are approved by a member constitute a
4138 waiver of appraisal rights with respect to such member to the
4139 extent provided in such organic rules.
4140 (3) To the extent that appraisal rights are available
4141 hereunder, ss. 605.1061-605.1072 govern the procedures with
4142 respect to such appraisal rights as between the limited
4143 liability company and its members.
4144 (4) Notwithstanding subsection (1), the availability of
4145 appraisal rights must be limited in accordance with the
4146 following provisions:
4147 (a) Appraisal rights are not available for holders of a
4148 membership interests that are:
4149 1. A covered security under section 18(b)(1)(A) or (B) of
4150 the Securities Act of 1933, as amended;
4151 2. Traded in an organized market and part of a class or
4152 series that has at least 2,000 members or other holders and a
4153 market value of at least $20 million, exclusive of the value of
4154 such class or series of membership interests held by the limited
4155 liability company’s subsidiaries, senior executives, managers,
4156 and beneficial members owning more than 10 percent of such class
4157 or series of membership interests; or
4158 3. Issued by an open-end management investment company
4159 registered with the Securities and Exchange Commission under the
4160 Investment Company Act of 1940 and subject to being redeemed at

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4161 the option of the holder at net asset value.
4162 (b) The applicability of paragraph (a) shall be determined
4163 as of the date fixed to determine the members entitled to
4164 receive notice of and to vote upon the appraisal event, or the
4165 day before the effective date of such appraisal event if there
4166 is no meeting of the members to vote upon the appraisal event.
4167 (c) Subsection (4) does not apply to, and appraisal rights
4168 must be available pursuant to subsection (1) for, any members
4169 who are required by the appraisal event to accept for their
4170 membership interests anything other than cash or a proprietary
4171 interest in an entity that satisfies the standards provided in
4172 paragraph (a) at the time the appraisal event becomes effective.
4173 (d) Subsection (4) does not apply to, and appraisal rights
4174 must be available pursuant to subsection (1) for, the holder of
4175 a membership interest if:
4176 1. Any of the members' interests in the limited liability
4177 company or the limited liability company's assets are being
4178 acquired or converted, whether by merger, conversion, or
4179 otherwise, pursuant to the appraisal event by a person or by an
4180 affiliate of a person who:
4181 a. Is or at any time in the 1-year period immediately
4182 preceding approval of the appraisal event was the beneficial
4183 owner of 20 percent or more of those interests in the limited
4184 liability company entitled to vote on the appraisal event,
4185 excluding any such interests acquired pursuant to an offer for
4186 all interests having such voting rights, if such offer was made
4187 within 1 year before the appraisal event for consideration of
4188 the same kind and of a value equal to or less than that paid in
4189 connection with the appraisal event; or

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4190 b. Directly or indirectly has, or at any time in the 1-year
4191 period immediately preceding approval of the appraisal event
4192 had, the power, contractually or otherwise, to cause the
4193 appointment or election of any senior executives or managers of
4194 the limited liability company; or
4195 2. Any of the members' interests in the limited liability
4196 company or the limited liability company's assets are being
4197 acquired or converted, whether by merger, conversion, or
4198 otherwise, pursuant to the appraisal event by a person, or by an
4199 affiliate of a person, who is or at any time in the 1-year
4200 period immediately preceding approval of the appraisal event was
4201 a senior executive of the limited liability company or a senior
4202 executive of any affiliate of the limited liability company, and
4203 that senior executive will receive, as a result of the limited
4204 liability company action, a financial benefit not generally
4205 available to members, other than:
4206 a. Employment, consulting, retirement, or similar benefits
4207 established separately and not as part, or in contemplation, of
4208 the appraisal event;
4209 b. Employment, consulting, retirement, or similar benefits
4210 established in contemplation, or as part, of the appraisal event
4211 which are not more favorable than those existing before the
4212 appraisal event or, if more favorable, which have been approved
4213 by the limited liability company; or
4214 c. In the case of a manager of the limited liability
4215 company who will, during or as the result of the appraisal
4216 event, become a manager, general partner, or director of the
4217 surviving or converted entity or one of its affiliates, those
4218 rights and benefits as a manager, general partner, or director

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4219 which are provided on the same basis as those afforded by the
4220 surviving or converted entity generally to other managers,
4221 general partners, or directors of the surviving or converted
4222 entity or its affiliate.
4223 (e) For the purposes of sub-subparagraph (4)(d)1.a., the
4224 term "beneficial owner" means a person who, directly or
4225 indirectly, through a contract, arrangement, or understanding,
4226 other than a revocable proxy, has or shares the right to vote or
4227 to direct the voting of an interest in a limited liability
4228 company with respect to approval of the appraisal event;
4229 however, a member of a national securities exchange may not be
4230 deemed to be a beneficial owner of an interest in a limited
4231 liability company held directly or indirectly by it on behalf of
4232 another person solely because the member is the record holder of
4233 interests in the limited liability company if the member is
4234 precluded by the rules of such exchange from voting without
4235 instruction on contested matters or matters that may
4236 substantially affect the rights or privileges of the holders of
4237 the interests in the limited liability company to be voted. If
4238 two or more persons agree to act together for the purpose of
4239 voting such interests, each member of the group formed thereby
4240 is deemed to have acquired beneficial ownership, as of the date
4241 of such agreement, of all voting interests in the limited
4242 liability company beneficially owned by a member or members of
4243 the group.
4244 605.1021 Merger authorized.—
4245 (1) By complying with the provisions of ss. 605.1021-
4246 605.1026:
4247 (a) One or more domestic limited liability companies may

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4248 merge with one or more domestic or foreign entities into a
4249 domestic or foreign surviving entity; and
4250 (b) Two or more foreign entities may merge into a domestic
4251 limited liability company.
4252 (2) By complying with the provisions of ss. 605.1021-
4253 605.1026 which are applicable to foreign entities, a foreign
4254 entity may be a party to a merger under the provisions of ss.
4255 605.1021-605.1026 or may be the surviving entity in such a
4256 merger if the merger is authorized by the law of the foreign
4257 entity's jurisdiction of formation.
4258 (3) In the case of a merger involving a limited liability
4259 company that is a not-for-profit company, the surviving limited
4260 liability company or other business entity must also be a not-
4261 for-profit entity.
4262 605.1022 Plan of merger.—
4263 (1) A domestic limited liability company may become a party
4264 to a merger under the provisions of ss. 605.1021-605.1026 by
4265 approving a plan of merger. The plan must be in a record and
4266 contain the following:
4267 (a) As to each merging entity, its name, jurisdiction of
4268 formation, and type of entity.
4269 (b) The surviving entity in the merger.
4270 (c) The manner and basis of converting the interests and
4271 the rights to acquire interests in each party to the merger into
4272 interests, securities, obligations, money, other property,
4273 rights to acquire interests or securities, or any combination of
4274 the foregoing.
4275 (d) If the surviving entity exists before the merger, any
4276 proposed amendments to or restatements of its public organic

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4277 record, or any proposed amendments to or restatements of its
4278 private organic rules, which are or are proposed to be in a
4279 record, and all such amendments or restatements that are
4280 effective at the effective date of the merger.
4281 (e) If the surviving entity is to be created in the merger,
4282 its proposed public organic record and the full text of its
4283 private organic rules that are proposed to be in a record, if
4284 any.
4285 (f) The other terms and conditions of the merger.
4286 (g) Any other provision required by the law of a merging
4287 entity's jurisdiction of formation or the organic rules of a
4288 merging entity.
4289 (2) In addition to the requirements under subsection (1), a
4290 plan of merger may contain any other provision not prohibited by
4291 law.
4292 605.1023 Approval of merger.—
4293 (1) A plan of merger is not effective unless it has been
4294 approved:
4295 (a) With respect to a domestic merging limited liability
4296 company, by a majority-in-interest of the members; and
4297 (b) In a record, by each member of a merging limited
4298 liability company which will have interest holder liability for
4299 debts, obligations, and other liabilities that arise after the
4300 merger becomes effective, unless:
4301 1. The organic rules of the company in a record provide for
4302 the approval of a merger in which some or all of its members
4303 become subject to interest holder liability by the vote or
4304 consent of fewer than all of the members; and
4305 2. The member consented in a record to or voted for that

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4306 provision of the organic rules or became a member after the
4307 adoption of that provision.
4308 (2) A merger involving a domestic merging entity that is
4309 not a limited liability company is not effective unless the
4310 merger is approved by that entity in accordance with its organic
4311 law.
4312 (3) A merger involving a foreign merging entity is not
4313 effective unless the merger is approved by the foreign entity in
4314 accordance with the law of the foreign entity's jurisdiction of
4315 formation.
4316 (4) All members of each domestic limited liability company
4317 that is a party to the merger who have a right to vote upon the
4318 merger must be given written notice of any meeting with respect
4319 to the approval of a plan of merger as provided in subsection
4320 (1) not less than 10 days and not more than 60 days before the
4321 date of the meeting at which the plan of merger is submitted for
4322 approval by the members of such limited liability company. The
4323 notification required under this subsection may be waived in
4324 writing by the person or persons entitled to such notification.
4325 (5) The notification required under subsection (4) must be
4326 in writing and must include the following:
4327 (a) The date, time, and place of the meeting at which the
4328 plan of merger is to be submitted for approval by the members of
4329 the limited liability company.
4330 (b) A copy of the plan of merger.
4331 (c) The statement or statements required under s. 605.1006
4332 and ss. 605.1061-605.1072 regarding the availability of
4333 appraisal rights, if any, to members of the limited liability
4334 company.

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4335 (d) The date on which such notification was mailed or
4336 delivered to the members.
4337 (6) In addition to the requirements under subsection (5),
4338 the notification required under subsection (4) may contain any
4339 other information concerning the plan of merger not prohibited
4340 by applicable law.
4341 (7) The notification required under subsection (4) is
4342 deemed to be given at the earliest date of:
4343 (a) The date such notification is received;
4344 (b) Five days after the date such notification is deposited
4345 in the United States mail addressed to the member at the
4346 member's address as it appears in the books and records of the
4347 limited liability company, with prepaid postage affixed;
4348 (c) The date shown on the return receipt if sent by
4349 registered or certified mail, return receipt requested, and the
4350 receipt is signed by or on behalf of the addressee; or
4351 (d) The date such notification is given in accordance with
4352 the provisions of the organic rules of the limited liability
4353 company.
4354 605.1024 Amendment or abandonment of plan of merger.—
4355 (1) A plan of merger may be amended only with the consent
4356 of each party to the plan except as otherwise provided in the
4357 plan or in the organic rules of each such entity.
4358 (2) A merging limited liability company may approve an
4359 amendment of a plan of merger:
4360 (a) In the same manner that the plan was approved if the
4361 plan does not provide for the manner in which it may be amended;
4362 or
4363 (b) By the managers or members in the manner provided in

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4364 the plan, but a member who was entitled to vote on or consent to
4365 the approval of the merger is entitled to vote on or consent to
4366 an amendment of the plan which will change:
4367 1. The amount or kind of interests, securities,
4368 obligations, money, other property, rights to acquire interests
4369 or securities, or any combination of the foregoing, to be
4370 received by the interest holders of any party to the plan;
4371 2. The public organic record, if any, or private organic
4372 rules of the surviving entity which will be in effect
4373 immediately after the merger becomes effective, except for
4374 changes that do not require approval of the interest holders of
4375 the surviving entity under its organic law or organic rules; or
4376 3. Any other terms or conditions of the plan if the change
4377 would adversely affect the member in any material respect.
4378 (3) After a plan of merger has been approved and before the
4379 articles of merger become effective, the plan may be abandoned
4380 as provided in the plan. Unless prohibited by the plan, a
4381 domestic merging limited liability company may abandon the plan
4382 in the same manner as the plan was approved.
4383 (4) If a plan of merger is abandoned after articles of
4384 merger have been delivered to the department for filing and
4385 before such articles of merger have become effective, a
4386 statement of abandonment, signed by a party to the plan, must be
4387 delivered to the department for filing before the articles of
4388 merger become effective. The statement of abandonment takes
4389 effect on filing, and the merger is abandoned and does not
4390 become effective. The statement of abandonment must contain the
4391 following:
4392 (a) The name of each party to the plan of merger.

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4393 (b) The date on which the articles of merger were delivered
4394 to the department for filing.
4395 (c) A statement that the merger has been abandoned in
4396 accordance with this section.
4397 605.1025 Articles of merger.—
4398 (1) After a plan of merger is approved, articles of merger
4399 must be signed by each merging entity and delivered to the
4400 department for filing.
4401 (2) The articles of merger must contain the following:
4402 (a) The name, jurisdiction of formation, and type of entity
4403 of each merging entity that is not the surviving entity.
4404 (b) The name, jurisdiction of formation, and type of entity
4405 of the surviving entity.
4406 (c) A statement that the merger was approved by each
4407 domestic merging entity that is a limited liability company, if
4408 any, in accordance with the provisions of ss. 605.1021-605.1026;
4409 by each other merging entity, if any, in accordance with the law
4410 of its jurisdiction of formation; and by each member of such
4411 limited liability company who, as a result of the merger, will
4412 have interest holder liability under s. 605.1023(1)(b) and whose
4413 approval is required.
4414 (d) If the surviving entity exists before the merger and is
4415 a domestic filing entity, any amendment to its public organic
4416 record approved as part of the plan of merger.
4417 (e) If the surviving entity is created by the merger and is
4418 a domestic filing entity, its public organic record, as an
4419 attachment.
4420 (f) If the surviving entity is created by the merger and is
4421 a domestic limited liability partnership or domestic limited

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4422 liability limited partnership, its statement of qualification,
4423 as an attachment.
4424 (g) If the surviving entity is a foreign entity that does
4425 not have a certificate of authority to transact business in this
4426 state, a mailing address to which the department may send any
4427 process served on the department pursuant to s. 605.0117 and
4428 chapter 48.
4429 (h) A statement that the surviving entity has agreed to pay
4430 to any members of any limited liability company with appraisal
4431 rights the amount to which such members are entitled under the
4432 provisions of s. 605.1006 and ss. 605.1061-605.1072.
4433 (i) The effective date of the merger if the effective date
4434 of the merger is not the same as the date of filing of the
4435 articles of merger, subject to the limitations contained in s.
4436 605.0207.
4437 (3) In addition to the requirements of subsection (2),
4438 articles of merger may contain any other provision not
4439 prohibited by law.
4440 (4) A merger becomes effective when the articles of merger
4441 become effective, unless the articles of merger specify an
4442 effective time or a delayed effective date that complies with s.
4443 605.0207.
4444 (5) A copy of the articles of merger, certified by the
4445 department, may be filed in the official records of any county
4446 in this state in which any party to the merger holds an interest
4447 in real property.
4448 (6) A limited liability company is not required to deliver
4449 articles of merger for filing pursuant to subsection (1) if the
4450 limited liability company is named as a merging entity or

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4451 surviving entity in articles of merger or a certificate of
4452 merger filed for the same merger in accordance with s. 607.1109,
4453 s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and if such
4454 articles of merger or certificate of merger substantially comply
4455 with the requirements of this section. In such a case, the other
4456 articles of merger or certificate of merger may also be used for
4457 purposes of subsection (5).
4458 605.1026 Effect of merger.
4459 (1) When a merger becomes effective:
4460 (a) The surviving entity continues in existence;
4461 (b) Each merging entity that is not the surviving entity
4462 ceases to exist;
4463 (c) All property of each merging entity vests in the
4464 surviving entity without transfer, reversion or impairment;
4465 (d) All debts, obligations, and other liabilities of each
4466 merging entity are debts, obligations, and other liabilities of
4467 the surviving entity;
4468 (e) Except as otherwise provided by law or the plan of
4469 merger, all the rights, privileges, immunities, powers, and
4470 purposes of each merging entity vest in the surviving entity;
4471 (f) If the surviving entity exists before the merger:
4472 1. All its property continues to be vested in it without
4473 transfer, reversion, or impairment;
4474 2. It remains subject to all of its debts, obligations, and
4475 other liabilities; and
4476 3. All of its rights, privileges, immunities, powers, and
4477 purposes continue to be vested in it;
4478 (g) The name of the surviving entity may be substituted for
4479 the name of any merging entity that is a party to any pending

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4480 action or proceeding;
4481 (h) If the surviving entity exists before the merger:
4482 1. Its public organic record, if any, is amended as
4483 provided in the articles of merger; and
4484 2. Its private organic rules that are to be in a record, if
4485 any, are amended to the extent provided in the plan of merger;
4486 (i) If the surviving entity is created by the merger:
4487 1. Its public organic record, if any, is effective; and
4488 2. Its private organic rules are effective; and
4489 (j) The interests or rights to acquire interests in each
4490 merging entity which are to be converted in the merger are
4491 converted, and the interest holders of those interests are
4492 entitled only to the rights provided to them under the plan of
4493 merger and to any appraisal rights they have under s. 605.1006
4494 and ss. 605.1061-605.1072 and the merging entity's organic law.
4495 (2) Except as otherwise provided in the organic law or
4496 organic rules of a merging entity:
4497 (a) The merger does not give rise to any rights that an
4498 interest holder, governor, or third party would have upon a
4499 dissolution, liquidation, or winding up of the merging entity;
4500 and
4501 (b) The merging entity is not required to wind up its
4502 affairs, pay its liabilities, and distribute its assets under
4503 ss. 605.0701-605.0717, and the merger shall not constitute a
4504 dissolution of the merging entity.
4505 (3) When a merger becomes effective, a person who did not
4506 have interest holder liability with respect to any of the
4507 merging entities and becomes subject to interest holder
4508 liability with respect to a domestic entity as a result of the

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4509 merger will have interest holder liability only to the extent
4510 provided by the organic law of that entity and only for those
4511 debts, obligations, and other liabilities that arise after the
4512 merger becomes effective.
4513 (4) When a merger becomes effective, the interest holder
4514 liability of a person who ceases to hold an interest in a
4515 domestic merging entity with respect to which the person had
4516 interest holder liability is as follows:
4517 (a) The merger does not discharge an interest holder
4518 liability under the organic law of the domestic merging entity
4519 to the extent the interest holder liability arose before the
4520 merger became effective.
4521 (b) The person does not have interest holder liability
4522 under the organic law of the domestic merging entity for a debt,
4523 obligation, or other liability that arises after the merger
4524 becomes effective.
4525 (c) The organic law of the domestic merging entity and any
4526 rights of contribution provided under such law, or the organic
4527 rules of the domestic merging entity, continue to apply to the
4528 release, collection, or discharge of any interest holder
4529 liability preserved under paragraph (a) as if the merger had not
4530 occurred and the surviving entity were the domestic merging
4531 entity.
4532 (5) When a merger becomes effective, a foreign entity that
4533 is the surviving entity may be served with process in this state
4534 for the collection and enforcement of any debts, obligations, or
4535 other liabilities of a domestic merging entity as provided in s.
4536 605.0117 and chapter 48.
4537 (6) When a merger becomes effective, the certificate of

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4538 authority to transact business in this state of any foreign
4539 merging entity that is not the surviving entity is canceled.
4540 605.1031 Interest exchange authorized.—
4541 (1) By complying with the provisions of ss. 605.1031-
4542 605.1036:
4543 (a) A domestic limited liability company may acquire all of
4544 one or more classes or series of interests of another domestic
4545 or foreign entity, or rights to acquire one or more classes or
4546 series of any such interests, in exchange for interests,
4547 securities, obligations, money, other property, rights to
4548 acquire interests or securities, or any combination of the
4549 foregoing; or
4550 (b) All of one or more classes or series of interests of a
4551 domestic limited liability company or rights to acquire one or
4552 more classes or series of any such interests may be acquired by
4553 another domestic or foreign entity in exchange for interests,
4554 securities, obligations, money, other property, rights to
4555 acquire interests or securities, or any combination of the
4556 foregoing.
4557 (2) By complying with the provisions of ss. 605.1031-
4558 605.1036 which are applicable to foreign entities, a foreign
4559 entity may be the acquiring or acquired entity in an interest
4560 exchange completed under the provisions of ss. 605.1031-605.1036
4561 if the interest exchange is authorized by the organic law in the
4562 foreign entity's jurisdiction of formation.
4563 (3) If a protected agreement contains a provision that
4564 applies to a merger of a domestic limited liability company but
4565 does not refer to an interest exchange, the provision applies to
4566 an interest exchange in which the domestic limited liability

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4567 company is the acquired entity as if the interest exchange were
4568 a merger until the provision is amended after January 1, 2014.
4569 605.1032 Plan of interest exchange.—
4570 (1) A domestic limited liability company may be the
4571 acquired entity in an interest exchange under the provisions of
4572 ss. 605.1031-605.1036 by approving a plan of interest exchange.
4573 The plan must be in a record and contain the following:
4574 (a) The name of the acquired entity.
4575 (b) The name, jurisdiction of formation, and type of entity
4576 of the acquiring entity.
4577 (c) The manner and basis of converting the interests and
4578 the rights to acquire interests of the members of each limited
4579 liability company that is to be an acquired entity into
4580 interests, securities, obligations, money, other property,
4581 rights to acquire interests or securities, or any combination of
4582 the foregoing.
4583 (d) If the acquired entity is a domestic limited liability
4584 company, any proposed amendments to or restatements of its
4585 public organic record or any amendments to or restatements of
4586 its private organic rules that are or are proposed to be in a
4587 record and all such amendments or restatements are effective at
4588 the effective date of the interest exchange.
4589 (e) The other terms and conditions of the interest
4590 exchange.
4591 (f) Any other provision required by the law of an acquired
4592 entity's jurisdiction of formation, the organic rules of the
4593 acquired entity, the organic rules of an acquiring entity, or
4594 the law of the jurisdiction of formation of the acquiring
4595 entity.

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4596 (2) In addition to the requirements of subsection (1), a
4597 plan of interest exchange may contain any other provision not
4598 prohibited by law.
4599 605.1033 Approval of interest exchange.—
4600 (1) A plan of interest exchange is not effective unless it
4601 has been approved:
4602 (a) With respect to a domestic limited liability company
4603 that is the acquired entity in the interest exchange, by a
4604 majority-in-interest of the members of such company; and
4605 (b) In a record, by each member of the domestic acquired
4606 limited liability company that will have interest holder
4607 liability for debts, obligations, and other liabilities that
4608 arise after the interest exchange becomes effective, unless:
4609 1. The organic rules of the company in a record provide for
4610 the approval of an interest exchange or a merger in which some
4611 or all of its members become subject to interest holder
4612 liability by the vote or consent of fewer than all the members;
4613 and
4614 2. The member consented in a record to or voted for that
4615 provision of the organic rules or became a member after the
4616 adoption of that provision.
4617 (2) An interest exchange involving a domestic acquired
4618 entity that is not a limited liability company is not effective
4619 unless it is approved by the domestic entity in accordance with
4620 its organic law.
4621 (3) An interest exchange involving a foreign acquired
4622 entity is not effective unless it is approved by the foreign
4623 entity in accordance with the law of the foreign entity's
4624 jurisdiction of formation.

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4625 (4) Except as otherwise provided in its organic law or
4626 organic rules, the interest holders of the acquiring entity are
4627 not required to approve the interest exchange.
4628 (5) All members of each domestic limited liability company
4629 that is a party to the interest exchange and who have a right to
4630 vote upon the interest exchange must be given written notice of
4631 any meeting with respect to the approval of a plan of interest
4632 exchange as provided in subsection (1) not less than 10 days and
4633 not more than 60 days before the date of the meeting at which
4634 the plan of interest exchange is submitted for approval by the
4635 members of such limited liability company. The notification
4636 required under this subsection may be waived in writing by the
4637 person entitled to such notification.
4638 (6) The notification required under subsection (5) must be
4639 in writing and must include the following:
4640 (a) The date, time, and place of the meeting at which the
4641 plan of interest exchange is to be submitted for approval by the
4642 members of the limited liability company.
4643 (b) A copy of the plan of interest exchange.
4644 (c) The statement or statements required under s. 605.1006
4645 and ss. 605.1061-605.1072 regarding the availability of
4646 appraisal rights, if any, to members of the limited liability
4647 company.
4648 (d) The date on which such notification was mailed or
4649 delivered to the members.
4650 (7) In addition to the requirements of subsection (6), the
4651 notification required under subsection (5) may contain any other
4652 information concerning the plan of interest exchange not
4653 prohibited by applicable law.

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4654 (8) The notification required under subsection (5) is
4655 deemed to be given at the earliest date of:
4656 (a) The date the notification is received;
4657 (b) Five days after the date such notification is deposited
4658 in the United States mail addressed to the member at the
4659 member's address as it appears in the books and records of the
4660 limited liability company, with prepaid postage affixed;
4661 (c) The date shown on the return receipt, if sent by
4662 registered or certified mail, return receipt requested, and if
4663 the receipt is signed by or on behalf of the addressee; or
4664 (d) The date such notification is given in accordance with
4665 the provisions of the organic rules of the limited liability
4666 company.
4667 605.1034 Amendment or abandonment of plan of interest
4668 exchange.—
4669 (1) A plan of interest exchange may be amended only with
4670 the consent of each party to the plan, except as otherwise
4671 provided in the plan or in the organic rules of each such
4672 entity.
4673 (2) A domestic acquired limited liability company may
4674 approve an amendment of a plan of interest exchange:
4675 (a) In the same manner as the plan was approved, if the
4676 plan does not provide for the manner in which it may be amended;
4677 or
4678 (b) By the managers or members in the manner provided in
4679 the plan, but a member who was entitled to vote on or consent to
4680 approval of the interest exchange is entitled to vote on or
4681 consent to any amendment of the plan which will change:
4682 1. The amount or kind of interests, securities,

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4683 obligations, money, other property, rights to acquire interests
4684 or securities, or any combination of the foregoing, to be
4685 received by the interest holders of any party to the plan;
4686 2. The public organic record, if any, or private organic
4687 rules of the acquired entity which will be in effect immediately
4688 after the interest exchange becomes effective, except for
4689 changes that do not require approval of the interest holders of
4690 the acquired entity under its organic law or organic rules; or
4691 3. Any other terms or conditions of the plan, if the change
4692 would adversely affect the member in any material respect.
4693 (3) After a plan of interest exchange has been approved and
4694 before such articles of interest exchange become effective, the
4695 plan may be abandoned as provided in the plan. Unless prohibited
4696 by the plan, a domestic limited liability company may abandon
4697 the plan in the same manner as the plan was approved.
4698 (4) If a plan of interest exchange is abandoned after
4699 articles of interest exchange have been delivered to the
4700 department for filing and before such articles of interest
4701 exchange have become effective, a statement of abandonment,
4702 signed by a party to the plan, must be delivered to the
4703 department for filing before the articles of interest exchange
4704 become effective. The statement of abandonment takes effect on
4705 filing, and the interest exchange is abandoned and does not
4706 become effective. The statement of abandonment must contain the
4707 following:
4708 (a) The name of each party to the plan of interest
4709 exchange.
4710 (b) The date on which the articles of interest exchange
4711 were delivered to the department for filing.

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4712 (c) A statement that the interest exchange has been
4713 abandoned in accordance with this section.
4714 605.1035 Articles of interest exchange.—
4715 (1) After a plan of interest exchange has been approved,
4716 articles of interest exchange must be signed by each party to
4717 the interest exchange and delivered to the department for
4718 filing.
4719 (2) The articles of interest exchange must contain the
4720 following:
4721 (a) The name of the acquired limited liability company.
4722 (b) The name, jurisdiction of formation, and type of entity
4723 of the acquiring entity.
4724 (c) A statement that the plan of interest exchange was
4725 approved by the acquired limited liability entity in accordance
4726 with the provisions of ss. 605.1031-605.1036 and by each member
4727 of such limited liability company who, as a result of the
4728 interest exchange, will have interest holder liability under s.
4729 605.1033(1)(b) and whose approval is required.
4730 (d) Any amendments to the acquired limited liability
4731 company's public organic record approved as part of the plan of
4732 interest exchange.
4733 (e) A statement that the plan of interest exchange was
4734 approved by each acquiring entity that is a party to the
4735 interest exchange in accordance with the organic laws in its
4736 jurisdiction of formation, or if such approval was not required,
4737 a statement to that effect.
4738 (f) A statement that the acquiring entity has agreed to pay
4739 to any members of the acquired entity with appraisal rights the
4740 amount to which such members are entitled under s. 605.1006 and

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4741 ss. 605.1061-605.1072.
4742 (g) The effective date of the interest exchange, if the
4743 effective date of the interest exchange is not the same as the
4744 date of filing of the articles of interest exchange, subject to
4745 the limitations in s. 605.0207.
4746 (3) In addition to the requirements of subsection (2),
4747 articles of interest exchange may include any other provision
4748 not prohibited by law.
4749 (4) An interest exchange becomes effective when the
4750 articles of interest exchange become effective, unless the
4751 articles of interest exchange specify an effective time or a
4752 delayed effective date that complies with s. 605.0207.
4753 (5) A limited liability company is not required to deliver
4754 articles of interest exchange for filing pursuant to subsection
4755 (1) if the domestic limited liability company is named as an
4756 acquired entity or as an acquiring entity in the articles of
4757 share exchange filed for the same interest exchange in
4758 accordance with s. 607.1105(1) and if such articles of share
4759 exchange substantially comply with the requirements of this
4760 section.
4761 605.1036 Effect of interest exchange.—
4762 (1) When an interest exchange in which the acquired entity
4763 is a domestic limited liability company becomes effective:
4764 (a) The interests in a domestic company which are the
4765 subject of the interest exchange cease to exist or are converted
4766 or exchanged, and the members holding those interests are
4767 entitled only to the rights provided to them under the plan of
4768 interest exchange and to any appraisal rights they have under s.
4769 605.1006 and ss. 605.1061-605.1072;

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4770 (b) The acquiring entity becomes the interest holder of the
4771 interests in the acquired entity stated in the plan of interest
4772 exchange to be acquired by the acquiring entity;
4773 (c) The public organic record of the acquired entity is
4774 amended as provided in the articles of interest exchange; and
4775 (d) The provisions of the private organic rules of the
4776 acquired entity that are to be in a record, if any, are amended
4777 to the extent provided in the plan of interest exchange.
4778 (2) Except as otherwise provided in the organic rules of
4779 the acquired limited liability company, the interest exchange
4780 does not give rise to any rights that a member, manager, or
4781 third party would have upon a dissolution, liquidation, or
4782 winding up of the acquired entity.
4783 (3) When an interest exchange becomes effective, a person
4784 who did not have interest holder liability with respect to a
4785 domestic acquired limited liability company and who becomes
4786 subject to interest holder liability with respect to a domestic
4787 entity as a result of the interest exchange will have interest
4788 holder liability only to the extent provided by the organic law
4789 of the entity and only for those debts, obligations, and other
4790 liabilities that arise after the interest exchange becomes
4791 effective.
4792 (4) When an interest exchange becomes effective, the
4793 interest holder liability of a person who ceases to hold an
4794 interest in a domestic acquired limited liability company with
4795 respect to which the person had interest holder liability is as
4796 follows:
4797 (a) The interest exchange does not discharge any interest
4798 holder liability to the extent the interest holder liability

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4799 arose before the interest exchange became effective.
4800 (b) The person does not have interest holder liability for
4801 any debt, obligation, or other liability that arises after the
4802 interest exchange becomes effective.
4803 (c) The organic law of the acquired entity's jurisdiction
4804 of formation and any rights of contribution provided by such
4805 law, or under the organic rules of the acquired entity, continue
4806 to apply to the release, collection, or discharge of any
4807 interest holder liability preserved under paragraph (a) as if
4808 the interest exchange had not occurred.
4809 605.1041 Conversion authorized.—
4810 (1) By complying with the provisions of ss. 605.1041-
4811 605.1046, a domestic limited liability company may become:
4812 (a) A domestic entity that is a different type of entity;
4813 or
4814 (b) A foreign entity that is a limited liability company or
4815 a different type of entity, if the conversion is authorized by
4816 the law of the foreign entity's jurisdiction of formation.
4817 (2) By complying with the provisions of ss. 605.1041-
4818 605.1046, which are applicable to a domestic entity that is not
4819 a domestic limited liability company, the domestic entity may
4820 become a domestic limited liability company if the conversion is
4821 authorized by the law governing the domestic entity.
4822 (3) By complying with the provisions of ss. 605.1041-
4823 608.1046 which are applicable to foreign entities, a foreign
4824 entity may become a domestic limited liability company if the
4825 conversion is authorized by the law of the foreign entity's
4826 jurisdiction of formation.
4827 (4) If a protected agreement contains a provision that

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4828 applies to a merger of a domestic limited liability company but
4829 does not refer to a conversion, the provision applies to a
4830 conversion of the entity as if the conversion were a merger
4831 until the provision is amended after January 1, 2014.
4832 605.1042 Plan of conversion.—
4833 (1) A domestic limited liability company may convert into a
4834 different type of domestic entity or into a foreign entity that
4835 is a foreign limited liability company or a different type of
4836 foreign entity by approving a plan of conversion. The plan must
4837 be in a record and contain the following:
4838 (a) The name of the converting limited liability company.
4839 (b) The name, jurisdiction of formation, and type of entity
4840 of the converted entity.
4841 (c) The manner and basis of converting the interests and
4842 rights to acquire interests in the converting limited liability
4843 company into interests, securities, obligations, money, other
4844 property, rights to acquire interests or securities, or any
4845 combination of the foregoing.
4846 (d) The proposed public organic record of the converted
4847 entity, if it will be a filing entity.
4848 (e) The full text of the private organic rules of the
4849 converted entity which are proposed to be in a record, if any.
4850 (f) Any other provision required by the law of this state
4851 or the organic rules of the converted limited liability company,
4852 if the entity is to be an entity other than a domestic limited
4853 liability company.
4854 (g) All other statements required to be set forth in a plan
4855 of conversion by the law of the jurisdiction of formation of the
4856 converted entity following the conversion.

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4857 (2) In addition to the requirements of subsection (1), a
4858 plan of conversion may contain any other provision not
4859 prohibited by law.
4860 605.1043 Approval of conversion.—
4861 (1) A plan of conversion is not effective unless it has
4862 been approved:
4863 (a) If the converting entity is a domestic limited
4864 liability company, by a majority-in-interest of the members of
4865 such company who have a right to vote upon the conversion; and
4866 (b) In a record, by each member of a converting limited
4867 liability company which will have interest holder liability for
4868 debts, obligations, and other liabilities that arise after the
4869 conversion becomes effective, unless:
4870 1. The organic rules of the company in a record provide for
4871 the approval of a conversion in which some or all of its members
4872 become subject to interest holder liability by the vote or
4873 consent of less than all of the members; and
4874 2. The member consented in a record to or voted for that
4875 provision of the organic rules or became a member after the
4876 adoption of that provision.
4877 (2) A conversion involving a domestic converting entity
4878 that is not a limited liability company is not effective unless
4879 it is approved by the domestic converting entity in accordance
4880 with its organic law.
4881 (3) A conversion of a foreign converting entity is not
4882 effective unless it is approved by the foreign entity in
4883 accordance with the law of the foreign entity's jurisdiction of
4884 formation.
4885 (4) If the converting entity is a domestic limited

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4886 liability company, all members of the company who have the right
4887 to vote upon the conversion must be given written notice of a
4888 meeting with respect to the approval of a plan of conversion as
4889 provided in subsection (1) not less than 10 days and not more
4890 than 60 days before the date of the meeting at which the plan of
4891 conversion is submitted for approval by the members of such
4892 limited liability company. The notification required under this
4893 subsection may be waived in writing by the person or persons
4894 entitled to such notification.
4895 (5) The notification required under subsection (4) must be
4896 in writing and include the following:
4897 (a) The date, time, and place of the meeting at which the
4898 plan of conversion is to be submitted for approval by the
4899 members of the limited liability company.
4900 (b) A copy of the plan of conversion.
4901 (c) The statement or statements required under s. 605.1006
4902 and ss. 605.1061-605.1072 regarding the availability of
4903 appraisal rights, if any, to members of the limited liability
4904 company.
4905 (d) The date on which such notification was mailed or
4906 delivered to the members.
4907 (6) In addition to the requirements of subsection (5), the
4908 notification required under subsection (4) may contain any other
4909 information concerning the plan of conversion not prohibited by
4910 applicable law.
4911 (7) The notification required under subsection (4) is
4912 deemed to be given at the earliest date of:
4913 (a) The date the notification is received;
4914 (b) Five days after the date the notification is deposited

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4915 in the United States mail addressed to the member at the
4916 member's address as it appears in the books and records of the
4917 limited liability company, with prepaid postage affixed;
4918 (c) The date shown on the return receipt, if sent by
4919 registered or certified mail, return receipt requested, and if
4920 the receipt is signed by or on behalf of the addressee; or
4921 (d) The date the notification is given in accordance with
4922 the organic rules of the limited liability company.
4923 605.1044 Amendment or abandonment of plan of conversion.—
4924 (1) A plan of conversion of a domestic converting limited
4925 liability company may be amended:
4926 (a) In the same manner as the plan was approved, if the
4927 plan does not provide for the manner in which it may be amended;
4928 or
4929 (b) By the managers or members of the entity in the manner
4930 provided in the plan, but a member who was entitled to vote on
4931 or consent to approval of the conversion is entitled to vote on
4932 or consent to an amendment of the plan which will change:
4933 1. The amount or kind of interests, securities,
4934 obligations, money, other property, rights to acquire interests
4935 or securities, or any combination of the foregoing, to be
4936 received by the interest holders of the converting entity under
4937 the plan;
4938 2. The public organic record, if any, or private organic
4939 rules of the converted entity which will be in effect
4940 immediately after the conversion becomes effective, except for
4941 changes that do not require approval of the interest holders of
4942 the converting entity under its organic law or organic rules; or
4943 3. Any other terms or conditions of the plan, if the change

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4944 would adversely affect the interest holder in any material
4945 respect.
4946 (2) After a plan of conversion has been approved and before
4947 the articles of conversion become effective, the plan may be
4948 abandoned as provided in the plan. Unless prohibited by the
4949 plan, a domestic converting limited liability company may
4950 abandon the plan in the same manner as the plan was approved.
4951 (3) If a plan of conversion is abandoned after articles of
4952 conversion have been delivered to the department for filing and
4953 before such articles of conversion have become effective, a
4954 statement of abandonment, signed by the converting entity, must
4955 be delivered to the department for filing before the articles of
4956 conversion become effective. The statement of abandonment takes
4957 effect on filing, and the conversion is abandoned and does not
4958 become effective. The statement of abandonment must contain the
4959 following:
4960 (a) The name of the converting limited liability company.
4961 (b) The date on which the articles of conversion were
4962 delivered to the department for filing.
4963 (c) A statement that the conversion has been abandoned in
4964 accordance with this section.
4965 605.1045 Articles of conversion.—
4966 (1) After a plan of conversion is approved, articles of
4967 conversion signed by the converting entity must be delivered to
4968 the department for filing.
4969 (2) The articles of conversion must contain the following:
4970 (a) The name, jurisdiction of formation, and type of entity
4971 of the converting entity.
4972 (b) The name, jurisdiction of formation, and type of entity

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4973 of the converted entity.
4974 (c) If the converting entity is a domestic limited
4975 liability company, a statement that the plan of conversion has
4976 been approved in accordance with ss. 605.1041-605.1046, or if
4977 the converting entity is a foreign entity, a statement that the
4978 conversion was approved by the foreign converting entity in
4979 accordance with the law of its jurisdiction of formation and by
4980 each member of the converting entity who as a result of the
4981 conversion will have interest holder liability under s.
4982 605.1043(1)(b) and whose approval is required.
4983 (d) If the converted entity is a domestic filing entity,
4984 the text of its public organic record, as an attachment.
4985 (e) If the converted entity is a domestic limited liability
4986 partnership, the text of its statement of qualification, as an
4987 attachment.
4988 (f) If the converted entity is a foreign entity that does
4989 not have a certificate of authority to transact business in this
4990 state, a mailing address to which the department may send any
4991 process served on the department pursuant to s. 605.0117 and
4992 chapter 48.
4993 (g) A statement that the converted entity has agreed to pay
4994 to the members of any limited liability company with appraisal
4995 rights the amount to which such members are entitled under s.
4996 605.1006 and ss. 605.1061-605.1072.
4997 (h) The effective date of the conversion, if the effective
4998 date of the conversion is not the same as the date of filing of
4999 the articles of conversion, subject to the limitations contained
5000 in s. 605.0207.
5001 (2) In addition to the requirements of subsection (1),

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5002 articles of conversion may contain any other provision not
5003 prohibited by law.
5004 (3) A conversion becomes effective when the articles of
5005 conversion become effective, unless the articles of conversion
5006 specify an effective time or a delayed effective date that
5007 complies with s. 605.0207.
5008 (4) A copy of the articles of conversion, certified by the
5009 department, may be filed in the official records of any county
5010 in this state in which the converted entity holds an interest in
5011 real property.
5012 605.1046 Effect of conversion.—
5013 (1) When a conversion in which the converted entity is a
5014 domestic limited liability company becomes effective:
5015 (a) The converted entity is:
5016 1. Organized under and subject to this chapter; and
5017 2. The same entity, without interruption, as the converting
5018 entity.
5019 (b) All property of the converting entity continues to be
5020 vested in the converted entity without transfer, reversion, or
5021 impairment;
5022 (c) All debts, obligations, and other liabilities of the
5023 converting entity continue as debts, obligations, and other
5024 liabilities of the converted entity;
5025 (d) Except as otherwise provided by law or the plan of
5026 conversion, all the rights, privileges, immunities, powers, and
5027 purposes of the converting entity remain in the converted
5028 entity;
5029 (e) The name of the converted entity may be substituted for
5030 the name of the converting entity in any pending action or

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5031 proceeding;
5032 (f) The provisions of the organic rules of the converted
5033 entity which are to be in a record, if any, approved as part of
5034 the plan of conversion are effective; and
5035 (g) The interests or rights to acquire interests in the
5036 converting entity are converted, and the interest holders of the
5037 converting entity are entitled only to the rights provided to
5038 them under the plan of conversion and to any appraisal rights
5039 they have under s. 605.1006 and ss. 605.1061-605.1072 and the
5040 converting entity's organic law.
5041 (2) Except as otherwise provided in the private organic
5042 rules of a domestic converting limited liability company, the
5043 conversion does not give rise to any rights that a member,
5044 manager, or third party would otherwise have upon a dissolution,
5045 liquidation, or winding up of the converting entity.
5046 (3) When a conversion becomes effective, a person who did
5047 not have interest holder liability with respect to the
5048 converting entity and becomes subject to interest holder
5049 liability with respect to a domestic entity as a result of the
5050 conversion has interest holder liability only to the extent
5051 provided by the organic law of the entity and only for those
5052 debts, obligations, and other liabilities that arise after the
5053 conversion becomes effective.
5054 (4) When a conversion becomes effective, the interest
5055 holder liability of a person who ceases to hold an interest in a
5056 domestic limited liability company with respect to which the
5057 person had interest holder liability is as follows:
5058 (a) The conversion does not discharge interest holder
5059 liability to the extent the interest holder liability arose

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5060 before the conversion became effective.
5061 (b) The person does not have interest holder liability for
5062 any debt, obligation, or other liability that arises after the
5063 conversion becomes effective.
5064 (c) The organic law of the jurisdiction of formation of the
5065 converting limited liability company and the rights of
5066 contribution provided under such law, or the organic rules of
5067 the converting limited liability company, continue to apply to
5068 the release, collection, or discharge of any interest holder
5069 liability preserved under paragraph (a) as if the conversion had
5070 not occurred.
5071 (5) When a conversion becomes effective, a foreign entity
5072 that is the converted entity may be served with process in this
5073 state for the collection and enforcement of its debts,
5074 obligations, and liabilities as provided in s. 605.0117 and
5075 chapter 48.
5076 (6) If the converting entity is a registered foreign
5077 entity, the certificate of authority to conduct business in this
5078 state of the converting entity is canceled when the conversion
5079 becomes effective.
5080 (7) A conversion does not require the entity to wind up its
5081 affairs and does not constitute or cause the dissolution of the
5082 entity.
5083 605.1051 Domestication authorized.—By complying with ss.
5084 605.1051-605.1056, a non-United States entity may become a
5085 domestic limited liability company if the domestication is
5086 authorized under the organic law of the non-United States
5087 entity’s jurisdiction of formation.
5088 605.1052 Plan of domestication.—

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5089 (1) A non-United States entity may become a domestic
5090 limited liability company by approving a plan of domestication.
5091 The plan of domestication must be in a record and contain the
5092 following:
5093 (a) The name and jurisdiction of formation of the
5094 domesticating entity.
5095 (b) If applicable, the manner and basis of converting the
5096 interests and rights to acquire interests in the domesticating
5097 entity into interests, securities, obligations, money, other
5098 property, rights to acquire interests or securities, or any
5099 combination of the foregoing.
5100 (c) The proposed public organic record of the domesticating
5101 entity in this state.
5102 (d) The full text of the proposed private organic rules of
5103 the domesticated entity that are to be in a record, if any.
5104 (e) Any other provision required by the law of the
5105 jurisdiction of formation of the domesticating entity or the
5106 organic rules of the domesticating entity.
5107 (2) In addition to the requirements of subsection (1), a
5108 plan of domestication may contain any other provision not
5109 prohibited by law.
5110 605.1053 Approval of domestication.—A plan of domestication
5111 of a domesticating entity shall be approved:
5112 (1) In accordance with the organic law of the domesticating
5113 entity's jurisdiction of formation; and
5114 (2) In a record, by each of the domesticating entity's
5115 owners who will have interest holder liability for debts,
5116 obligations, and other liabilities that arise after the
5117 domestication becomes effective, unless:

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5118 (a) The organic rules of the domesticating entity in a
5119 record provide for the approval of a domestication in which some
5120 or all of the persons who are its owners become subject to
5121 interest holder liability by the vote or consent of fewer than
5122 all of the persons who are its owners; and
5123 (b) The person who will be a member of the domesticated
5124 limited liability company consented in a record to or voted for
5125 that provision of the organic rules of the domesticating entity
5126 or became an owner of the domesticating entity after the
5127 adoption of that provision.
5128 605.1054 Amendment or abandonment of plan of
5129 domestication.—
5130 (1) A plan of domestication of a domesticating entity may
5131 be amended:
5132 (a) In the same manner as the plan was approved if the plan
5133 does not provide for the manner in which it may be amended; or
5134 (b) By the interest holders of the domesticating entity in
5135 the manner provided in the plan, but an owner who was entitled
5136 to vote on or consent to approval of the domestication is
5137 entitled to vote on or consent to any amendment of the plan that
5138 will change:
5139 1. If applicable, the amount or kind of interests,
5140 securities, obligations, money, other property, rights to
5141 acquire interests or securities, or any combination of the
5142 foregoing, to be received by the interest holders of the
5143 domesticating entity under the plan;
5144 2. The public organic record, if any, or private organic
5145 rules of the domesticated limited liability company which will
5146 be in effect immediately after the domestication becomes

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5147 effective except for changes that do not require approval of the
5148 interest holders of the domesticating entity under its organic
5149 law or organic rules; or
5150 3. Any other terms or conditions of the plan, if the change
5151 would adversely affect the interest holder in any material
5152 respect.
5153 (2) After a plan of domestication has been approved and
5154 before the articles of domestication become effective, the plan
5155 may be abandoned as provided in the plan. Unless prohibited by
5156 the plan, the domesticating entity may abandon the plan in the
5157 same manner as the plan was approved.
5158 (3) If a plan of domestication is abandoned after articles
5159 of domestication have been delivered to the department for
5160 filing and before such articles of domestication have become
5161 effective, a statement of abandonment, signed by the
5162 domesticating entity, must be delivered to the department for
5163 filing before the articles of domestication become effective.
5164 The statement of abandonment takes effect on filing, and the
5165 domestication is abandoned and does not become effective. The
5166 statement of abandonment must contain the following:
5167 (a) The name of the domesticating entity.
5168 (b) The date on which the articles of domestication were
5169 delivered to the department for filing.
5170 (c) A statement that the domestication has been abandoned
5171 in accordance with this section.
5172 605.1055 Articles of domestication.—
5173 (1) The articles of domestication must be filed with the
5174 department. The articles of domestication must contain the
5175 following:

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5176 (a) The date on which the domesticating entity was first
5177 formed, incorporated, created, or otherwise came into being.
5178 (b) The name of the domesticating entity immediately before
5179 the filing of the articles of domestication.
5180 (c) The articles of organization of the domesticated
5181 limited liability company, as an attachment.
5182 (d) The effective date of the domestication as a limited
5183 liability company, if the effective date of the domestication is
5184 not the same as the date of filing of the articles of
5185 domestication, subject to the limitations contained in s.
5186 605.0207.
5187 (e) The jurisdiction that constituted the seat, siege
5188 social, or principal place of business or central administration
5189 of the domesticating entity, or any other equivalent thereto
5190 under the law of the jurisdiction of formation, immediately
5191 before the filing of the articles of domestication.
5192 (f) A statement that the domestication has been approved in
5193 accordance with the laws of the jurisdiction of formation of the
5194 domesticating entity.
5195 (2) In addition to the requirements of subsection (1),
5196 articles of domestication may contain any other provision not
5197 prohibited by law.
5198 (3) The articles of domestication which are filed with the
5199 department must be accompanied by a certificate of status or
5200 equivalent document, if any, from the domesticating entity's
5201 jurisdiction of formation.
5202 (4) The articles of domestication and the articles of
5203 organization of a domesticated limited liability company must
5204 satisfy the requirements of the law of this state, and may be

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5205 executed by an authorized representative and registered agent in
5206 accordance with this chapter.
5207 605.1056 Effect of domestication.—
5208 (1) When a domestication becomes effective:
5209 (a) The domesticated limited liability company is:
5210 1. Organized under and subject to the organic law of this
5211 state; and
5212 2. The same entity, without interruption, as the
5213 domesticating entity;
5214 (b) All property of the domesticating entity continues to
5215 be vested in the domesticated limited liability company without
5216 transfer, reversion, or impairment;
5217 (c) All debts, obligations, and other liabilities of the
5218 domesticating entity continue as debts, obligations, and other
5219 liabilities of the domesticated limited liability company;
5220 (d) Except as otherwise provided by law or the plan of
5221 domestication, all the rights, privileges, immunities, powers,
5222 and purposes of the domesticating entity remain in the
5223 domesticated limited liability company;
5224 (e) The name of the domesticated limited liability company
5225 may be substituted for the name of the domesticating entity in
5226 any pending action or proceeding;
5227 (f) The articles of organization of the domesticated
5228 limited liability company are effective;
5229 (g) The provisions of the private organic rules of the
5230 domesticated limited liability company which are to be in a
5231 record, if any, approved as part of the plan of domestication
5232 are effective; and
5233 (h) The interests in the domesticating entity are converted

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5234 to the extent and as approved in connection with the
5235 domestication, and the interest holders of the domesticating
5236 entity are entitled only to the rights provided to them under
5237 the plan of domestication.
5238 (2) Except as otherwise provided in the organic law or
5239 organic rules of the domesticating entity, the domestication
5240 does not give rise to any rights that an interest holder or
5241 third party would otherwise have upon a dissolution,
5242 liquidation, or winding up of the domesticating entity.
5243 (3) When a domestication becomes effective, a person who
5244 did not have interest holder liability with respect to the
5245 domesticating entity and becomes subject to interest holder
5246 liability with respect to the domesticated limited liability
5247 company as a result of the domestication has interest holder
5248 liability only to the extent provided by the organic law of the
5249 domesticating entity and only for those debts, obligations, and
5250 other liabilities that arise after the domestication becomes
5251 effective.
5252 (4) When a domestication becomes effective, the interest
5253 holder liability of a person who ceases to hold an interest in a
5254 domestic limited liability company with respect to which the
5255 person had interest holder liability is as follows:
5256 (a) The domestication does not discharge any interest
5257 holder liability under this chapter to the extent the interest
5258 holder liability arose before the domestication became
5259 effective;
5260 (b) A person does not have interest holder liability under
5261 this chapter for any debt, obligation, or other liability that
5262 arises after the domestication becomes effective; and

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5263 (c) The organic law of the jurisdiction of formation of the
5264 domesticating entity and any rights of contribution provided
5265 under such law, or the organic rules of the domesticating
5266 entity, continue to apply to the release, collection, or
5267 discharge of any interest holder liability preserved under
5268 paragraph (a) as if the domestication had not occurred.
5269 (5) When a domestication becomes effective, a domesticating
5270 entity that has become the domesticated limited liability
5271 company may be served with process in this state for the
5272 collection and enforcement of its debts, obligations, and
5273 liabilities as provided in s. 605.0117 and chapter 48.
5274 (6) If the domesticating entity is qualified to transact
5275 business in this state, the certificate of authority of the
5276 domesticating entity is canceled when the domestication becomes
5277 effective.
5278 (7) A domestication does not require the domesticating
5279 entity to wind up its affairs and does not constitute or cause
5280 the dissolution of the domesticating entity.
5281 605.1061 Appraisal rights; definitions.—The following
5282 definitions apply to s. 605.1006 and to ss. 605.1061-605.1072:
5283 (1) "Accrued interest" means interest from the effective
5284 date of the appraisal event to which the member objects until
5285 the date of payment, at the rate of interest determined for
5286 judgments in accordance with s. 55.03, determined as of the
5287 effective date of the appraisal event.
5288 (2) "Affiliate" means a person who directly or indirectly,
5289 through one or more intermediaries, controls, is controlled by,
5290 or is under common control with another person or is a senior
5291 executive thereof. For purposes of s. 605.1006(4)(d), a person

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5292 is deemed to be an affiliate of its senior executives.
5293 (3) “Appraisal event” means an event described in s.
5294 605.1006(1).
5295 (4) “Beneficial member” means a person who is the
5296 beneficial owner of a membership interest held in a voting trust
5297 or by a nominee on the beneficial owner’s behalf.
5298 (5) “Fair value” means the value of the member’s membership
5299 interest determined:
5300 (a) Immediately before the effectuation of the appraisal
5301 event to which the member objects;
5302 (b) Using customary and current valuation concepts and
5303 techniques generally employed for similar businesses in the
5304 context of the transaction requiring appraisal, excluding any
5305 appreciation or depreciation in anticipation of the transaction
5306 to which the member objects, unless exclusion would be
5307 inequitable to the limited liability company and its remaining
5308 members; and
5309 (c) Without discounting for lack of marketability or
5310 minority status.
5311 (6) “Limited liability company” means the limited liability
5312 company that issued the membership interest held by a member
5313 demanding appraisal and, for matters covered in ss. 605.1061-
5314 605.1072, includes the converted entity in a conversion or the
5315 surviving entity in a merger.
5316 (7) “Member” means a record member or a beneficial member.
5317 (8) “Membership interest” means a member’s transferable
5318 interest and all other rights as a member of the limited
5319 liability company that issued the membership interest, including
5320 voting rights, management rights, or other rights under this

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5321 chapter or the organic rules of the limited liability company
5322 except, if the appraisal rights of a member under s. 605.1006
5323 pertain to only a certain class or series of a membership
5324 interest, the term "membership interest" means only the
5325 membership interest pertaining to such class or series.
5326 (9) "Record member" means each person who is identified as
5327 a member in the current list of members maintained for purposes
5328 of s. 605.1006 by the limited liability company, or to the
5329 extent the limited liability company has failed to maintain a
5330 current list, each person who is the rightful owner of a
5331 membership interest in the limited liability company. A
5332 transferee of a membership interest who has not been admitted as
5333 a member is not a record member.
5334 (10) "Senior executive" means a manager in a manager-
5335 managed limited liability company; a member in a member-managed
5336 limited liability company; or the chief executive officer, chief
5337 operating officer, chief financial officer, or president or any
5338 other person in charge of a principal business unit or function
5339 of a limited liability company, in charge of a manager in a
5340 manager-managed limited liability company, or in charge of a
5341 member in a member-managed limited liability company.
5342 605.1062 Assertion of rights by nominees and beneficial
5343 owners.—
5344 (1) A record member may assert appraisal rights as to less
5345 than all the membership interests registered in the record
5346 member's name which are owned by a beneficial member only if the
5347 record member objects with respect to all membership interests
5348 of the class or series owned by that beneficial member and
5349 notifies the limited liability company in writing of the name

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5350 and address of each beneficial member on whose behalf appraisal
5351 rights are being asserted. The rights of a record member who
5352 asserts appraisal rights for only part of the membership
5353 interests of the class or series held of record in the record
5354 member's name under this subsection shall be determined as if
5355 the membership interests to which the record member objects and
5356 the record member's other membership interests were registered
5357 in the names of different record members.
5358 (2) A beneficial member may assert appraisal rights as to a
5359 membership interest held on behalf of the member only if such
5360 beneficial member:
5361 (a) Submits to the limited liability company the record
5362 member's written consent to the assertion of such rights by the
5363 date provided in s. 605.1063(3)(b); and
5364 (b) Does so with respect to all membership interests of the
5365 class or series that are beneficially owned by the beneficial
5366 member.
5367 605.1063 Notice of appraisal rights.—
5368 (1) If a proposed appraisal event is to be submitted to a
5369 vote at a members' meeting, the meeting notice must state that
5370 the limited liability company has concluded that the members
5371 are, are not, or may be entitled to assert appraisal rights
5372 under this chapter.
5373 (2) If the limited liability company concludes that
5374 appraisal rights are or may be available, a copy of s. 605.1006
5375 and ss. 605.1061-605.1072 must accompany the meeting notice sent
5376 to those record members who are or may be entitled to exercise
5377 appraisal rights.
5378 (3) If the appraisal event is to be approved other than by

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5379 a members' meeting:
5380 (a) Written notice that appraisal rights are, are not, or
5381 may be available must be sent to each member from whom a consent
5382 is solicited at the time consent of such member is first
5383 solicited, and if the limited liability company has concluded
5384 that appraisal rights are or may be available, a copy of s.
5385 605.1006 and ss. 605.1061-605.1072 must accompany such written
5386 notice; or
5387 (b) Written notice that appraisal rights are, are not, or
5388 may be available must be delivered, at least 10 days before the
5389 appraisal event becomes effective, to all nonconsenting and
5390 nonvoting members, and, if the limited liability company has
5391 concluded that appraisal rights are or may be available, a copy
5392 of s. 605.1006 and ss. 605.1061-605.1072 must accompany such
5393 written notice.
5394 (4) If a particular appraisal event is proposed and the
5395 limited liability company concludes that appraisal rights are or
5396 may be available, the notice referred to in subsection (1),
5397 paragraph (3)(a), or paragraph (3)(b) must be accompanied by:
5398 (a) Financial statements of the limited liability company
5399 that issued the membership interests that may be or are subject
5400 to appraisal rights, consisting of a balance sheet as of the end
5401 of the fiscal year ending not more than 16 months before the
5402 date of the notice, an income statement for that fiscal year,
5403 and a cash flow statement for that fiscal year; however, if such
5404 financial statements are not reasonably available, the limited
5405 liability company shall provide reasonably equivalent financial
5406 information; and
5407 (b) The latest available interim financial statements,

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5408 including year-to-date through the end of the interim period, of
5409 such limited liability company, if any.
5410 (5) The right to receive the information described in
5411 subsection (4) may be waived in writing by a member before or
5412 after the appraisal event.
5413 605.1064 Notice of intent to demand payment.—
5414 (1) If a proposed appraisal event is submitted to a vote at
5415 a members' meeting, a member who is entitled to and who wishes
5416 to assert appraisal rights with respect to a class or series of
5417 membership interests:
5418 (a) Must deliver, before the vote is taken, to any other
5419 member of a member-managed limited liability company, to a
5420 manager of a manager-managed limited liability company, or, if
5421 the limited liability company has appointed officers, to an
5422 officer written notice of such person's intent to demand payment
5423 if the proposed appraisal event is effectuated; and
5424 (b) May not vote, or cause or permit to be voted, any
5425 membership interests of the class or series in favor of the
5426 appraisal event.
5427 (2) If a proposed appraisal event is to be approved by less
5428 than unanimous written consent of the members, a member who is
5429 entitled to and who wishes to assert appraisal rights with
5430 respect to a class or series of membership interests must not
5431 sign a consent in favor of the proposed appraisal event with
5432 respect to that class or series of membership interests.
5433 (3) A person who may otherwise be entitled to appraisal
5434 rights, but does not satisfy the requirements of subsection (1)
5435 or subsection (2), is not entitled to payment under s. 605.1006
5436 and ss. 605.1061-605.1072.

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5437 605.1065 Appraisal notice and form.—
5438 (1) If the proposed appraisal event becomes effective, the
5439 limited liability company must send a written appraisal notice
5440 and form required by paragraph (2)(a) to all members who satisfy
5441 the requirements of s. 605.1064(1) or (2).
5442 (2) The appraisal notice must be sent no earlier than the
5443 date the appraisal event became effective and within 10 days
5444 after such date and must:
5445 (a) Supply a form that specifies the date that the
5446 appraisal event became effective and that provides for the
5447 member to state:
5448 1. The member's name and address;
5449 2. The number, classes, and series of membership interests
5450 as to which the member asserts appraisal rights;
5451 3. That the member did not vote for or execute a written
5452 consent with respect to the transaction as to any classes or
5453 series of membership interests as to which the member asserts
5454 appraisal rights;
5455 4. Whether the member accepts the limited liability
5456 company's offer as stated in subparagraph (2)(b)5.; and
5457 5. If the offer is not accepted, the member's estimated
5458 fair value of the membership interests and a demand for payment
5459 of the member's estimated value plus accrued interest.
5460 (b) State:
5461 1. Where the form described in paragraph (a) must be sent;
5462 2. A date by which the limited liability company must
5463 receive the form, which date may not be less than 40 days or
5464 more than 60 days after the date the appraisal notice and form
5465 described in this section are sent, and that the member is

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5466 considered to have waived the right to demand appraisal with
5467 respect to the membership interests unless the form is received
5468 by the limited liability company by such specified date;
5469 3. In the case of membership interests represented by a
5470 certificate, the location at which certificates for the
5471 certificated membership interests must be deposited, if that
5472 action is required by the limited liability company and the date
5473 by which those certificates must be deposited, which may not be
5474 earlier than the date for receiving the required form under
5475 subparagraph 2.;
5476 4. The limited liability company's estimate of the fair
5477 value of the membership interests;
5478 5. An offer to each member who is entitled to appraisal
5479 rights to pay the limited liability company's estimate of fair
5480 value provided in subparagraph 4.;
5481 6. That, if requested in writing, the limited liability
5482 company will provide to the member so requesting, within 10 days
5483 after the date specified in subparagraph 2., the number of
5484 members who return the forms by the specified date and the total
5485 number of membership interests owned by such members;
5486 7. The date by which the notice to withdraw under s.
5487 605.1066 must be received, which date must be within 20 days
5488 after the date specified in subparagraph 2.; and
5489 8. If not previously provided, accompanied by a copy of s.
5490 605.1006 and ss. 605.1061-605.1072.
5491 605.1066 Perfection of rights; right to withdraw.—
5492 (1) A member who receives notice pursuant to s. 605.1065
5493 and wishes to exercise appraisal rights must sign and return the
5494 form received pursuant to s. 605.1065 (1) and, in the case of

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5495 certificated membership interests and if the limited liability
5496 company so requires, deposit the member's certificates in
5497 accordance with the terms of the notice by the date referred to
5498 in the notice pursuant to s. 605.1065 (2)(b)2. Once a member
5499 deposits that member's certificates or, in the case of
5500 uncertificated membership interests, returns the signed form
5501 described in s. 605.1065 (2), the member loses all rights as a
5502 member, unless the member withdraws pursuant to subsection (2).
5503 Upon receiving a demand for payment from a member who holds an
5504 uncertificated membership interest, the limited liability
5505 company shall make an appropriate notation of the demand for
5506 payment in its records and shall restrict the transfer of the
5507 membership interest, or the applicable class or series, from the
5508 date the member delivers the items required by this section.
5509 (2) A member who has complied with subsection (1) may
5510 nevertheless decline to exercise appraisal rights and withdraw
5511 from the appraisal process by so notifying the limited liability
5512 company in writing by the date provided in the appraisal notice
5513 pursuant to s. 605.1065(2)(b)7. A member who fails to notify the
5514 limited liability company in writing of the withdrawal by the
5515 date provided in the appraisal notice may not thereafter
5516 withdraw without the limited liability company's written
5517 consent.
5518 (3) A member who does not sign and return the form and, in
5519 the case of certificated membership interests, deposit that
5520 member's certificates, if so required by the limited liability
5521 company, each by the date set forth in the notice described in
5522 s. 605.1065(2)(a), is not entitled to payment under s. 605.1006
5523 and ss. 605.1061-605.1072.

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5524 (4) If the member's right to receive fair value is
5525 terminated other than by the purchase of the membership interest
5526 by the limited liability company, all rights of the member, with
5527 respect to such membership interest, shall be reinstated
5528 effective as of the date the member delivered the items required
5529 by subsection (1), including the right to receive any
5530 intervening payment or other distribution with respect to such
5531 membership interest, or, if any such rights have expired or any
5532 such distribution other than a cash payment has been completed,
5533 in lieu thereof at the election of the limited liability
5534 company, the fair value thereof in cash as determined by the
5535 limited liability company as of the time of such expiration or
5536 completion, but without prejudice otherwise to any action or
5537 proceeding of the limited liability company that may have been
5538 taken by the limited liability company on or after the date the
5539 member delivered the items required by subsection (1).
5540 605.1067 Member's acceptance of limited liability company's
5541 offer.
5542 (1) If the member states on the form provided in s.
5543 605.1065(1) that the member accepts the offer of the limited
5544 liability company to pay the limited liability company's
5545 estimated fair value for the membership interest, the limited
5546 liability company shall make the payment to the member within 90
5547 days after the limited liability company's receipt of the items
5548 required by s. 605.1066(1).
5549 (2) Upon payment of the agreed value, the member shall
5550 cease to have an interest in the membership interest.
5551 605.1068 Procedure if member is dissatisfied with offer.—
5552 (1) A member who is dissatisfied with the limited liability

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5553 company's offer as provided pursuant to s. 605.1065(2)(b)4. must
5554 notify the limited liability company on the form provided
5555 pursuant to s. 605.1065(1) of the member's estimate of the fair
5556 value of the membership interest and demand payment of that
5557 estimate plus accrued interest.
5558 (2) A member who fails to notify the limited liability
5559 company in writing of the member's demand to be paid the
5560 member's estimate of the fair value plus interest under
5561 subsection (1) within the timeframe provided in s.
5562 605.1065(2)(b)2. waives the right to demand payment under this
5563 section and is entitled only to the payment offered by the
5564 limited liability company pursuant to s. 605.1065(2)(b)4.
5565 605.1069 Court action.—
5566 (1) If a member makes demand for payment under s. 605.1068
5567 which remains unsettled, the limited liability company shall
5568 commence a proceeding within 60 days after receiving the payment
5569 demand and petition the court to determine the fair value of the
5570 membership interest plus accrued interest from the date of the
5571 appraisal event. If the limited liability company does not
5572 commence the proceeding within the 60-day period, any member who
5573 has made a demand pursuant to s. 605.1068 may commence the
5574 proceeding in the name of the limited liability company.
5575 (2) The proceeding must be commenced in the appropriate
5576 court of the county in which the limited liability company's
5577 principal office in this state is located or, if none, the
5578 county in which its registered agent is located. If by virtue of
5579 the appraisal event becoming effective the entity has become a
5580 foreign entity without a registered agent in this state, the
5581 proceeding must be commenced in the county in this state in

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5582 which the principal office or registered agent of the limited
5583 liability company was located immediately before the time the
5584 appraisal event became effective; if it has, and immediately
5585 before the appraisal event became effective had no principal
5586 office in this state, then in the county in which the limited
5587 liability company has, or immediately before the time the
5588 appraisal event became effective had, an office in this state;
5589 or if none in this state, then in the county in which the
5590 limited liability company's registered office is or was last
5591 located.
5592 (3) All members, whether or not residents of this state,
5593 whose demands remain unsettled shall be made parties to the
5594 proceeding as in an action against their membership interests.
5595 The limited liability company shall serve a copy of the initial
5596 pleading in such proceeding upon each member-party who is a
5597 resident of this state in the manner provided by law for the
5598 service of a summons and complaint and upon each nonresident
5599 member-party by registered or certified mail or by publication
5600 as provided by law.
5601 (4) The jurisdiction of the court in which the proceeding
5602 is commenced under subsection (2) is plenary and exclusive. If
5603 it so elects, the court may appoint one or more persons as
5604 appraisers to receive evidence and recommend a decision on the
5605 question of fair value. The appraisers shall have the powers
5606 described in the order appointing them or in an amendment to the
5607 order. The members demanding appraisal rights are entitled to
5608 the same discovery rights as parties in other civil proceedings.
5609 There is no right to a jury trial.
5610 (5) Each member who is made a party to the proceeding is

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5611 entitled to judgment for the amount of the fair value of such
5612 member's membership interests, plus interest, as found by the
5613 court.
5614 (6) The limited liability company shall pay each such
5615 member the amount found to be due within 10 days after final
5616 determination of the proceedings. Upon payment of the judgment,
5617 the member ceases to have any interest in the membership
5618 interests.
5619 605.1070 Court costs and attorney fees.—
5620 (1) The court in an appraisal proceeding shall determine
5621 all costs of the proceeding, including the reasonable
5622 compensation and expenses of appraisers appointed by the court.
5623 The court shall assess the costs against the limited liability
5624 company, except that the court may assess costs against all or
5625 some of the members demanding appraisal, in amounts the court
5626 finds equitable, to the extent the court finds the members acted
5627 arbitrarily, vexatiously, or not in good faith with respect to
5628 the rights provided by this chapter.
5629 (2) The court in an appraisal proceeding may also assess
5630 the expenses incurred by the respective parties, in amounts the
5631 court finds equitable:
5632 (a) Against the limited liability company and in favor of
5633 any or all members demanding appraisal, if the court finds the
5634 limited liability company did not substantially comply with the
5635 requirements of ss. 605.1061-605.1072; or
5636 (b) Against either the limited liability company or a
5637 member demanding appraisal, in favor of another party, if the
5638 court finds that the party against whom the expenses are
5639 assessed acted arbitrarily, vexatiously, or not in good faith

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5640 with respect to the rights provided by this chapter.
5641 (3) If the court in an appraisal proceeding finds that the
5642 expenses incurred by any member were of substantial benefit to
5643 other members similarly situated and should not be assessed
5644 against the limited liability company, the court may direct that
5645 the expenses be paid out of the amounts awarded the members who
5646 were benefited.
5647 (4) To the extent the limited liability company fails to
5648 make a required payment pursuant to s. 605.1067 or s. 605.1069,
5649 the member may sue the limited liability company directly for
5650 the amount owed and, to the extent successful, is entitled to
5651 recover from the limited liability company all costs and
5652 expenses of the suit, including attorney fees.
5653 605.1071 Limitation on limited liability company payment.—
5654 (1) Payment may not be made to a member seeking appraisal
5655 rights if, at the time of payment, the limited liability company
5656 is unable to meet the distribution standards of s. 605.0405. In
5657 such event, the member shall, at the member's option:
5658 (a) Withdraw the notice of intent to assert appraisal
5659 rights, which is deemed withdrawn with the consent of the
5660 limited liability company; or
5661 (b) Retain the status as a claimant against the limited
5662 liability company and, if the limited liability company is
5663 liquidated, be subordinated to the rights of creditors of the
5664 limited liability company, but have rights superior to the
5665 members not asserting appraisal rights and, if the limited
5666 liability company is not liquidated, retain the right to be paid
5667 for the membership interest, which right the limited liability
5668 company shall be obligated to satisfy when the restrictions of

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5669 this section do not apply.
5670 (2) The member shall exercise the option under subparagraph
5671 (1)(a) or subparagraph (1)(b) by written notice filed with the
5672 limited liability company within 30 days after the limited
5673 liability company has given written notice that the payment for
5674 the membership interests cannot be made because of the
5675 restrictions of this section. If the member fails to exercise
5676 the option, the member is deemed to have withdrawn the notice of
5677 intent to assert appraisal rights.
5678 605.1072 Other remedies limited.—
5679 (1) The legality of a proposed or completed appraisal event
5680 may not be contested, and the appraisal event may not be
5681 enjoined, set aside, or rescinded, in a legal or equitable
5682 proceeding by a member after the members have approved the
5683 appraisal event.
5684 (2) Subsection (1) does not apply to an appraisal event
5685 that:
5686 (a) Was not authorized and approved in accordance with the
5687 applicable provisions of this chapter, the organic rules of the
5688 limited liability company, or the resolutions of the members
5689 authorizing the appraisal event;
5690 (b) Was procured as a result of fraud, a material
5691 misrepresentation, or an omission of a material fact that is
5692 necessary to make statements made, in light of the circumstances
5693 in which they were made, not misleading; or
5694 (c) Is an interested transaction, unless it has been
5695 approved in the same manner as is provided in s. 605.04092 or is
5696 fair to the limited liability company as defined in s.
5697 605.04092(1)(c).

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5698 605.1101 Uniformity of application and construction.—In
5699 applying and construing this chapter, consideration must be
5700 given to the need to promote uniformity of the law with respect
5701 to the uniform act upon which it is based.
5702 605.1102 Relation to Electronic Signatures in Global and
5703 National Commerce Act.—This chapter modifies, limits, and
5704 supersedes the Electronic Signatures in Global and National
5705 Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify,
5706 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
5707 or authorize electronic delivery of the notices described in s.
5708 103(b) of that act, 15 U.S.C. s. 7003(b). Notwithstanding the
5709 foregoing, this chapter does not operate to modify, limit, or
5710 supersede any provisions of s. 15.16, s. 116.34, or s. 668.50.
5711 605.1103 Tax exemption on income of certain limited
5712 liability companies.—
5713 (1) A limited liability company classified as a partnership
5714 for federal income tax purposes, or a single-member limited
5715 liability company that is disregarded as an entity separate from
5716 its owner for federal income tax purposes, and organized
5717 pursuant to this chapter or qualified to do business in this
5718 state as a foreign limited liability company is not an
5719 "artificial entity" within the purview of s. 220.02 and is not
5720 subject to the tax imposed under chapter 220. If a single-member
5721 limited liability company is disregarded as an entity separate
5722 from its owner for federal income tax purposes, its activities
5723 are, for purposes of taxation under chapter 220, treated in the
5724 same manner as a sole proprietorship, branch, or division of the
5725 owner.
5726 (2) For purposes of taxation under chapter 220, a limited

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5727 liability company formed in this state or a foreign limited
5728 liability company with a certificate of authority to transact
5729 business in this state shall be classified as a partnership or a
5730 limited liability company that has only one member shall be
5731 disregarded as an entity separate from its owner for federal
5732 income tax purposes, unless classified otherwise for federal
5733 income tax purposes, in which case the limited liability company
5734 shall be classified identically to its classification for
5735 federal income tax purposes. For purposes of taxation under
5736 chapter 220, a member or a transferee of a member of a limited
5737 liability company formed in this state or a foreign limited
5738 liability company with a certificate of authority to transact
5739 business in this state shall be treated as a resident or
5740 nonresident partner unless classified otherwise for federal
5741 income tax purposes, in which case the member or transferee of a
5742 member has the same status as the member or transferee of a
5743 member has for federal income tax purposes.
5744 (3) Single-member limited liability companies and other
5745 entities that are disregarded for federal income tax purposes
5746 must be treated as separate legal entities for all non-income
5747 tax purposes. The Department of Revenue shall adopt rules to
5748 take into account that single-member disregarded entities such
5749 as limited liability companies and qualified subchapter S
5750 corporations may be disregarded as separate entities for federal
5751 tax purposes and therefore may report and account for income,
5752 employment, and other taxes under the taxpayer identification
5753 number of the owner of the single-member entity.
5754 605.1104 Interrogatories by department; other powers of
5755 department.—

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5756 (1) The department may direct to any limited liability
5757 company or foreign limited liability company subject to this
5758 chapter, and to a member or manager of any limited liability
5759 company or foreign limited liability company subject to this
5760 chapter, interrogatories reasonably necessary and proper to
5761 enable the department to ascertain whether the limited liability
5762 company or foreign limited liability company has complied with
5763 the provisions of this chapter applicable to the limited
5764 liability company or foreign limited liability company. The
5765 interrogatories must be answered within 30 days after the date
5766 of mailing, or within such additional time as fixed by the
5767 department. The answers to the interrogatories must be full and
5768 complete and must be made in writing and under oath. If the
5769 interrogatories are directed to an individual, they must be
5770 answered by the individual, and if directed to a limited
5771 liability company or foreign limited liability company, they
5772 must be answered by a manager of a manager-managed company, a
5773 member of a member-managed company, or other applicable governor
5774 if a foreign limited liability company is not member-managed or
5775 manager managed, or a fiduciary if the company is in the hands
5776 of a receiver, trustee, or other court-appointed fiduciary.
5777 (2) The department need not file a record in a court of
5778 competent jurisdiction to which the interrogatories relate until
5779 the interrogatories are answered as provided in this chapter,
5780 and is not required to file a record if the answers disclose
5781 that the record is not in conformity with the requirements of
5782 this chapter or if the department has determined that the
5783 parties to such document have not paid all fees, taxes, and
5784 penalties due and owing this state. The department shall certify

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5785 to the Department of Legal Affairs, for such action as the
5786 Department of Legal Affairs may deem appropriate, all
5787 interrogatories and answers that disclose a violation of this
5788 chapter.
5789 (3) The department may, based upon its findings under this
5790 section or as provided in s. 213.053(15), bring an action in
5791 circuit court to collect any penalties, fees, or taxes
5792 determined to be due and owing the state and to compel any
5793 filing, qualification, or registration required by law. In
5794 connection with such proceeding, the department may, without
5795 prior approval by the court, file a lis pendens against any
5796 property owned by the limited liability company and may further
5797 certify any findings to the Department of Legal Affairs for the
5798 initiation of an action permitted pursuant to this chapter which
5799 the Department of Legal Affairs may deem appropriate.
5800 (4) The department has the power and authority reasonably
5801 necessary to administer this chapter efficiently, to perform the
5802 duties herein imposed upon it, and to adopt reasonable rules
5803 necessary to carry out its duties and functions under this
5804 chapter.
5805 605.1105 Reservation of power to amend or repeal.—The
5806 Legislature has the power to amend or repeal all or part of this
5807 chapter at any time, and all domestic and foreign limited
5808 liability companies subject to this chapter shall be governed by
5809 the amendment or repeal.
5810 605.1106 Savings clause.—
5811 (1) Except as provided in subsection (2), the repeal of a
5812 statute by this chapter does not affect:
5813 (a) The operation of the statute or an action taken under

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5814 it before its repeal, including, without limiting the generality
5815 of the foregoing, the continuing validity of any provision of
5816 the articles of organization, regulations, or operating
5817 agreements of a limited liability company authorized under the
5818 statute at the time of its adoption;
5819 (b) Any ratification, right, remedy, privilege, obligation,
5820 or liability acquired, accrued, or incurred under the statute
5821 before its repeal;
5822 (c) Any violation of the statute or any penalty,
5823 forfeiture, or punishment incurred because of the violation,
5824 before its repeal; or
5825 (d) Any proceeding, merger, sale of assets, reorganization,
5826 or dissolution commenced under the statute before its repeal,
5827 and the proceeding, merger, sale of assets, reorganization, or
5828 dissolution may be completed in accordance with the statute as
5829 if it had not been repealed.
5830 (2) If a penalty or punishment imposed for violation of a
5831 statute is reduced by this chapter, the penalty or punishment,
5832 if not already imposed, shall be imposed in accordance with this
5833 chapter.
5834 (3) This chapter does not affect an action commenced,
5835 proceeding brought, or right accrued before this chapter takes
5836 effect.
5837 605.1107 Severability clause.—If any provision of this
5838 chapter or its application to any person or circumstance is held
5839 invalid, the invalidity does not affect other provisions or
5840 applications of this chapter which can be given effect without
5841 the invalid provision or application, and to this end the
5842 provisions of this chapter are severable.

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5843 605.1108 Application to limited liability company formed
5844 under the Florida Limited Liability Company Act.—
5845 (1) Subject to subsection (4), before January 1, 2015, this
5846 chapter governs only:
5847 (a) A limited liability company formed on or after January
5848 1, 2014; and
5849 (b) A limited liability company formed before January 1,
5850 2014, which elects, in the manner provided in its operating
5851 agreement or by law for amending the operating agreement, to be
5852 subject to this chapter.
5853 (2) On or after January 1, 2015, this chapter governs all
5854 limited liability companies.
5855 (3) For the purpose of applying this chapter to a limited
5856 liability company formed before January 1, 2014, under the
5857 Florida Limited Liability Company Act, ss. 608.401-608.705:
5858 (a) The company's articles of organization are deemed to be
5859 the company's articles of organization under this chapter; and
5860 (b) For the purpose of applying s. 605.0102(39), the
5861 language in the company's articles of organization designating
5862 the company's management structure operates as if that language
5863 were in the operating agreement.
5864 (4) Notwithstanding the provisions of subsections (1) and
5865 (2), effective January 1, 2014, all documents, instruments, and
5866 other records submitted to the department must comply with the
5867 filing requirements stipulated by this chapter.
5868 Section 3. Section 48.062, Florida Statutes, is created to
5869 read:
5870 48.062 Service on a limited liability company.—
5871 (1) Process against a limited liability company, domestic

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5872 or foreign, may be served on the registered agent designated by
5873 the limited liability company under chapter 605 or chapter 608.
5874 A person attempting to serve process pursuant to this subsection
5875 may serve the process on any employee of the registered agent
5876 during the first attempt at service even if the registered agent
5877 is a natural person and is temporarily absent from his or her
5878 office.
5879 (2) If service cannot be made on a registered agent of the
5880 limited liability company because of failure to comply with
5881 chapter 605 or chapter 608 or because the limited liability
5882 company does not have a registered agent, or if its registered
5883 agent cannot with reasonable diligence be served, process
5884 against the limited liability company, domestic or foreign, may
5885 be served:
5886 (a) On a member of a member-managed limited liability
5887 company;
5888 (b) On a manager of a manager-managed limited liability
5889 company; or
5890 (c) If a member or manager is not available during regular
5891 business hours to accept service on behalf of the limited
5892 liability company, he, she, or it may designate an employee of
5893 the limited liability company to accept such service. After one
5894 attempt to serve a member, manager, or designated employee has
5895 been made, process may be served on the person in charge of the
5896 limited liability company during regular business hours.
5897 (3) If, after reasonable diligence, service of process
5898 cannot be completed under subsection (1) or (2), service of
5899 process may be effected by service upon the Secretary of State
5900 as agent of the limited liability company as provided for in s.

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5901 48.181.
5902 (4) If the address provided for the registered agent,
5903 member or manager is a residence or private mailbox, service on
5904 the limited liability company, domestic or foreign, may be made
5905 by serving the registered agent, member or manager in accordance
5906 with s. 48.031.
5907 (5) This section does not apply to service of process on
5908 insurance companies.
5909 Section 4. Effective January 1, 2015, the Florida Limited
5910 Liability Company Act, consisting of ss. 608.401-608.705,
5911 Florida Statutes, is repealed.
5912 Section 5. Subsection (3) of section 607.1109, Florida
5913 Statutes, is amended to read:
5914 607.1109 Articles of merger.—
5915 (3) A domestic corporation is not required to file articles
5916 of merger pursuant to subsection (1) if the domestic corporation
5917 is named as a party or constituent organization in articles of
5918 merger or a certificate of merger filed for the same merger in
5919 accordance with s. 605.1025, s. 608.4382(1), s. 617.1108, s.
5920 620.2108(3), or s. 620.8918(1) and (2), and if the articles of
5921 merger or certificate of merger substantially complies with the
5922 requirements of this section. In such a case, the other articles
5923 of merger or certificate of merger may also be used for purposes
5924 of subsection (2).
5925 Section 6. Effective January 1, 2015, subsection (3) of
5926 section 607.1109, Florida Statutes, is amended to read:
5927 607.1109 Articles of merger.—
5928 (3) A domestic corporation is not required to file articles
5929 of merger pursuant to subsection (1) if the domestic corporation

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5930 is named as a party or constituent organization in articles of
5931 merger or a certificate of merger filed for the same merger in
5932 accordance with s. 605.1025, ~~s. 608.4382(1),~~ s. 617.1108, s.
5933 620.2108(3), or s. 620.8918(1) and (2), and if the articles of
5934 merger or certificate of merger substantially complies with the
5935 requirements of this section. In such a case, the other articles
5936 of merger or certificate of merger may also be used for purposes
5937 of subsection (2).
5938 Section 7. Subsection (3) of section 607.1113, Florida
5939 Statutes, is amended to read:
5940 607.1113 Certificate of conversion.—
5941 (3) A converting domestic corporation is not required to
5942 file a certificate of conversion pursuant to subsection (1) if
5943 the converting domestic corporation files articles of conversion
5944 or a certificate of conversion that substantially complies with
5945 the requirements of this section pursuant to s. 605.1041, s.
5946 608.439, s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains
5947 the signatures required by this chapter. In such a case, the
5948 other certificate of conversion may also be used for purposes of
5949 subsection (2).
5950 Section 8. Effective January 1, 2015, subsection (3) of
5951 section 607.1113, Florida Statutes, is amended to read:
5952 607.1113 Certificate of conversion.—
5953 (3) A converting domestic corporation is not required to
5954 file a certificate of conversion pursuant to subsection (1) if
5955 the converting domestic corporation files articles of conversion
5956 or a certificate of conversion that substantially complies with
5957 the requirements of this section pursuant to s. 605.1041, ~~s.~~
5958 ~~608.439,~~ s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains

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5959 the signatures required by this chapter. In such a case, the
5960 other certificate of conversion may also be used for purposes of
5961 subsection (2).
5962 Section 9. Subsections (1) and (2) of section 607.193,
5963 Florida Statutes, are amended to read:
5964 607.193 Supplemental corporate fee.—
5965 (1) In addition to any other taxes imposed by law, an
5966 annual supplemental corporate fee of $88.75 is imposed on each
5967 business entity that is authorized to transact business in this
5968 state and is required to file an annual report with the
5969 Department of State under s. 605.0212, s. 607.1622, s. 608.4511,
5970 or s. 620.1210.
5971 (2)(a) The business entity shall remit the supplemental
5972 corporate fee to the Department of State at the time it files
5973 the annual report required by s. 605.0212, s. 607.1622, s.
5974 608.4511, or s. 620.1210.
5975 (b) In addition to the fees levied under ss. 607.0122~~,~~
5976 ~~608.452,~~ and 620.1109, s. 605.0213 or s. 608.452, and the
5977 supplemental corporate fee, a late charge of $400 shall be
5978 imposed if the supplemental corporate fee is remitted after May
5979 1 except in circumstances in which a business entity was
5980 administratively dissolved or its certificate of authority was
5981 revoked due to its failure to file an annual report and the
5982 entity subsequently applied for reinstatement and paid the
5983 applicable reinstatement fee.
5984 Section 10. Effective January 1, 2015, subsections (1) and
5985 (2) of section 607.193, Florida Statutes, are amended to read:
5986 607.193 Supplemental corporate fee.—
5987 (1) In addition to any other taxes imposed by law, an

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5988 annual supplemental corporate fee of $88.75 is imposed on each
5989 business entity that is authorized to transact business in this
5990 state and is required to file an annual report with the
5991 Department of State under s. 605.0212, s. 607.1622, ~~s. 608.4511,~~
5992 or s. 620.1210.
5993 (2)(a) The business entity shall remit the supplemental
5994 corporate fee to the Department of State at the time it files
5995 the annual report required by s. 605.0212, s. 607.1622, ~~s.~~
5996 ~~608.4511,~~ or s. 620.1210.
5997 (b) In addition to the fees levied under ss. 605.0213,
5998 607.0122, ~~608.452,~~ and 620.1109 and the supplemental corporate
5999 fee, a late charge of $400 shall be imposed if the supplemental
6000 corporate fee is remitted after May 1 except in circumstances in
6001 which a business entity was administratively dissolved or its
6002 certificate of authority was revoked due to its failure to file
6003 an annual report and the entity subsequently applied for
6004 reinstatement and paid the applicable reinstatement fee.
6005 Section 11. Subsection (2) of section 617.1108, Florida
6006 Statutes, is amended to read:
6007 617.1108 Merger of domestic corporation and other business
6008 entities.—
6009 (2) A domestic corporation not for profit organized under
6010 this chapter is not required to file articles of merger pursuant
6011 to this section if the corporation not for profit is named as a
6012 party or constituent organization in articles of merger or a
6013 certificate of merger filed for the same merger in accordance
6014 with s. 605.1025, s. 607.1109, s. 608.4382(1), s. 620.2108(3),
6015 or s. 620.8918(1) and (2). In such a case, the other articles of
6016 merger or certificate of merger may also be used for purposes of

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6017 subsection (3).
6018 Section 12. Effective January 1, 2015, subsection (2) of
6019 section 617.1108, Florida Statutes, is amended to read:
6020 617.1108 Merger of domestic corporation and other business
6021 entities.—
6022 (2) A domestic corporation not for profit organized under
6023 this chapter is not required to file articles of merger pursuant
6024 to this section if the corporation not for profit is named as a
6025 party or constituent organization in articles of merger or a
6026 certificate of merger filed for the same merger in accordance
6027 with s. 605.1025, s. 607.1109, ~~s. 608.4382(1),~~ s. 620.2108(3),
6028 or s. 620.8918(1) and (2). In such a case, the other articles of
6029 merger or certificate of merger may also be used for purposes of
6030 subsection (3).
6031 Section 13. Paragraph (c) of subsection (1) of section
6032 620.2104, Florida Statutes, is amended to read:
6033 620.2104 Filings required for conversion; effective date.—
6034 (1) After a plan of conversion is approved:
6035 (c) A converting limited partnership is not required to
6036 file a certificate of conversion pursuant to paragraph (a) if
6037 the converting limited partnership files articles of conversion
6038 or a certificate of conversion that substantially complies with
6039 the requirements of this section pursuant to s. 605.1041, s.
6040 607.1115, s. 608.439, or s. 620.8914(1)(b) and contains the
6041 signatures required by this chapter. In such a case, the other
6042 certificate of conversion may also be used for purposes of s.
6043 620.2105(4).
6044 Section 14. Effective January 1, 2015, paragraph (c) of
6045 subsection (1) of section 620.2104, Florida Statutes, is amended

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6046 to read:
6047 620.2104 Filings required for conversion; effective date.—
6048 (1) After a plan of conversion is approved:
6049 (c) A converting limited partnership is not required to
6050 file a certificate of conversion pursuant to paragraph (a) if
6051 the converting limited partnership files articles of conversion
6052 or a certificate of conversion that substantially complies with
6053 the requirements of this section pursuant to s. 605.1041, s.
6054 607.1115, ~~s. 608.439,~~ or s. 620.8914(1)(b) and contains the
6055 signatures required by this chapter. In such a case, the other
6056 certificate of conversion may also be used for purposes of s.
6057 620.2105(4).
6058 Section 15. Subsection (3) of section 620.2108, Florida
6059 Statutes, is amended to read:
6060 620.2108 Filings required for merger; effective date.—
6061 (3) Each constituent limited partnership shall deliver the
6062 certificate of merger for filing in the Department of State
6063 unless the constituent limited partnership is named as a party
6064 or constituent organization in articles of merger or a
6065 certificate of merger filed for the same merger in accordance
6066 with s. 605.1025, s. 607.1109(1), s. 608.4382(1), s. 617.1108,
6067 or s. 620.8918(1) and (2) and such articles of merger or
6068 certificate of merger substantially complies with the
6069 requirements of this section. In such a case, the other articles
6070 of merger or certificate of merger may also be used for purposes
6071 of s. 620.2109(3).
6072 Section 16. Effective January 1, 2015, subsection (3) of
6073 section 620.2108, Florida Statutes, is amended to read:
6074 620.2108 Filings required for merger; effective date.—

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6075 (3) Each constituent limited partnership shall deliver the
6076 certificate of merger for filing in the Department of State
6077 unless the constituent limited partnership is named as a party
6078 or constituent organization in articles of merger or a
6079 certificate of merger filed for the same merger in accordance
6080 with s. 605.1025, s. 607.1109(1), ~~s. 608.4382(1),~~ s. 617.1108,
6081 or s. 620.8918(1) and (2) and such articles of merger or
6082 certificate of merger substantially complies with the
6083 requirements of this section. In such a case, the other articles
6084 of merger or certificate of merger may also be used for purposes
6085 of s. 620.2109(3).
6086 Section 17. Subsection (1) of section 620.8914, Florida
6087 Statutes, is amended to read:
6088 620.8914 Filings required for conversion; effective date.—
6089 (1) After a plan of conversion is approved:
6090 (a) A converting partnership shall deliver to the
6091 Department of State for filing a registration statement in
6092 accordance with s. 620.8105, if such statement was not
6093 previously filed, and a certificate of conversion, in accordance
6094 with s. 620.8105, which must include:
6095 1. A statement that the partnership has been converted into
6096 another organization.
6097 2. The name and form of the organization and the
6098 jurisdiction of its governing law.
6099 3. The date the conversion is effective under the governing
6100 law of the converted organization.
6101 4. A statement that the conversion was approved as required
6102 by this act.
6103 5. A statement that the conversion was approved as required

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6104 by the governing law of the converted organization.
6105 6. If the converted organization is a foreign organization
6106 not authorized to transact business in this state, the street
6107 and mailing address of an office which the Department of State
6108 may use for the purposes of s. 620.8915(3).
6109 (b) In the case of a converting organization converting
6110 into a partnership to be governed by this act, the converting
6111 organization shall deliver to the Department of State for
6112 filing:
6113 1. A registration statement in accordance with s. 620.8105.
6114 2. A certificate of conversion, in accordance with s.
6115 620.8105, signed by a general partner of the partnership in
6116 accordance with s. 620.8105(6) and by the converting
6117 organization as required by applicable law, which certificate of
6118 conversion must include:
6119 a. A statement that the partnership was converted from
6120 another organization.
6121 b. The name and form of the converting organization and the
6122 jurisdiction of its governing law.
6123 c. A statement that the conversion was approved as required
6124 by this act.
6125 d. A statement that the conversion was approved in a manner
6126 that complied with the converting organization’s governing law.
6127 e. The effective time of the conversion, if other than the
6128 time of the filing of the certificate of conversion.
6129
6130 A converting domestic partnership is not required to file a
6131 certificate of conversion pursuant to paragraph (a) if the
6132 converting domestic partnership files articles of conversion or

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6133 a certificate of conversion that substantially complies with the
6134 requirements of this section pursuant to s. 605.1041, s.
6135 607.1115, s. 608.439, or s. 620.2104(1)(b) and contains the
6136 signatures required by this chapter. In such a case, the other
6137 certificate of conversion may also be used for purposes of s.
6138 620.8915(4).
6139 Section 18. Effective January 1, 2015, subsection (1) of
6140 section 620.8914, Florida Statutes, is amended to read:
6141 620.8914 Filings required for conversion; effective date.—
6142 (1) After a plan of conversion is approved:
6143 (a) A converting partnership shall deliver to the
6144 Department of State for filing a registration statement in
6145 accordance with s. 620.8105, if such statement was not
6146 previously filed, and a certificate of conversion, in accordance
6147 with s. 620.8105, which must include:
6148 1. A statement that the partnership has been converted into
6149 another organization.
6150 2. The name and form of the organization and the
6151 jurisdiction of its governing law.
6152 3. The date the conversion is effective under the governing
6153 law of the converted organization.
6154 4. A statement that the conversion was approved as required
6155 by this act.
6156 5. A statement that the conversion was approved as required
6157 by the governing law of the converted organization.
6158 6. If the converted organization is a foreign organization
6159 not authorized to transact business in this state, the street
6160 and mailing address of an office which the Department of State
6161 may use for the purposes of s. 620.8915(3).

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6162 (b) In the case of a converting organization converting
6163 into a partnership to be governed by this act, the converting
6164 organization shall deliver to the Department of State for
6165 filing:
6166 1. A registration statement in accordance with s. 620.8105.
6167 2. A certificate of conversion, in accordance with s.
6168 620.8105, signed by a general partner of the partnership in
6169 accordance with s. 620.8105(6) and by the converting
6170 organization as required by applicable law, which certificate of
6171 conversion must include:
6172 a. A statement that the partnership was converted from
6173 another organization.
6174 b. The name and form of the converting organization and the
6175 jurisdiction of its governing law.
6176 c. A statement that the conversion was approved as required
6177 by this act.
6178 d. A statement that the conversion was approved in a manner
6179 that complied with the converting organization's governing law.
6180 e. The effective time of the conversion, if other than the
6181 time of the filing of the certificate of conversion.
6182
6183 A converting domestic partnership is not required to file a
6184 certificate of conversion pursuant to paragraph (a) if the
6185 converting domestic partnership files articles of conversion or
6186 a certificate of conversion that substantially complies with the
6187 requirements of this section pursuant to s. 605.1041, s.
6188 607.1115, ~~s. 608.439,~~ or s. 620.2104(1)(b) and contains the
6189 signatures required by this chapter. In such a case, the other
6190 certificate of conversion may also be used for purposes of s.

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6191 620.8915(4).
6192 Section 19. Subsection (3) of section 620.8918, Florida
6193 Statutes, is amended to read:
6194 620.8918 Filings required for merger; effective date.—
6195 (3) Each domestic constituent partnership shall deliver the
6196 certificate of merger for filing with the Department of State,
6197 unless the domestic constituent partnership is named as a party
6198 or constituent organization in articles of merger or a
6199 certificate of merger filed for the same merger in accordance
6200 with s. 605.1025, s. 607.1109(1), s. 608.4382(1), s. 617.1108,
6201 or s. 620.2108(3). The articles of merger or certificate of
6202 merger must substantially comply with the requirements of this
6203 section. In such a case, the other articles of merger or
6204 certificate of merger may also be used for purposes of s.
6205 620.8919(3). Each domestic constituent partnership in the merger
6206 shall also file a registration statement in accordance with s.
6207 620.8105(1) if it does not have a currently effective
6208 registration statement filed with the Department of State.
6209 Section 20. Effective January 1, 2015, subsection (3) of
6210 section 620.8918, Florida Statutes, is amended to read:
6211 620.8918 Filings required for merger; effective date.—
6212 (3) Each domestic constituent partnership shall deliver the
6213 certificate of merger for filing with the Department of State,
6214 unless the domestic constituent partnership is named as a party
6215 or constituent organization in articles of merger or a
6216 certificate of merger filed for the same merger in accordance
6217 with s. 605.1025, s. 607.1109(1), ~~s. 608.4382(1),~~ s. 617.1108,
6218 or s. 620.2108(3). The articles of merger or certificate of
6219 merger must substantially comply with the requirements of this

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6220 section. In such a case, the other articles of merger or
6221 certificate of merger may also be used for purposes of s.
6222 620.8919(3). Each domestic constituent partnership in the merger
6223 shall also file a registration statement in accordance with s.
6224 620.8105(1) if it does not have a currently effective
6225 registration statement filed with the Department of State.
6226 Section 21. Section 621.051, Florida Statutes, is amended
6227 to read:
6228 621.051 Limited liability company organization.—A group of
6229 professional service corporations, professional limited
6230 liability companies, or individuals, in any combination, duly
6231 licensed or otherwise legally authorized to render the same
6232 professional services may organize and become members of a
6233 professional limited liability company for pecuniary profit
6234 under the provisions of chapter 605 or chapter 608 for the sole
6235 and specific purpose of rendering the same and specific
6236 professional service.
6237 Section 22. Effective January 1, 2015, section 621.051,
6238 Florida Statutes, is amended to read:
6239 621.051 Limited liability company organization.—A group of
6240 professional service corporations, professional limited
6241 liability companies, or individuals, in any combination, duly
6242 licensed or otherwise legally authorized to render the same
6243 professional services may organize and become members of a
6244 professional limited liability company for pecuniary profit
6245 under the provisions of chapter 605 ~~chapter 608~~ for the sole and
6246 specific purpose of rendering the same and specific professional
6247 service.
6248 Section 23. Section 621.07, Florida Statutes, is amended to

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6249 read:
6250 621.07 Liability of officers, agents, employees,
6251 shareholders, members, and corporation or limited liability
6252 company.—Nothing contained in this act shall be interpreted to
6253 abolish, repeal, modify, restrict, or limit the law now in
6254 effect in this state applicable to the professional relationship
6255 and liabilities between the person furnishing the professional
6256 services and the person receiving such professional service and
6257 to the standards for professional conduct; provided, however,
6258 that any officer, agent, member, manager, or employee of a
6259 corporation or limited liability company organized under this
6260 act shall be personally liable and accountable only for
6261 negligent or wrongful acts or misconduct committed by that
6262 person, or by any person under that person's direct supervision
6263 and control, while rendering professional service on behalf of
6264 the corporation or limited liability company to the person for
6265 whom such professional services were being rendered; and
6266 provided further that the personal liability of shareholders of
6267 a corporation, or members of a limited liability company,
6268 organized under this act, in their capacity as shareholders or
6269 members of such corporation or limited liability company, shall
6270 be no greater in any aspect than that of a shareholder-employee
6271 of a corporation organized under chapter 607 or a member-
6272 employee of a limited liability company organized under chapter
6273 605 or chapter 608. The corporation or limited liability company
6274 shall be liable up to the full value of its property for any
6275 negligent or wrongful acts or misconduct committed by any of its
6276 officers, agents, members, managers, or employees while they are
6277 engaged on behalf of the corporation or limited liability

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6278 company in the rendering of professional services.
6279 Section 24. Effective January 1, 2015, section 621.07,
6280 Florida Statutes, is amended to read:
6281 621.07 Liability of officers, agents, employees,
6282 shareholders, members, and corporation or limited liability
6283 company.—Nothing contained in this act shall be interpreted to
6284 abolish, repeal, modify, restrict, or limit the law now in
6285 effect in this state applicable to the professional relationship
6286 and liabilities between the person furnishing the professional
6287 services and the person receiving such professional service and
6288 to the standards for professional conduct; provided, however,
6289 that any officer, agent, member, manager, or employee of a
6290 corporation or limited liability company organized under this
6291 act shall be personally liable and accountable only for
6292 negligent or wrongful acts or misconduct committed by that
6293 person, or by any person under that person's direct supervision
6294 and control, while rendering professional service on behalf of
6295 the corporation or limited liability company to the person for
6296 whom such professional services were being rendered; and
6297 provided further that the personal liability of shareholders of
6298 a corporation, or members of a limited liability company,
6299 organized under this act, in their capacity as shareholders or
6300 members of such corporation or limited liability company, shall
6301 be no greater in any aspect than that of a shareholder-employee
6302 of a corporation organized under chapter 607 or a member-
6303 employee of a limited liability company organized under chapter
6304 605 ~~chapter 608~~. The corporation or limited liability company
6305 shall be liable up to the full value of its property for any
6306 negligent or wrongful acts or misconduct committed by any of its

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6307 officers, agents, members, managers, or employees while they are
6308 engaged on behalf of the corporation or limited liability
6309 company in the rendering of professional services.
6310 Section 25. Subsections (2) and (4) of section 621.12,
6311 Florida Statutes, are amended to read:
6312 621.12 Identification with individual shareholders or
6313 individual members.—
6314 (2) The name shall also contain:
6315 (a) The word "chartered"; or
6316 (b)1. In the case of a professional corporation, the words
6317 "professional association" or the abbreviation "P.A."; or
6318 2. In the case of a professional limited liability company~~,~~
6319 formed before January 1, 2014, the words "professional limited
6320 company" or "professional limited liability company," ~~or~~ the
6321 abbreviation "P.L.~~,~~" or "P.L.L.C." or the designation "PL" or
6322 "PLLC," in lieu of the words "limited company" or "limited
6323 liability company," or the abbreviation "L.C." or "L.L.C." or
6324 the designation "LC" or "LLC" as otherwise required under s.
6325 605.0112 or s. 608.406.
6326 3. In the case of a professional limited liability company
6327 formed on or after January 1, 2014, the words "professional
6328 limited liability company," the abbreviation "P.L.L.C." or the
6329 designation "PLLC," in lieu of the words "limited liability
6330 company," or the abbreviation "L.L.C." or the designation "LLC"
6331 as otherwise required under s.605.0112.
6332 (4) It shall be permissible, however, for the corporation
6333 or limited liability company to render professional services and
6334 to exercise its authorized powers under a name which is
6335 identical to its name except that the word "chartered," the

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6336 words "professional association," ~~or~~ "professional limited
6337 company," or "professional limited liability company," ~~or~~ the
6338 abbreviations "P.A.," ~~or~~ "P.L.," or "P.L.L.C.," or the
6339 designation "PL" or "PLLC" may be omitted, provided that the
6340 corporation or limited liability company has first registered
6341 the name to be so used in the manner required for the
6342 registration of fictitious names.
6343 Section 26. Section 621.13, Florida Statutes, is amended to
6344 read:
6345 621.13 Applicability of chapters 605, 607, and 608.—
6346 (1) Chapter 607 is applicable to a corporation organized
6347 pursuant to this act except to the extent that any of the
6348 provisions of this act are interpreted to be in conflict with
6349 the provisions of chapter 607. In such event, the provisions and
6350 sections of this act shall take precedence with respect to a
6351 corporation organized pursuant to the provisions of this act.
6352 (2)(a) Before January 1, 2014, and during any transition
6353 period thereafter, chapter 608 is applicable to a limited
6354 liability company organized pursuant to this act before January
6355 1, 2014, except to the extent that any of the provisions of this
6356 act are interpreted to be in conflict with the provisions of
6357 chapter 608. In such event, the provisions and sections of this
6358 act shall take precedence with respect to a limited liability
6359 company organized pursuant to the provisions of this act.
6360 (b) On and after January 1, 2014, chapter 605 is applicable
6361 to a limited liability company organized pursuant to this act on
6362 or after January 1, 2014, except to the extent that any of the
6363 provisions of this act are interpreted to be in conflict with
6364 the provisions of chapter 605. In such event, the provisions and

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6365 sections of this act shall take precedence with respect to a
6366 limited liability company organized pursuant to the provisions
6367 of this act.
6368 (c) After an election is made to be subject to the
6369 provisions of chapter 605, chapter 605 applies to a limited
6370 liability company organized pursuant to this act before January
6371 1, 2014, except to the extent that any of the provisions of this
6372 act are interpreted to be in conflict with the provisions of
6373 chapter 605. In such event, the provisions and sections of this
6374 act shall take precedence with respect to a limited liability
6375 company organized pursuant to the provisions of this act.
6376 (3) A professional corporation or limited liability company
6377 heretofore or hereafter organized under this act may change its
6378 business purpose from the rendering of professional service to
6379 provide for any other lawful purpose by amending its certificate
6380 of incorporation in the manner required for an original
6381 incorporation under chapter 607 or by amending its certificate
6382 of organization in the manner required for an original
6383 organization under chapter 608, or for a limited liability
6384 company subject to chapter 605 by amending its certificate of
6385 organization in the manner required for an original organization
6386 under chapter 605. However, such an amendment, when filed with
6387 and accepted by the Department of State, shall remove such
6388 corporation or limited liability company from the provisions of
6389 this chapter including, but not limited to, the right to
6390 practice a profession. A change of business purpose shall not
6391 have any effect on the continued existence of the corporation or
6392 limited liability company.
6393 Section 27. Effective January 1, 2015, section 621.13,

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6394 Florida Statutes, is amended to read:
6395 621.13 Applicability of chapters 605 and 607 ~~and 608~~.—
6396 (1) Chapter 607 is applicable to a corporation organized
6397 pursuant to this act except to the extent that any of the
6398 provisions of this act are interpreted to be in conflict with
6399 the provisions of chapter 607. In such event, the provisions and
6400 sections of this act shall take precedence with respect to a
6401 corporation organized pursuant to the provisions of this act.
6402 (2) Chapter 605 ~~Chapter 608~~ is applicable to a limited
6403 liability company organized pursuant to this act except to the
6404 extent that any of the provisions of this act are interpreted to
6405 be in conflict with the provisions of chapter 605 ~~chapter 608~~.
6406 In such event, the provisions and sections of this act shall
6407 take precedence with respect to a limited liability company
6408 organized pursuant to the provisions of this act.
6409 (3) A professional corporation or limited liability company
6410 heretofore or hereafter organized under this act may change its
6411 business purpose from the rendering of professional service to
6412 provide for any other lawful purpose by amending its certificate
6413 of incorporation in the manner required for an original
6414 incorporation under chapter 607 or for a limited liability
6415 company subject to chapter 605 by amending its certificate of
6416 organization in the manner required for an original organization
6417 under chapter 605 ~~chapter 608~~. However, such an amendment, when
6418 filed with and accepted by the Department of State, shall remove
6419 such corporation or limited liability company from the
6420 provisions of this chapter including, but not limited to, the
6421 right to practice a profession. A change of business purpose
6422 shall not have any effect on the continued existence of the

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6423 corporation or limited liability company.
6424 Section 28. Except as otherwise provided, this act shall
6425 take effect January 1, 2014.
6426
6427 ========== T I T L E A M E N D M E N T ==========
6428 And the title is amended as follows:
6429 Delete everything before the enacting clause
6430 and insert:
6431 A bill to be entitled
6432 An act relating to limited liability companies;
6433 providing a directive to the Division of Law Revision
6434 and Information; creating ch. 605, F.S.; providing a
6435 short title; providing definitions and general
6436 provisions relating to operating agreements, powers,
6437 property, rules of construction, names, and registered
6438 agents of limited liability companies; providing
6439 penalties for noncompliance with certain provisions;
6440 providing for the formation and filing of documents of
6441 a limited liability company with the Department of
6442 State; establishing the authority and liability of
6443 members and managers; providing for the relationship
6444 of members and management, voting, standards of
6445 conduct, records, and the right to obtain information;
6446 providing for transferable interests and the rights of
6447 transferees and creditors; providing for the
6448 dissociation of a member and its effects; providing
6449 for the dissolution and winding up of a limited
6450 liability company; providing for payment of attorney
6451 fees and costs in certain circumstances; establishing

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6452 provisions for merger, conversion, domestication,
6453 interest exchange, and appraisal rights; providing
6454 miscellaneous provisions for application and
6455 construction, electronic signatures, tax exemption on
6456 income, interrogatories and other powers of the
6457 department, and reservation of power to amend or
6458 appeal; providing for severability; providing for the
6459 application to a limited liability company formed
6460 under the Florida Limited Liability Company Act;
6461 creating s. 48.062, F.S.; providing for service of
6462 process on a limited liability company; providing for
6463 the applicability of the Florida Limited Liability
6464 Company Act; providing for the future repeal of ch.
6465 608, F.S., relating to the Florida Limited Liability
6466 Company Act; amending ss. 607.1109, 607.1113, 607.193,
6467 617.1108, 620.2104, 620.2108, 620.8914, 620.8918,
6468 621.051, and 621.07; providing cross-references to
6469 conform to changes made by the act; amending s.
6470 621.12, F.S.; revising provisions relating to the
6471 identification of certain professional corporations to
6472 conform to changes made by the act; amending s.
6473 621.13, F.S.; revising provisions relating to the
6474 applicability of certain chapters to the Professional
6475 Service Corporation and Limited Liability Company Act
6476 to conform to changes made by the act; providing
6477 effective dates.

By Senator Simmons

A bill to be entitled

An act relating to limited liability companies; designating the Florida Limited Liability Company Act as part I of chapter 608, F.S.; amending s. 608.401, F.S.; conforming a cross-reference; creating s. 608.706, F.S.; providing for construction; providing for applicability of and transition from the Florida Limited Liability Company Act to the Florida Revised Limited Liability Company Act, as created by this act; creating part II of chapter 608, F.S.; creating the "Florida Revised Limited Liability Company Act"; providing definitions and general provisions relating to operating agreements, powers, property, rules of construction, names, and registered agents of limited liability companies; providing penalties for noncompliance with certain provisions related to registered agents; providing for service of process; providing for the formation and filing of documents of a limited liability company with the Department of State; providing penalties for failing to file an annual report; providing for the sharing of distributions before dissolution, profits, and losses; providing limitations on distributions and liability for improper distributions; establishing the authority and liability of members and managers; providing for the relationship of members and management, voting, standards of conduct, records, and the right to obtain information; providing for the payment of costs and attorney fees in an action to obtain information;

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

providing for transferable interests and the rights of transferees and creditors; providing for the dissociation of a member and its effects; providing for the judicial or administrative dissolution and winding up of a limited liability company; providing for payment of attorney fees and costs in certain cases of judicial dissolution; providing for claims against a dissolved limited liability company and the payment of expenses and attorney fees; providing for a direct action by a member against another member, a manager, or the limited liability company; providing for a derivative action by a member; providing for payment of attorney fees and costs in a derivative action; providing requirements and procedures for a foreign limited liability corporation; providing for charitable and donative actions of a limited liability company; establishing provisions for merger, conversion, domestication, interest exchange, and appraisal rights; providing for court costs and attorney fees in actions concerning a demand for payment by a member; providing miscellaneous provisions concerning application and construction, electronic signatures, tax exemption on income, interrogatories and other powers of the department, reservation of power to amend or appeal, and application to a limited liability company formed under the Florida Limited Liability Company Act before a specified date; providing for the future repeal of part I of chapter 608, F.S., relating to the Florida

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

59 Limited Liability Company Act; providing for
60 severability; providing effective dates.
61
62 Be It Enacted by the Legislature of the State of Florida:
63
64 Section 1. Sections 608.401 through 608.705, Florida
65 Statutes, are designated as part I of chapter 608, Florida
66 Statutes, to be entitled the "Florida Limited Liability Company
67 Act."
68 Section 2. Section 608.401, Florida Statutes, is amended to
69 read:
70 608.401 Short title.—Sections 608.401-608.706 ~~608.401-~~
71 ~~608.705~~ may be cited as the "Florida Limited Liability Company
72 Act."
73 Section 3. Section 608.706, Florida Statutes, is created in
74 part I of chapter 608, Florida Statutes, to read:
75 608.706 References to chapter.—Any reference to "this
76 chapter" contained within this part shall be construed as a
77 reference to this part only.
78 Section 4. (1) Except as otherwise provided in subsection
79 (2) or subsection (3), the Florida Limited Liability Company
80 Act, part I of chapter 608, Florida Statutes, shall govern all
81 limited liability companies in existence before January 1, 2014.
82 (2) Before January 1, 2015, the Florida Revised Limited
83 Liability Company Act, part II of chapter 608, Florida Statutes,
84 as created by this act, governs only:
85 (a) A limited liability company formed on or after January
86 1, 2014; or
87 (b) A limited liability company formed before January 1,

88 2014, that elects, in the manner provided in its operating
89 agreement or by law for amending the operating agreement, to be
90 subject to the Florida Revised Limited Liability Company Act,
91 part II of chapter 608, Florida Statutes.
92 (3) Effective January 1, 2015, except as otherwise provided
93 in s. 608.981, Florida Statutes, the Florida Revised Limited
94 Liability Company Act, part II of chapter 608, Florida Statutes,
95 shall govern all limited liability companies.
96 Section 5. Part II of chapter 608, Florida Statutes,
97 consisting of sections 608.7801 through 608.982, Florida
98 Statutes, is created to read:
99 PART II
100 FLORIDA REVISED LIMITED LIABILITY COMPANY ACT
101 608.7801 Short title.—Sections 608.7801-608.982 may be
102 cited as the "Florida Revised Limited Liability Company Act."
103 608.7802 Definitions.—As used in this chapter, the term:
104 (1) "Acquired entity" means the entity, all of one or more
105 classes or series of interests in which are acquired in an
106 interest exchange.
107 (2) "Acquiring entity" means the entity that acquires all
108 of one or more classes or series of interests of the acquired
109 entity in an interest exchange.
110 (3) "Articles of conversion" means the articles of
111 conversion required by s. 608.949. The term includes the
112 articles of conversion as amended or restated.
113 (4) "Articles of domestication" means the articles of
114 domestication required by s. 608.959. The term includes the
115 articles of domestication as amended or restated.
116 (5) "Articles of interest exchange" means the articles of

117 interest exchange required by s. 608.939. The term includes the
118 articles of interest exchange as amended or restated.
119 (6) "Articles of merger" means the articles of merger
120 required by s. 608.929. The term includes the articles of merger
121 as amended or restated.
122 (7) "Articles of organization" means the articles of
123 organization required by s. 608.7821. The term includes the
124 articles of organization as amended or restated.
125 (8) "Authorized representative" means a person authorized
126 by a prospective member of a limited liability company to form
127 the company by executing and filing its articles of organization
128 with the department:
129 (a) In the case of an existing limited liability company,
130 the term "authorized representative" means, with respect to the
131 execution and filing of a record with the department or taking
132 any other action required or permitted by this chapter:
133 1. A manager of a manager-managed limited liability company
134 who is authorized to do so;
135 2. A member of a member-managed limited liability company
136 who is authorized to do so; or
137 3. An agent or officer of the limited liability company who
138 is granted the authority to do so by such a manager or such a
139 member, or pursuant to the operating agreement of the limited
140 liability company.
141 (b) In the case of a foreign limited liability company or
142 another entity, the term "authorized representative" means, with
143 respect to the execution and filing of a record with the
144 department or taking another action required or permitted by
145 this chapter, a person who is authorized to file the record or

146 take another action on behalf of the foreign limited liability
147 company or other entity.
148 (9) "Business day" means Monday through Friday, excluding a
149 day a national banking association is not open for normal
150 business transactions.
151 (10) "Contribution," except in the phrase "right of
152 contribution," means property or a benefit described in s.
153 608.7841 which is provided by a person to a limited liability
154 company to become a member or is provided in the person's
155 capacity as a member.
156 (11) "Conversion" means a transaction authorized by ss.
157 608.941-608.950.
158 (12) "Converted entity" means the converting entity as it
159 continues in existence after a conversion.
160 (13) "Converting entity" means the domestic entity that
161 approves a plan of conversion pursuant to s. 608.947 or the
162 foreign entity that approves a conversion pursuant to the
163 organic law of its jurisdiction of formation.
164 (14) "Day" means a calendar day.
165 (15) "Debtor in bankruptcy" means a person who is the
166 subject of:
167 (a) An order for relief under Title 11 of the United States
168 Code or a successor statute of general application; or
169 (b) A comparable order under federal, state, or foreign law
170 governing insolvency.
171 (16) "Department" means the Department of State.
172 (17) "Distribution" means a transfer of money or other
173 property from a limited liability company to a person on account
174 of a transferable interest or in the person's capacity as a

175 member.
176 (a) The term includes:
177 1. A redemption or other purchase by a limited liability
178 company of a transferable interest.
179 2. A transfer to a member in return for the member's
180 relinquishment of any right to participate as a member in the
181 management or conduct of the company's activities and affairs or
182 a relinquishment of a right to have access to records or other
183 information concerning the company's activities and affairs.
184 (b) The term does not include amounts constituting
185 reasonable compensation for present or past service or payments
186 made in the ordinary course of business under a bona fide
187 retirement plan or other bona fide benefits program.
188 (18) "Distributional interest" means the rights under an
189 unincorporated entity's organic law and organic rules to receive
190 distributions from the entity.
191 (19) "Domestic" with respect to an entity, means an entity
192 whose jurisdiction of formation is this state.
193 (20) "Domesticated limited liability company" means the
194 domesticating entity as it continues in existence after a
195 domestication.
196 (21) "Domesticating entity" means a non-United States
197 entity that approves a domestication pursuant to the law of its
198 jurisdiction of formation.
199 (22) "Domestication" means a transaction authorized by ss.
200 608.955-608.960.
201 (23) "Entity" means:
202 (a) A business corporation;
203 (b) A nonprofit corporation;

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204 (c) A general partnership, including a limited liability
205 partnership;
206 (d) A limited partnership, including a limited liability
207 limited partnership;
208 (e) A limited liability company;
209 (f) A real estate investment trust; or
210 (g) Another domestic or foreign entity that is organized
211 under an organic law, but does not include:
212 1. An individual;
213 2. A trust with a predominantly donative purpose or a
214 charitable trust;
215 3. An association or relationship that is not a partnership
216 solely by reason of s. 620.8202(3) or a similar provision of the
217 law of another jurisdiction;
218 4. A decedent's estate; or
219 5. A government or a governmental subdivision, agency, or
220 instrumentality.
221 (24) "Filing entity" means an entity whose formation
222 requires the filing of a public organic record.
223 (25) "Foreign," with respect to an entity, means an entity
224 whose jurisdiction of formation is a jurisdiction other than
225 this state.
226 (26) "Foreign limited liability company" means an
227 unincorporated entity that was formed in a jurisdiction other
228 than this state and is denominated by that law as a limited
229 liability company.
230 (27) "Governance interest" means a right under the organic
231 law or organic rules of an unincorporated entity, other than as
232 a governor, agent, assignee, or proxy, to:

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233 (a) Receive or demand access to information concerning an
234 entity, or its books and records;
235 (b) Vote for or consent to the election of the governors of
236 the entity; or
237 (c) Receive notice of, vote on, or consent to, an issue
238 involving the internal affairs of the entity.
239 (28) "Governor" means:
240 (a) A director of a business corporation;
241 (b) A director or trustee of a nonprofit corporation;
242 (c) A general partner of a general partnership;
243 (d) A general partner of a limited partnership;
244 (e) A manager of a manager-managed limited liability
245 company;
246 (f) A member of a member-managed limited liability company;
247 (g) A director or a trustee of a real estate investment
248 trust; or
249 (h) Another person under whose authority the powers of an
250 entity are exercised and under whose direction the activities
251 and affairs of the entity are managed pursuant to the organic
252 law and organic rules of the entity.
253 (29) "Interest" means:
254 (a) A share in a business corporation;
255 (b) A membership in a nonprofit corporation;
256 (c) A partnership interest in a general partnership;
257 (d) A partnership interest in a limited partnership;
258 (e) A membership interest in a limited liability company;
259 (f) A share or beneficial interest in a real estate
260 investment trust;
261 (g) A member's interest in a limited cooperative

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262 association;
263 (h) A beneficial interest in a statutory trust, business
264 trust, or common-law business trust; or
265 (i) A governance interest or distributional interest in
266 another entity.
267 (30) "Interest exchange" means a transaction authorized by
268 ss. 608.935-608.940.
269 (31) "Interestholder" means:
270 (a) A shareholder of a business corporation;
271 (b) A member of a nonprofit corporation;
272 (c) A general partner of a general partnership;
273 (d) A general partner of a limited partnership;
274 (e) A limited partner of a limited partnership;
275 (f) A member of a limited liability company;
276 (g) A shareholder or beneficial owner of a real estate
277 investment trust;
278 (h) A beneficiary or beneficial owner of a statutory trust,
279 business trust, or common-law business trust; or
280 (i) Another direct holder of an interest.
281 (32) "Interestholder liability" means:
282 (a) Personal responsibility for a liability of an entity
283 which is imposed on a person:
284 1. Solely by reason of the status of the person as an
285 interestholder; or
286 2. By the organic rules of the entity which make one or
287 more specified interestholders or categories of interestholders
288 liable in their capacity as interestholders for all or specified
289 liabilities of the entity.
290 (b) An obligation of an interestholder under the organic

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291 rules of an entity to contribute to the entity.
292 (33) "Jurisdiction," when used to refer to a political
293 entity, means the United States, a state, a foreign country, or
294 a political subdivision of a foreign country.
295 (34) "Jurisdiction of formation" means, with respect to an
296 entity:
297 (a) The jurisdiction under whose organic law the entity is
298 formed, incorporated, created or otherwise came into being;
299 provided, however, for these purposes, if an entity exists under
300 the law of a jurisdiction different from the jurisdiction under
301 which the entity originally was formed, incorporated, created,
302 or otherwise came into being, then the jurisdiction under which
303 the entity then exists shall be treated as the jurisdiction of
304 formation; or
305 (b) In the case of a limited liability partnership or
306 foreign limited liability partnership, the jurisdiction in which
307 the partnership's statement of qualification or equivalent
308 document is filed.
309 (35) "Legal representative" means, with regard to a natural
310 person, the personal representative, executor, guardian,
311 conservator or other person who is empowered by applicable law
312 with the authority to act on behalf of the natural person, and,
313 with regard to a person other than a natural person, a person
314 who is empowered by applicable law with the authority to act on
315 behalf of the person.
316 (36) "Limited liability company" or "company," except in
317 the phrase "foreign limited liability company," means an entity
318 formed or existing under this chapter, or an entity that becomes
319 subject to this chapter pursuant to ss. 608.961-608.972.

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320 (37) "Majority-in-interest" means those members holding
321 more than 50 percent of the then current percentage or other
322 interest in the profits or interests in the limited liability
323 company who have the right to vote; however for purposes of ss.
324 608.961-608.972, "majority-in-interest" means:
325 (a) In the case of a limited liability company with only
326 one class or series of members, the holders of more than 50
327 percent of the then current percentage or other interest in the
328 profits or interests in the company who have the right to
329 approve a merger, interest exchange, or conversion, under the
330 organic law or the organic rules of the company; and
331 (b) In the case of a limited liability company having more
332 than one class or series of members, the holders in each class
333 or series of more than 50 percent of the then current percentage
334 or other interest in the profits or interests in that class or
335 series who have the right to approve a merger, interest
336 exchange, or conversion under the organic law or the organic
337 rules of the company, unless the company's organic rules provide
338 for the approval of the transaction in a different manner.
339 (38) "Manager" means a person who, under the operating
340 agreement of a manager-managed limited liability company, is
341 responsible, alone or in concert with others, for performing the
342 management functions stated in s. 608.7846(3).
343 (39) "Manager-managed limited liability company" means a
344 limited liability company that is manager-managed by virtue of
345 the operation of s. 608.7846(1).
346 (40) "Member" means a person who:
347 (a) Has become a member of a limited liability company
348 under s. 608.784 or was a member in a company when the company

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349 become subject to this chapter; and
350 (b) Has not dissociated under s. 608.7862.
351 (41) "Member-managed limited liability company" means a
352 limited liability company that is not a manager-managed limited
353 liability company.
354 (42) "Merger" means a transaction authorized by ss.
355 608.925-608.930.
356 (43) "Merging entity" means an entity that is a party to a
357 merger and exists immediately before the merger becomes
358 effective.
359 (44) "Non-United States entity" means a foreign entity
360 other than an entity with a jurisdiction of formation that is
361 not a state.
362 (45) "Operating agreement" means an agreement, whether
363 referred to as an operating agreement that may be oral, implied,
364 in a record, or in any combination thereof, of the members of a
365 limited liability company, including a sole member, concerning
366 the matters described in s. 608.7805. The term includes the
367 agreement as amended or restated.
368 (46) "Organic law" means the law of the jurisdiction in
369 which an entity was formed.
370 (47) "Organic rules" means the public organic record and
371 private organic rules of an entity.
372 (48) "Person" means an individual, business corporation,
373 nonprofit corporation, partnership, limited partnership, limited
374 liability company, limited cooperative association,
375 unincorporated nonprofit association, statutory trust, business
376 trust, common-law business trust, estate, trust, association,
377 joint venture, public corporation, government or governmental

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378 subdivision, agency, or instrumentality, or another legal or
379 commercial entity.
380 (49) "Plan" means a plan of merger, plan of interest
381 exchange, plan of conversion, or plan of domestication, as
382 appropriate in the particular context.
383 (50) "Plan of conversion" means a plan developed under s.
384 608.946 and includes the plan of conversion as amended or
385 restated.
386 (51) "Plan of domestication" means a plan under s. 608.956
387 and includes the plan of domestication as amended or restated.
388 (52) "Plan of interest exchange" means a plan under s.
389 608.936 and includes the plan of interest exchange as amended or
390 restated.
391 (53) "Plan of merger" means a plan under s. 608.926 and
392 includes the plan of merger as amended or restated.
393 (54) "Principal office" means the principal executive
394 office of a limited liability company or foreign limited
395 liability company, regardless of whether the office is located
396 in this state.
397 (55) "Private organic rules" means the rules, whether or
398 not in a record, which govern the internal affairs of an entity,
399 are binding on all its interestholders, and are not part of its
400 public organic record, if a record exists. The term includes:
401 (a) The bylaws of a business corporation.
402 (b) The bylaws of a nonprofit corporation.
403 (c) The partnership agreement of a general partnership.
404 (d) The partnership agreement of a limited partnership.
405 (e) The operating agreement of a limited liability company.
406 (f) The bylaws, trust instrument, or similar rules of a

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407 real estate investment trust.
408 (g) The trust instrument of a statutory trust or similar
409 rules of a business trust or common-law business trust.
410 (56) "Property" means all property, whether real, personal,
411 mixed, tangible or intangible, or a right or interest therein.
412 (57) "Protected agreement" means:
413 (a) A record evidencing indebtedness and any related
414 agreement in effect on January 1, 2014;
415 (b) An agreement that is binding on an entity on January 1,
416 2014;
417 (c) The organic rules of an entity in effect on January 1,
418 2014; or
419 (d) An agreement that is binding on any of the governors or
420 interestholders of an entity on January 1, 2014.
421 (58) "Public organic record" means a record, the filing of
422 which by a governmental body, is required to form an entity and
423 an amendment to or restatement of that record. The term
424 includes:
425 (a) The articles of incorporation of a business
426 corporation;
427 (b) The articles of incorporation of a nonprofit
428 corporation;
429 (c) The certificate of limited partnership of a limited
430 partnership;
431 (d) The articles of organization of a limited liability
432 company;
433 (e) The articles of incorporation of a general cooperative
434 association or a limited cooperative association;
435 (f) The certificate of trust of a statutory trust or

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436 similar record of a business trust; or
437 (g) The articles of incorporation of a real estate
438 investment trust.
439 (59) "Record," when used as a noun, means information that
440 is inscribed on a tangible medium or that is stored in an
441 electronic or other medium and is retrievable in perceivable
442 form.
443 (60) "Registered foreign entity" means a foreign entity
444 that is authorized to transact business in this state pursuant
445 to a record filed with the department.
446 (61) "Registered foreign limited liability company" means a
447 foreign limited liability company that has a certificate of
448 authority to transact business in this state pursuant to a
449 record filed with the department.
450 (62) "Sign" means, with present intent to authenticate or
451 adopt a record:
452 (a) To execute or adopt a tangible symbol; or
453 (b) To attach to or logically associate with the record an
454 electronic symbol, sound, or process and includes a manual,
455 facsimile, conformed, or electronic signature. "Signed" and
456 "signature" have the corresponding meanings.
457 (63) "State" means a state of the United States, the
458 District of Columbia, Puerto Rico, the United States Virgin
459 Islands, or a territory or insular possession subject to the
460 jurisdiction of the United States.
461 (64) "Surviving entity" means the entity that continues in
462 existence after, or is created by, a merger.
463 (65) "Transfer" includes:
464 (a) An assignment.

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465 (b) A conveyance.
466 (c) A sale.
467 (d) A lease.
468 (e) An encumbrance, including a mortgage or security
469 interest.
470 (f) A gift.
471 (g) A transfer by operation of law.
472 (66) "Transferable interest" means the right, as initially
473 owned by a person in the person's capacity as a member, to
474 receive distributions from a limited liability company in
475 accordance with the operating agreement, whether the person
476 remains a member or continues to own a part of the right. The
477 term applies to any fraction of the interest, by whomever owned.
478 (67) "Transferee" means a person to whom all or part of a
479 transferable interest is transferred, whether or not the
480 transferor is a member. The term includes a person who owns a
481 transferable interest under s. 608.7863(1)(c).
482 (68) "Type of entity" means a generic form of entity:
483 (a) Recognized at common law; or
484 (b) Formed under an organic law, whether or not some of the
485 entities formed under that organic law are subject to provisions
486 of that law that create different categories of the form of
487 entity.
488 (69) "Writing" means printing, typewriting, electronic
489 communication, or other intentional communication that is
490 reducible to a tangible form. "Written" has the corresponding
491 meaning.
492 608.7803 Knowledge; notice.—
493 (1) A person knows a fact if the person:

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494 (a) Has actual knowledge of the fact; or
495 (b) Is deemed to know the fact under paragraph (4)(a) or
496 paragraph (4)(b), or a law other than this chapter.
497 (2) A person has notice of a fact when the person:
498 (a) Has reason to know the fact from all of the facts known
499 to the person at the time in question; or
500 (b) Is deemed to have notice of the fact under paragraph
501 (4)(c).
502 (3) Subject to s. 608.78291(8), a person notifies another
503 person of a fact by taking steps reasonably required to inform
504 the other person in the ordinary course of events, regardless of
505 whether those steps cause the other person to know the fact.
506 (4) A person who is not a member is deemed:
507 (a) To know of a limitation on authority to transfer real
508 property as provided in s. 608.7832(7).
509 (b) To know of the authority or limitation on the authority
510 of a person holding a position or having a specified status in a
511 company, or to know of the authority or limitation on the
512 authority of a specific person, if the authority or limitation
513 on the authority is described in the articles of organization in
514 accordance with s. 608.7821(3)(d). However, if that description
515 is added or changed by an amendment or an amendment and
516 restatement of the articles of organization, then notice of the
517 addition or change does not become effective until 90 days after
518 the effective date of the amendment or amendment and
519 restatement.
520 (c) To have notice of a limited liability company's:
521 1. Declaration in its articles of organization that it is
522 manager-managed in accordance with s. 608.7821(3)(a); if such a

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523 declaration is added or changed by an amendment or restatement
524 of the articles of organization, notice of the addition or
525 change does not become effective until 90 days after the
526 effective date of the amendment or restatement.
527 2. Dissolution within 90 days after the articles of
528 dissolution filed under s. 608.7917 become effective.
529 3. Termination within 90 days after a statement of
530 termination filed under s. 608.7919(7) becomes effective.
531 4. Participation in a merger, interest exchange,
532 conversion, or domestication within 90 days after the articles
533 of merger, articles of interest exchange, articles of
534 conversion, or articles of domestication under ss. 608.961-
535 608.972, as applicable, become effective.
536 608.7804 Governing law.—The law of this state governs:
537 (1) The internal affairs of a limited liability company.
538 (2) The liability of a member as member, and a manager as
539 manager, for the debts, obligations, or other liabilities of a
540 limited liability company.
541 608.7805 Operating agreement; scope, function, and
542 limitations.—
543 (1) Except as otherwise provided in subsections (3) and
544 (4), the operating agreement governs:
545 (a) Relations among the members as members and between the
546 members and the limited liability company.
547 (b) The rights and duties under this chapter of a person in
548 the capacity of manager.
549 (c) The activities and affairs of the company and the
550 conduct of those activities and affairs.
551 (d) The means and conditions for amending the operating

552 agreement.
553 (2) To the extent the operating agreement does not
554 otherwise provide for a matter described in subsection (1), this
555 chapter governs the matter.
556 (3) An operating agreement may not:
557 (a) Vary a limited liability company's capacity under s.
558 608.7809 to sue and be sued in its own name.
559 (b) Vary the law applicable under s. 608.7804.
560 (c) Vary the requirement, procedure, or other provision of
561 this chapter pertaining to:
562 1. Registered agents; or
563 2. The department, including provisions pertaining to
564 records authorized or required to be delivered to the department
565 for filing under this chapter.
566 (d) Vary the provisions of s. 608.7804.
567 (e) Eliminate the duty of loyalty or the duty of care under
568 s. 608.7851, except as otherwise provided in subsection (4).
569 (f) Eliminate the obligation of good faith and fair dealing
570 under s. 608.7851, but the operating agreement may prescribe the
571 standards by which the performance of the obligation is to be
572 measured, if the standards are not manifestly unreasonable.
573 (g) Relieve or exonerate a person from liability for
574 conduct involving bad faith, willful or intentional misconduct,
575 or a knowing violation of law.
576 (h) Unreasonably restrict the duties and rights stated in
577 s. 608.7853, but the operating agreement may impose reasonable
578 restrictions on the availability and use of information obtained
579 under that section and may define appropriate remedies,
580 including liquidating damages, for a breach of a reasonable

581 restriction on use.
582 (i) Vary the power of a person to dissociate under s.
583 608.7861 except to require that the notice under s. 608.7862(1)
584 be in a record.
585 (j) Vary the grounds for dissolution specified in s.
586 608.7912(2).
587 (k) Vary the requirement to wind up the company's business,
588 activities, and affairs as specified in s. 608.7919(1), (2)(a),
589 and (5).
590 (l) Unreasonably restrict the right of a member to maintain
591 an action under ss. 608.7931-608.7936.
592 (m) Vary the provisions of s. 608.7934, but the operating
593 agreement may provide that the company may not appoint a special
594 litigation committee. However, the operating agreement may not
595 prevent a court from appointing a special litigation committee.
596 (n) Vary the required contents of plan of merger under s.
597 608.926, a plan of interest exchange under s. 608.936, a plan of
598 conversion under s. 608.946, or a plan of domestication under s.
599 608.956.
600 (o) Except as otherwise provided in ss. 608.7806 and
601 608.7807(2), restrict the rights under this chapter of a person
602 other than a member or manager.
603 (p) Provide for indemnification for a member or manager
604 under s. 608.7850 for the following:
605 1. Conduct involving bad faith, willful or intentional
606 misconduct, or a knowing violation of law;
607 2. A transaction from which the member or manager derived
608 an improper personal benefit;
609 3. A circumstance under which the liability provisions of

610 s. 608.7845 are applicable; or
611 4. A breach of duties or obligations under s. 608.7851,
612 taking into account a variation of such duties and obligations
613 provided for in the operating agreement to the extent allowed by
614 subsection (4).
615 (4) Subject to subsection (3)(g), without limiting other
616 terms that may be included in an operating agreement, the
617 following rules apply:
618 (a) The operating agreement may:
619 1. Specify the method by which a specific act or
620 transaction that would otherwise violate the duty of loyalty may
621 be authorized or ratified by one or more disinterested and
622 independent persons after full disclosure of all material facts.
623 2. Alter the prohibition stated in s. 608.7844(1)(b) so
624 that the prohibition requires solely that the company's total
625 assets not be less than the sum of its total liabilities.
626 (b) To the extent the operating agreement of a member-
627 managed limited liability expressly relieves a member of
628 responsibility that the member would otherwise have under this
629 chapter and imposes the responsibility on one or more other
630 members, the operating agreement may, to the benefit of the
631 member that the operating agreement relieves of the
632 responsibility, also eliminate or limit a duty or obligation
633 that would have pertained to the responsibility.
634 (c) If not manifestly unreasonable, the operating agreement
635 may:
636 1. Alter or eliminate the aspects of the duty of loyalty
637 under s. 608.7851(2).
638 2. Identify specific types or categories of activities that

639 do not violate the duty of loyalty.
640 3. Alter the duty of care, but may not authorize willful or
641 intentional misconduct or a knowing violation of law.
642 (5) The court shall decide as a matter of law whether a
643 term of an operating agreement is manifestly unreasonable under
644 paragraph (3)(f) or paragraph(4)(c). The court:
645 (a) Shall make its determination as of the time the
646 challenged term became part of the operating agreement and shall
647 consider only circumstances existing at that time.
648 (b) May invalidate the term only if, in light of the
649 purposes, activities, and affairs of the limited liability
650 company, it is readily apparent that:
651 1. The objective of the term is unreasonable; or
652 2. The term is an unreasonable means to achieve the
653 provision's objective.
654 (6) An operating agreement may provide for specific
655 penalties or specified consequences, including those described
656 in s. 608.7842(5), in the event a member or transferee fails to
657 comply with the terms and conditions of the operating agreement,
658 or when other events specified in the operating agreement occur.
659 608.7806 Operating agreement; effect on limited liability
660 company and person becoming member; preformation agreement;
661 other matters involving operating agreement.—
662 (1) A limited liability company is bound by and may enforce
663 the operating agreement, regardless of whether the company has
664 itself agreed to the operating agreement.
665 (2) A person who becomes a member of a limited liability
666 company is deemed to assent to, is bound by, and may enforce the
667 operating agreement, regardless of whether the member executes

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668 the operating agreement.
669 (3) Two or more persons intending to become the initial
670 members of a limited liability company may make an agreement
671 providing that, upon the formation of the company, the agreement
672 will become the operating agreement. One person intending to
673 become the initial member of a limited liability company may
674 agree to terms that will become the operating agreement upon
675 formation of the company.
676 (4) A manager of a limited liability company or a
677 transferee is bound by the operating agreement regardless of
678 whether the manager or transferee has agreed to the operating
679 agreement.
680 (5) An operating agreement of a limited liability company
681 that has only one member is not unenforceable simply because
682 there is only one person who is a party to the operating
683 agreement.
684 (6) Except as provided in s. 608.7805(1), an operating
685 agreement is not subject to a statute of frauds.
686 (7) An operating agreement may provide rights to a person,
687 including a person who is not a party to the operating
688 agreement, to the extent provided in the operating agreement.
689 (8) A written operating agreement or other record:
690 (a) May provide that a person be admitted as a member of a
691 limited liability company or become a transferee of a limited
692 liability company interest or other rights or powers of a member
693 to the extent assigned:
694 1. If the person or a representative authorized by that
695 person orally, in writing, or by other action such as payment
696 for a limited liability company interest, executes the operating

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697 agreement or another record evidencing the intent of the person
698 to become a member or transferee; or
699 2. Without the execution of the operating agreement, if the
700 person or a representative authorized by the person orally, in
701 writing, or by other action such as payment for a limited
702 liability company interest complies with the conditions for
703 becoming a member or transferee as provided in the operating
704 agreement or another record.
705 (b) Shall not be unenforceable by reason of its not being
706 signed by a person being admitted as a member or becoming a
707 transferee as provided in subparagraph (a), or by reason of its
708 being signed by a representative as provided in this chapter.
709 608.7807 Operating agreement; effect on third parties and
710 relationship to records effective on behalf of limited liability
711 company.—
712 (1) An operating agreement may specify that its amendment
713 requires the approval of a person who is not a party to the
714 agreement or upon the satisfaction of a condition. An amendment
715 is ineffective if its adoption does not include the required
716 approval or satisfy the specified condition.
717 (2) The obligations of a limited liability company and its
718 members to a person in the person's capacity as a transferee or
719 a person dissociated as a member are governed by the operating
720 agreement. An amendment to the operating agreement made after a
721 person becomes a transferee or is dissociated as a member:
722 (a) Is effective with regard to a debt, obligation, or
723 other liability of the limited liability company or its members
724 to the person in the person's capacity as a transferee or person
725 dissociated as a member.

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726 (b) Is not effective to the extent the amendment imposes a
727 new debt, obligation, or other liability on the transferee or
728 person dissociated as a member.
729 (3) If a record delivered to the department for filing
730 becomes effective under this chapter and contains a provision
731 that would be ineffective under s. 608.7805(3) or (4)(c), if
732 contained in the operating agreement, the provision is
733 ineffective in the record.
734 (4) Subject to subsection (3), if a record delivered to the
735 department for filing that has become effective under this
736 chapter but conflicts with a provision of the operating
737 agreement:
738 (a) The operating agreement prevails as to members,
739 dissociated members, transferees, and managers.
740 (b) The record prevails as to other persons to the extent
741 they reasonably rely on the record.
742 608.7808 Nature, purpose, and duration of limited liability
743 company.—
744 (1) A limited liability company is an entity distinct from
745 its members.
746 (2) A limited liability company may have any lawful
747 purpose, regardless of whether the company is for profit.
748 (3) A limited liability company has indefinite duration.
749 608.7809 Powers.—A limited liability company has the
750 powers, rights, and privileges granted by this chapter, another
751 law, or by its operating agreement to do all things necessary or
752 convenient to carry out its activities and affairs, including
753 the power to:
754 (1) Sue and be sued, and defend, in its name.

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755 (2) Purchase, receive, lease, or otherwise acquire, own,
756 hold, improve, use, and otherwise deal with real or personal
757 property, or any legal or equitable interest in property,
758 wherever located.
759 (3) Sell, convey, mortgage, grant a security interest in,
760 lease, exchange, and otherwise encumber or dispose of all or a
761 part of its property.
762 (4) Purchase, receive, subscribe for, or otherwise acquire,
763 own, hold, vote, use, sell, mortgage, lend, grant a security
764 interest in, or otherwise dispose of and deal in and with,
765 shares or other interests in or obligations of another entity.
766 (5) Make contracts or guarantees, or incur liabilities;
767 borrow money; issue notes, bonds, or other obligations, which
768 may be convertible into or include the option to purchase other
769 securities of the limited liability company; or make contracts
770 of guaranty and suretyship that are necessary or convenient to
771 the conduct, promotion, or attainment of the purposes activities
772 and affairs of the limited liability company.
773 (6) Lend money, invest or reinvest its funds, and receive
774 and hold real or personal property as security for repayment.
775 (7) Conduct its business, locate offices, and exercise the
776 powers granted by this chapter within or without this state.
777 (8) Select managers and appoint officers, directors,
778 employees, and agents of the limited liability company, define
779 their duties, fix their compensation, and lend them money and
780 credit.
781 (9) Make donations for the public welfare or for
782 charitable, scientific, or educational purposes.
783 (10) Pay pensions and establish pension plans, pension

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784 trusts, profit-sharing plans, bonus plans, option plans, and
785 benefit or incentive plans for any or all of its current or
786 former managers, members, officers, agents, and employees.
787 (11) Be a promoter, incorporator, shareholder, partner,
788 member, associate, or manager of a corporation, partnership,
789 joint venture, trust, or other entity.
790 (12) Make payments or donations or do another act not
791 inconsistent with law that furthers the business of the limited
792 liability company.
793 (13) Enter into interest rate, basis, currency, hedge or
794 other swap agreements or cap, floor, put, call, option, exchange
795 or collar agreements, derivative agreements, or similar
796 agreement.
797 (14) Grant, hold or exercise a power of attorney, including
798 an irrevocable power of attorney.
799 608.7810 Limited liability company property.—
800 (1) All property originally contributed to the limited
801 liability company or subsequently acquired by a limited
802 liability company by purchase or other method is limited
803 liability company property.
804 (2) Property acquired with limited liability company funds
805 is limited liability company property.
806 (3) Instruments and documents providing for the
807 acquisition, mortgage, or disposition of property of the limited
808 liability company are valid and binding upon the limited
809 liability company if they are executed in accordance with this
810 chapter.
811 (4) A member of a limited liability company has no interest
812 in a specific limited liability company property.

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813 608.7811 Rules of construction and supplemental principles
814 of law.—
815 (1) It is the intent of this chapter to give the maximum
816 effect to the principle of freedom of contract and to the
817 enforceability of operating agreements, including the purposes
818 of ss. 608.7805-608.7807.
819 (2) Unless displaced by particular provisions of this
820 chapter, the principles of law and equity supplement this
821 chapter.
822 608.7812 Name.—
823 (1) The name of a limited liability company:
824 (a) Must contain the words "limited liability company" or
825 the abbreviation "L.L.C." or "LLC".
826 (b) Must be distinguishable in the records of the
827 department from the names of all other entities or filings,
828 except fictitious name registrations pursuant to s. 865.09,
829 organized, registered, or reserved under the laws of this state,
830 which names are on file with the department.
831 (c) May not contain language stating or implying that the
832 limited liability company is organized for a purpose other than
833 a purpose permitted in this chapter and its articles of
834 organization.
835 (d) May not contain language stating or implying that the
836 limited liability company is connected with a state or federal
837 government agency or a corporation or other entity chartered
838 under the laws of the United States.
839 (2) Subject to s. 608.905, this section applies to a
840 foreign limited liability company transacting business in this
841 state which has a certificate of authority to transact business

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842 in this state or which has applied for a certificate of
843 authority.
844 (3) In the case of a limited liability company in existence
845 before July 1, 2007, and registered with the department, the
846 requirement in this section that the name of a limited liability
847 company be distinguishable from the names of other entities and
848 filings shall only apply when the limited liability company
849 files documents on or after July 1, 2007, which would otherwise
850 have affected its name.
851 (4) A limited liability company in existence before January
852 1, 2014, which was registered with the department and is using
853 an abbreviation or designation in its name permitted under
854 previous law, is permitted to continue using the abbreviation or
855 designation in its name until it dissolves or amends its name in
856 the records of the department.
857 (5) The name of the limited liability company must be filed
858 with the department for public notice only and the act of filing
859 alone does not create any presumption of ownership beyond that
860 which is created under the common law.
861 608.7813 Registered agent.—
862 (1) Each limited liability company and each foreign limited
863 liability company that has a certificate of authority under s.
864 608.902 shall designate and continuously maintain in this state:
865 (a) A registered office, which may be the same as its place
866 of business in this state.
867 (b) A registered agent, who may be either:
868 1. An individual who resides in this state and whose
869 business address is identical to the address of the registered
870 office; or

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871 2. A foreign or domestic entity authorized to transact
872 business in this state, which has a business office address that
873 is identical to the registered office.
874 (2) Each initial registered agent, and each successor
875 registered agent that is appointed, shall file a statement in
876 writing with the department, in the form and manner prescribed
877 by the department, accepting the appointment as registered agent
878 while simultaneously being designated as the registered agent.
879 The statement of acceptance shall provide that the registered
880 agent is familiar with, and accepts, the obligations of that
881 position.
882 (3) The only duties of a registered agent are:
883 (a) To forward to the limited liability company or
884 registered foreign limited liability company, at the address
885 most recently supplied to the agent by the company, a process,
886 notice, or demand pertaining to the company or foreign limited
887 liability company that is served on or received by the agent.
888 (b) If the registered agent resigns, to provide the notice
889 required by s. 608.7815 to the company or foreign limited
890 liability company at the address most recently supplied to the
891 agent by the company or foreign limited liability company.
892 (4) The department shall maintain an accurate record of the
893 registered agents and registered office for the service of
894 process and shall promptly furnish information disclosed thereby
895 promptly upon request and payment of the required fee.
896 (5) A limited liability company and each foreign limited
897 liability company that has a certificate of authority under s.
898 608.902 may not prosecute, maintain, or defend an action in a
899 court until the limited liability company complies with this

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900 section and pays to the department a penalty of $5 for each day
901 it has failed to comply or $500, whichever is less, and pays
902 another amount required under this chapter.
903 608.7814 Change of registered agent or registered office.—
904 (1) In order to change its registered agent or registered
905 office address, a limited liability company or a foreign limited
906 liability company may deliver to the department, for filing, a
907 statement of change containing:
908 (a) The name of the limited liability company or foreign
909 limited liability company.
910 (b) The name of its current registered agent.
911 (c) If the registered agent is to be changed, the name of
912 the new registered agent.
913 (d) The street address of its current registered office for
914 its registered agent.
915 (e) If the street address of the registered office is to be
916 changed, the new street address of the registered office in this
917 state.
918 (2) If the registered agent is changed, the written
919 acceptance of the successor registered agent described in s.
920 608.7813(2) must also be included in or attached to the
921 statement of change.
922 (3) A statement of change is effective when filed by the
923 department or when permitted by s. 608.7827.
924 (4) The changes described in this section may also be made
925 on the limited liability company's or foreign limited liability
926 company's annual report or on an application for reinstatement
927 filed with the department under s. 608.7925(1) or in an
928 amendment to a foreign limited liability company's certificate

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929 of authority in accordance with s. 608.906.
930 608.7815 Resignation of registered agent.—
931 (1) A registered agent may resign as agent for a limited
932 liability company or foreign limited liability company by
933 delivering for filing to the department a signed statement of
934 resignation containing the name of the limited liability company
935 or foreign limited liability company.
936 (2) After filing the statement with the department, the
937 registered agent shall mail a copy to the limited liability
938 company's or foreign limited liability company's current mailing
939 address.
940 (3) A registered agent is terminated upon the earlier of:
941 (a) The 31st day after the department files the statement
942 of resignation; or
943 (b) When a statement of change or other record for
944 designating a new registered agent is filed by the department.
945 (4) When a statement of resignation takes effect, the
946 registered agent ceases to have responsibility for a matter
947 thereafter tendered to it as agent for the limited liability
948 company or foreign limited liability company. The resignation
949 does not affect contractual rights the company or foreign
950 limited liability company has against the agent or that the
951 agent has against the company or the foreign limited liability
952 company.
953 (5) A registered agent may resign from a limited liability
954 company or foreign limited liability company regardless of
955 whether the company or foreign limited liability company has
956 active status.
957 608.7816 Change of name or address by registered agent.—

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958 (1) If a registered agent changes his or her name or
959 address, the agent may deliver to the department for filing a
960 statement of change that provides:
961 (a) The name of the limited liability company or foreign
962 limited liability company represented by the registered agent.
963 (b) The name of the agent as currently shown in the records
964 of the department for the company or foreign limited liability
965 company.
966 (c) If the name of the agent has changed, its new name.
967 (d) If the address of the agent has changed, the new
968 address.
969 (e) The registered agent has given the notice required by
970 subsection (2).
971 (2) A registered agent shall promptly furnish notice of the
972 statement of change and the changes made by the statement filed
973 with the department to the represented limited liability company
974 or foreign limited liability company.
975 608.7817 Service of process, notice, or demand.—
976 (1) A limited liability company or registered foreign
977 limited liability company may be served with a process, notice,
978 or demand required or permitted by law by serving its registered
979 agent.
980 (2) If a limited liability company or registered foreign
981 limited liability company ceases to have a registered agent, or
982 if its registered agent cannot with reasonable diligence be
983 served, the process, notice, or demand required or permitted by
984 law may instead be served:
985 (a) On a member of a member-managed limited liability
986 company; or

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987 (b) On a manager of a manager-managed limited liability
988 company.
989 (3) If the process, notice, or demand cannot be served on a
990 limited liability company or registered foreign limited
991 liability company pursuant to subsection (1) or subsection (2),
992 the department shall also be an agent of the company upon whom
993 process, notice, or demand may be served.
994 (4) Service of a process, notice, or demand on the
995 department may be made by delivering to and leaving with the
996 department duplicate copies of the process, notice, or demand.
997 (5) Service is effected under subsection (3) on the date
998 shown as received by the department.
999 (6) The department shall keep a record of each process,
1000 notice, and demand served pursuant to this section and record
1001 the time of, and the action taken regarding, the service.
1002 (7) This section does not affect the right to serve
1003 process, notice, or demand in another manner provided by law.
1004 608.7818 Delivery of record.—
1005 (1) Except as otherwise provided in this chapter,
1006 permissible means of delivery of a record include delivery by
1007 hand, the United States Postal Service, a commercial delivery
1008 service, and electronic transmission.
1009 (2) Delivery to the department is effective only when a
1010 record is received by the department.
1011 608.7819 Waiver of notice.—When, pursuant to this chapter
1012 or the articles of organization or operating agreement of a
1013 limited liability company, notice is required to be given to a
1014 member of a limited liability company or to a manager of a
1015 limited liability company having a manager or managers, a waiver

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1016 in writing signed by the person or persons entitled to the
1017 notice, whether made before or after the time for notice to be
1018 given, is equivalent to the giving of notice.
1019 608.7821 Formation of limited liability company; articles
1020 of organization.—
1021 (1) One or more persons may act as authorized
1022 representatives to form a limited liability company by signing
1023 and delivering to the department, for filing, articles of
1024 organization.
1025 (2) The articles of organization must state:
1026 (a) The name of the limited liability company, which must
1027 comply with s. 608.7812.
1028 (b) The street and mailing addresses of the company's
1029 principal office.
1030 (c) The name, street address in this state, and written
1031 acceptance of the company's initial registered agent.
1032 (3) The articles of organization may contain statements as
1033 to matters other than those required by subsection (2), but may
1034 not vary or otherwise affect the provisions specified in s.
1035 608.7805(3) in a manner inconsistent with that section.
1036 Additional statements may include the following:
1037 (a) A declaration as to whether the limited liability
1038 company is manager-managed for purposes of s. 608.7846 and other
1039 relevant provisions of this chapter.
1040 (b) For a manager-managed limited liability company, the
1041 names and addresses of one or more of the managers of the
1042 company.
1043 (c) For a member-managed limited liability company, the
1044 name and address of one or more of the members of the company.

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1045 (d) A description of the authority or limitation on the
1046 authority of a person holding a position or having a specified
1047 status in a company, or a description of the authority or
1048 limitation on the authority of a specific person.
1049 (e) Other relevant matters.
1050 (4) A limited liability company is formed when the
1051 company's articles of organization become effective under s.
1052 608.7827, and at least one person becomes a member at the time
1053 that the articles of organization become effective. The person
1054 who signs the articles of organization must affirm that the
1055 company has or will have at least one member as of the time the
1056 articles of organization become effective.
1057 608.7822 Amendment or restatement of articles of
1058 organization.—
1059 (1) The articles of organization may be amended or restated
1060 at any time.
1061 (2) To amend the articles of organization, a limited
1062 liability company must deliver to the department for filing an
1063 amendment, designated as such in its heading, which contains:
1064 (a) The present name of the company.
1065 (b) The date of filing of its articles of organization.
1066 (c) The amendment to the articles of organization.
1067 (d) The delayed effective date, pursuant to s. 608.7827, if
1068 the amendment is not effective on the date the department files
1069 the amendment.
1070 (3) To restate its articles of organization, a limited
1071 liability company must deliver to the department for filing an
1072 instrument, entitled "restatement of articles of organization,"
1073 which contains:

1074 (a) The present name of the company.
1075 (b) The date of the filing of its articles of organization.
1076 (c) All of the provisions of its articles of organization
1077 in effect, as restated.
1078 (d) The delayed effective date, pursuant to s. 608.7827, if
1079 the restatement is not effective on the date the department
1080 files the restatement.
1081 (4) A restatement of the articles of organization of a
1082 limited liability company may also contain one or more
1083 amendments of the present articles of organization, in which
1084 case the instrument must be entitled "amended and restated
1085 articles of organization."
1086 (5) If a member of a member-managed limited liability
1087 company, or a manager of a manager-managed limited liability
1088 company, knew that information contained in filed articles of
1089 organization was inaccurate when the articles of organization
1090 were filed or became inaccurate due to changed circumstances,
1091 the member or manager shall promptly:
1092 (a) Cause the articles of organization to be amended; or
1093 (b) If appropriate, deliver to the department for filing a
1094 statement of change under s. 608.7814 or a statement of
1095 correction under s. 608.7829.
1096 608.7823 Signing of records to be delivered for filing to
1097 department.—
1098 (1) A record delivered to the department for filing
1099 pursuant to this chapter must be signed as follows:
1100 (a) Except as otherwise provided in paragraphs (b) and (c),
1101 a record signed on behalf of a limited liability company must be
1102 signed by a person authorized by the company.

1103 (b) A company's initial articles of organization must be
1104 signed by at least one person acting as an authorized
1105 representative. The articles must also include or have attached
1106 a statement signed by the initial registered agent in the form
1107 described in s. 608.7813(2).
1108 (c) A record delivered on behalf of a dissolved company
1109 that has no member must be signed by the person winding up the
1110 company's activities and affairs under s. 608.7919(3) or a
1111 person appointed under s. 608.7919(4) to wind up the activities
1112 and affairs.
1113 (d) A statement of denial by a person under s. 608.7833
1114 must be signed by that person.
1115 (e) A record changing the registered agent must also
1116 include or be accompanied by a statement signed by the successor
1117 registered agent in the form described in s. 608.7813(2).
1118 (f) Another record delivered on behalf of a person to the
1119 department must be signed by that person.
1120 (2) A record may also be signed by an agent, legal
1121 representative, or attorney-in-fact, as applicable, if such
1122 person is duly appointed and authorized to sign the record and
1123 the record recites that such person possesses that authority.
1124 (3) A person who signs a record as an agent, legal
1125 representative, or attorney-in-fact affirms as a fact that the
1126 person is authorized to sign the record.
1127 608.7824 Signing and filing pursuant to judicial order.—
1128 (1) If a person who is required by this chapter to sign a
1129 record or deliver a record to the department for filing under
1130 this chapter does not do so, another person who is aggrieved may
1131 petition the circuit court to order:

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1132 (a) The person to sign the record;
1133 (b) The person to deliver the record to the department for
1134 filing; or
1135 (c) The department to file the record unsigned.
1136 (2) If a petitioner under subsection (1) is not the limited
1137 liability company or foreign limited liability company to which
1138 the record pertains, the petitioner shall make the company a
1139 party to the action. The petitioner may seek the remedies
1140 provided in subsection (1) in the same action in combination or
1141 in the alternative.
1142 (3) A record filed under paragraph (1)(c) is effective
1143 without being signed.
1144 608.7825 Liability for inaccurate information in filed
1145 record.—
1146 (1) If a record delivered to the department for filing
1147 under this chapter and filed by the department contains
1148 inaccurate information, a person who suffers a loss by reliance
1149 on the information may recover damages for the loss from:
1150 (a) A person who signed the record, or caused another to
1151 sign it on the person's behalf, and knew the information was
1152 inaccurate at the time the record was signed.
1153 (b) Subject to subsection (2), a member of a member-managed
1154 limited liability company or the manager of a manager-managed
1155 limited liability company, if:
1156 1. The record was delivered for filing on behalf of the
1157 company.
1158 2. The member or manager had notice of the inaccuracy for a
1159 reasonably sufficient time before the information was relied
1160 upon so that, before the reliance, the member or manager

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1161 reasonably could have:
1162 a. Effected an amendment under s. 608.7822;
1163 b. Filed a petition under s. 608.7824; or
1164 c. Delivered to the department for filing a statement of
1165 change under s. 608.7814 or a statement of correction under s.
1166 608.7829.
1167 (2) To the extent that the operating agreement of a member-
1168 managed limited liability company expressly relieves a member of
1169 responsibility for maintaining the accuracy of information
1170 contained in records delivered on behalf of the company to the
1171 department for filing and imposes that responsibility on one or
1172 more other members, the liability stated in paragraph (1)(b)
1173 applies to those other members and not to the member that the
1174 operating agreement relieves of the responsibility.
1175 (3) An individual who signs a record authorized or required
1176 to be filed under this chapter affirms under penalty of perjury
1177 that the information stated in the record is accurate.
1178 608.7826 Filing requirements.—
1179 (1) A record authorized or required to be delivered to the
1180 department for filing must be captioned to describe the record's
1181 purpose, be in a medium permitted by the department, and be
1182 delivered to the department. Unless the department determines
1183 that a record does not comply with the filing requirements, and
1184 if all filing fees are paid, the department shall file the
1185 record.
1186 (2) Upon request and payment of the applicable fee, the
1187 department shall send to the requester a certified copy of the
1188 requested record.
1189 (3) If the department has prescribed a mandatory medium or

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1190 form for the record being filed, the record must be in the
1191 prescribed medium or on the prescribed form.
1192 (4) Except as otherwise provided by the department, a
1193 document to be filed by the department must be typewritten or
1194 printed, legible, and written in the English language. A limited
1195 liability company name does not need to be in English if written
1196 in English letters or Arabic or Roman numerals, and the
1197 certificate of existence required of a foreign limited liability
1198 company, does not need to be in English if accompanied by a
1199 reasonably authenticated English translation. If the department
1200 has prescribed a mandatory form for the document to be filed,
1201 the document must be in or on the prescribed form. The
1202 department may prescribe forms in electronic format that comply
1203 with this chapter. The department may also use electronic
1204 transmissions for the purposes of notice and communication in
1205 the performance of its duties and may require filers and
1206 registrants to furnish e-mail addresses when presenting a
1207 document for filing.
1208 608.7827 Effective date and time.—Except as otherwise
1209 provided in s. 608.7828, and subject to s. 608.7829(3), a
1210 document delivered to the department for filing may specify an
1211 effective time and a delayed effective date. In the case of
1212 initial articles of organization, a previous effective date may
1213 be specified in the articles of organization, provided such date
1214 is within 5 business days before the date of filing. Subject to
1215 ss. 608.7814, 608.7815, and 608.7829, a record filed by the
1216 department is effective:
1217 (1) If the record does not specify an effective time and
1218 does not specify a previous or a delayed effective date, on the

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1219 date and when the record is filed as evidenced by the
1220 department's endorsement of the date and time on the record.
1221 (2) If the record specifies an effective time but not a
1222 previous or delayed effective date, on the date the record is
1223 filed at the time specified in the record.
1224 (3) If the record specifies a delayed effective date but
1225 not an effective time, at 12:01 a.m. on the earlier of:
1226 (a) The specified date; or
1227 (b) The 90th day after the record is filed.
1228 (4) If the record specifies a date before the effective
1229 date but no effective time, at 12:01 a.m. on the later of:
1230 (a) The specified date; or
1231 (b) The 5th business day before the record is filed.
1232 (5) If the record specifies an effective time and a delayed
1233 effective date, at the specified time on the earlier of:
1234 (a) The specified date; or
1235 (b) The 90th day after the record is filed.
1236 (6) If the record specifies an effective time and a
1237 previous effective date, at the specified time on the later of:
1238 (a) The specified date; or
1239 (b) The 5th business day before the record is filed.
1240 608.7828 Withdrawal of filed record before effectiveness.—
1241 (1) Except as otherwise provided in ss. 608.961-608.972, a
1242 record delivered to the department for filing may be withdrawn
1243 before it takes effect by delivering to the department for
1244 filing a withdrawal statement.
1245 (2) A withdrawal statement must:
1246 (a) Be signed by each person who signed the record being
1247 withdrawn, except as otherwise agreed by those persons.

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1248 (b) Identify the record to be withdrawn.
1249 (c) If not signed by all the persons who signed the record
1250 being withdrawn, state that the record is withdrawn in
1251 accordance with the agreement of all the persons who signed the
1252 record.
1253 (3) Upon the filing by the department of a withdrawal
1254 statement, the action or transaction evidenced by the original
1255 record does not take effect.
1256 608.7829 Correcting filed record.—
1257 (1) A person on whose behalf a filed record was delivered
1258 to the department for filing may correct the record if:
1259 (a) The record at the time of filing was inaccurate;
1260 (b) The record was defectively signed; or
1261 (c) The electronic transmission of the record to the
1262 department was defective.
1263 (2) To correct a filed record, a person on whose behalf the
1264 record was delivered to the department must deliver to the
1265 department for filing a statement of correction.
1266 (3) A statement of correction:
1267 (a) May not state a delayed effective date.
1268 (b) Must be signed by the person correcting the filed
1269 record.
1270 (c) Must identify the filed record to be corrected.
1271 (d) Must specify the inaccuracy or defect to be corrected.
1272 (e) Must correct the inaccuracy or defect.
1273 (4) A statement of correction is effective as of the
1274 effective date of the filed record that it corrects, except for
1275 purposes of s. 608.7803(4) and as to persons relying on the
1276 uncorrected filed record and adversely affected by the

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1277 correction. For those purposes and as to those persons, the
1278 statement of correction is effective when filed.
1279 608.78291 Duty of department to file; review of refusal to
1280 file; transmission of information by department.—
1281 (1) The department is considered to file a document by
1282 stamping or otherwise endorsing the document as filed, together
1283 with the department official title and the date and time of
1284 receipt.
1285 (2) After filing a record, the department shall deliver an
1286 acknowledgment of the filing or certified copy of the document
1287 to the company or foreign limited liability company or its
1288 authorized representative.
1289 (3) If the department refuses to file a record, the
1290 department shall, within 15 days after the record is delivered:
1291 (a) Return the record or notify the person that submitted
1292 the record of the refusal.
1293 (b) Provide a brief explanation in a record of the reason
1294 for the refusal.
1295 (4) If the applicant returns the document with corrections
1296 in accordance with the rules of the department within 60 days
1297 after it was mailed to the applicant by the department and, if
1298 at the time of return, the applicant so requests in writing, the
1299 filing date of the document is the filing date that would have
1300 been applied had the original document not been deficient,
1301 except as to persons who relied on the record before correction
1302 and were adversely affected.
1303 (5) The department's duty to file documents under this
1304 section is ministerial. Filing or refusing to file a document
1305 does not:

1306 (a) Affect the validity or invalidity of the document in
1307 whole or part;
1308 (b) Relate to the correctness or incorrectness of
1309 information contained in the document; or
1310 (c) Create a presumption that the document is valid or
1311 invalid or that information contained in the document is correct
1312 or incorrect.
1313 (6) If not otherwise provided by law and this chapter, the
1314 department shall determine, by rule, the appropriate format for,
1315 number of copies of, manner of execution of, method of
1316 electronic transmission of, and amount of and method of payment
1317 of fees for a document placed under its jurisdiction.
1318 (7) If the department refuses to file a record, the person
1319 who submitted the record may petition the circuit court to
1320 compel filing of the record. The record and the explanation of
1321 the department of the refusal to file must be attached to the
1322 petition. The court may decide the matter in a summary
1323 proceeding.
1324 (8) Except as otherwise provided by s. 608.7817 or by any
1325 law other than this chapter, the department may deliver a record
1326 to a person by delivering it:
1327 (a) In person to the person that submitted it;
1328 (b) To the address of the person's registered agent;
1329 (c) To the principal office of the person; or
1330 (d) To another address the person provides to the
1331 department for delivery.
1332 608.78292 Certificate of status.—
1333 (1) Upon request of a person, the department shall issue a
1334 certificate of status for a limited liability company if the

1335 records filed show that the department has accepted and filed
1336 its articles of organization. A certificate of status must
1337 state:
1338 (a) The company's name.
1339 (b) That the company was duly formed under the laws of this
1340 state and the date of formation.
1341 (c) Whether all fees and penalties due to the department
1342 under this chapter have been paid.
1343 (d) Whether the company's most recent annual report
1344 required by s. 608.78293 has been filed by the department.
1345 (e) Whether the department has administratively dissolved
1346 the company or received a record notifying the department that
1347 the company has been dissolved by judicial action pursuant to s.
1348 608.7915.
1349 (f) Whether the department has filed articles of
1350 dissolution for the company.
1351 (g) Whether the department has accepted and filed a
1352 statement of termination.
1353 (2) The department, upon request and payment of the
1354 requisite fee, shall furnish a certificate of status for a
1355 foreign limited liability company if the records filed show that
1356 the department has filed a certificate of authority. A
1357 certificate of status for a foreign limited liability company
1358 must state:
1359 (a) The company's name and a current alternate name adopted
1360 under s. 608.905(1) for use in this state.
1361 (b) That the company is authorized to transact business in
1362 this state.
1363 (c) Whether all fees and penalties due to the department

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1364 under this chapter or other law have been paid.
1365 (d) Whether the company's most recent annual report
1366 required by s. 608.78293 has been filed by the department.
1367 (e) Whether the department has:
1368 1. Revoked the company's certificate of authority; or
1369 2. Filed a notice of withdrawal of certificate of
1370 authority.
1371 (3) Subject to a qualification stated in the articles of
1372 organization, a certificate of status issued by the department
1373 is conclusive evidence that the limited liability company is in
1374 existence or the foreign limited liability company is authorized
1375 to transact business in this state.
1376 608.78293 Annual report for department.—
1377 (1) A limited liability company or a registered foreign
1378 limited liability company shall deliver to the department for
1379 filing an annual report that states:
1380 (a) The name of the limited liability company or, if a
1381 foreign limited liability company, the name under which the
1382 foreign limited liability company is registered to transact
1383 business in this state.
1384 (b) The street address of its principal office and its
1385 mailing address.
1386 (c) The date of its organization, or if a foreign limited
1387 liability company, the jurisdiction of its formation, and the
1388 date on which it became qualified to transact business in this
1389 state.
1390 (d) The company's federal employer identification number
1391 or, if none, whether one was applied for.
1392 (e) The name, title or capacity, and address of at least

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1393 one person who has the authority to manage the company.
1394 (f) Additional information that is necessary or appropriate
1395 to enable the department to carry out this chapter.
1396 (2) Information in the annual report must be current as of
1397 the date the report is delivered to the department for filing.
1398 (3) The first annual report must be delivered to the
1399 department between January 1 and May 1 of the year after the
1400 calendar year in which the limited liability company's articles
1401 of organization became effective or the foreign limited
1402 liability company registered to transact business in this state.
1403 Subsequent annual reports must be delivered to the department
1404 between January 1 and May 1 of each calendar year thereafter. If
1405 one or more forms of annual report are submitted for a calendar
1406 year, the department shall file each of them and make the
1407 information contained in them part of the official record. The
1408 first form of annual report filed in a calendar year will be
1409 considered the annual report for that calendar year, and each
1410 report filed after that one in the same calendar year will be
1411 treated as an amended report for that calendar year.
1412 (4) If an annual report does not contain the information
1413 required in this section, the department shall promptly notify
1414 the reporting limited liability company or registered foreign
1415 limited liability company. If the report is corrected to contain
1416 the information required in subsection (1) and delivered to the
1417 department within 30 days after the effective date of the
1418 notice, it is timely delivered.
1419 (5) If an annual report contains the name or address of a
1420 registered agent that differs from the information shown in the
1421 records of the department immediately before the annual report

1422 becomes effective, the differing information in the annual
1423 report is considered a statement of change under s. 608.7814.
1424 (6) A limited liability company or foreign limited
1425 liability company that fails to file an annual report that
1426 complies with the requirements of this section may not maintain
1427 or defend an action in a court of this state until the report is
1428 filed and all fees due under this chapter are paid. The company
1429 is subject to dissolution or cancellation of its certificate of
1430 authority to transact business as provided in this chapter.
1431 (7) The department shall prescribe the forms, which may be
1432 in an electronic format, on which to make the annual report
1433 called for in this section and may substitute the uniform
1434 business report, pursuant to s. 606.06, as a means of satisfying
1435 the requirement of this chapter.
1436 (8) As a condition of a merger under s. 608.925, each party
1437 to a merger which exists under the laws of this state, and each
1438 party to the merger which exists under the laws of another
1439 jurisdiction and is authorized to transact business or conduct
1440 its affairs in this state, must be active and current in filing
1441 its annual reports in the records of the department through
1442 December 31st of the calendar year in which the articles of
1443 merger are submitted to the department for filing.
1444 (9) As a condition of a conversion of an entity into a
1445 limited liability company under s. 608.941, the entity, if it
1446 exists under the laws of this state, or if it exists under the
1447 laws of another jurisdiction and is authorized to transact
1448 business or conduct its affairs in this state, must be active
1449 and current in filing its annual reports on the records of the
1450 department through December 31st of the calendar year in which

1451 the articles of conversion are submitted to the department for
1452 filing.
1453 (10) As a condition of a conversion of a limited liability
1454 company into another entity under s. 608.941, the limited
1455 liability company converting to the other type of entity must be
1456 active and current in filing its annual reports in the records
1457 of the department through December 31st of the calendar year in
1458 which the articles of conversion are submitted to the department
1459 for filing.
1460 608.78294 Fees of the department.—The fees of the
1461 department under this chapter are as follows:
1462 (1) Furnishing a certified copy, $30.
1463 (2) Filing original articles of organization, $100.
1464 (3) Filing articles of merger of limited liability
1465 companies or other business entities, $25 per constituent party
1466 to the merger, unless a specific fee is required for a party
1467 under other applicable law.
1468 (4) Filing an annual report, $50, plus the annual fee
1469 imposed pursuant to s. 607.193 in the amount of $88.75.
1470 (5) Filing an application for reinstatement after an
1471 administrative or judicial dissolution or a revocation of
1472 authority to transact business, $100.
1473 (6) Designating a registered agent or changing a registered
1474 agent or registered office address, $25.
1475 (7) Filing a registered agent's statement of resignation
1476 from an active limited liability company, $85.
1477 (8) Filing a registered agent's statement of resignation
1478 from a dissolved or revoked limited liability company, $25.
1479 (9) Filing a statement of change of name of registered

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1480 agent or change of registered office address, $25.
1481 (10) Filing articles of conversion of a limited liability
1482 company, $25.
1483 (11) Filing articles of domestication, $25.
1484 (12) Furnishing a certificate of status, $5.
1485 (13) Filing restated articles of organization, amended and
1486 restated articles of organization, an amendment to the articles
1487 of organization, or an amendment to a restated or an amended and
1488 restated articles of organization, $25.
1489 (14) Filing an amendment to certificate of authority, $25.
1490 (15) Filing a notice of withdrawal of certificate of
1491 authority, $25.
1492 (16) Filing a statement of dissociation, $25.
1493 (17) Filing a manager's statement of resignation, $25.
1494 (18) Filing articles of dissolution, $25.
1495 (19) Filing a certificate of revocation of dissolution,
1496 $100.
1497 (20) Filing a statement of termination, $25.
1498 (21) Filing a withdrawal statement, $25.
1499 (22) Filing a statement of authority, $25.
1500 (23) Filing an amendment to a statement of authority, $25.
1501 (24) Filing a statement of denial, $25.
1502 (25) Filing a cancellation of a statement of authority,
1503 $25.
1504 (26) Filing a statement of correction, $25.
1505 (27) Filing a foreign limited liability company's
1506 application for a certificate of authority to transact business,
1507 $35.
1508 (28) Filing an amended annual report, $50.

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1509 (29) Filing a withdrawal statement of delivered
1510 record before effectiveness, $25.
1511 (30) Filing a notice of withdrawal of certificate of
1512 authority, $25.
1513 (31) Filing another limited liability company or foreign
1514 limited liability company document, $25.
1515 608.78295 Powers of department.—The department has the
1516 power and authority reasonably necessary to administer this
1517 chapter efficiently, to perform the duties imposed upon it, and
1518 to adopt reasonable rules necessary to carry out its duties and
1519 functions under this chapter.
1520 608.78296 Certificates to be received in evidence and
1521 evidentiary effect of copy of filed document.—All certificates
1522 issued by the department in accordance with this chapter shall
1523 be taken and received in all courts, public offices, and
1524 official bodies as prima facie evidence of the facts stated. A
1525 certificate from the department delivered with a copy of a
1526 document filed by the department is conclusive evidence that the
1527 original document is on file with the department.
1528 608.78297 Statement of dissociation or resignation.—
1529 (1) A member of a limited liability company may file a
1530 statement of dissociation with the department containing:
1531 (a) The name of the limited liability company.
1532 (b) The name and signature of the dissociating member.
1533 (c) The date the member withdrew or will withdraw.
1534 (d) A statement that the company has been notified of the
1535 dissociation in writing.
1536 (2) A manager in a manager-managed limited liability
1537 company may file a statement of resignation with the department

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1538 containing:
1539 (a) The name of the limited liability company.
1540 (b) The name and signature of the resigning manager.
1541 (c) The date the resigning manager resigned or will resign.
1542 (d) A statement that the limited liability company has been
1543 notified of the resignation in writing.
1544 608.783 Power to bind limited liability company.—A person
1545 may not have the power to bind a limited liability company,
1546 except to the extent the person:
1547 (1) Is an agent of the company by virtue of s. 608.7849.
1548 (2) Has the authority to do so under the articles of
1549 organization or operating agreement of the company;
1550 (3) Has the authority to do so by a statement of authority
1551 filed under s. 608.7832; or
1552 (4) Has the status of an agent of the company, or the
1553 authority or power to bind the company, under a law other than
1554 this chapter.
1555 608.7832 Statement of authority.—
1556 (1) A limited liability company may file a statement of
1557 authority. The statement:
1558 (a) Must include the name of the company as it appears on
1559 the records of the department, and the street and mailing
1560 addresses of its principal office.
1561 (b) With respect to a specified status or position in a
1562 company, whether as a member, transferee, manager, officer, or
1563 otherwise, may state the authority, or limitations on the
1564 authority, of all persons having such status or holding such
1565 position to:
1566 1. Execute an instrument transferring real property held in

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1567 the name of the company; or
1568 2. Enter into other transactions on behalf of, or otherwise
1569 act for or bind, the company.
1570 (c) May state the authority, or limitations on the
1571 authority, of a specific person to:
1572 1. Execute an instrument transferring real property held in
1573 the name of the company; or
1574 2. Enter into other transactions on behalf of, or otherwise
1575 act for or bind, the company.
1576 (2) To amend or cancel a statement of authority filed by
1577 the department, a limited liability company must deliver to the
1578 department for filing an amendment or cancellation stating:
1579 (a) The name of the company as it appears on the records of
1580 the department.
1581 (b) The street and mailing addresses of the limited
1582 liability company's principal office.
1583 (c) The date of the statement being affected became
1584 effective.
1585 (d) The contents of the amendment or a declaration that the
1586 affected statement is canceled.
1587 (3) A statement of authority affects only the power of a
1588 person to bind a limited liability company to persons who are
1589 not members.
1590 (4) Subject to subsection (3) and s. 608.7803(4) and except
1591 as otherwise provided in subsections (6), (7), and (8), a
1592 limitation on the authority of a person or a position contained
1593 in an effective statement of authority is not by itself evidence
1594 of knowledge or notice of the limitation by a person.
1595 (5) Subject to subsection (3), a grant of authority not

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1596 pertaining to transfers of real property and contained in an
1597 effective statement of authority is conclusive in favor of a
1598 person that gives value in reliance on the grant, except to the
1599 extent that when the person gives value:
1600 (a) The person has knowledge to the contrary;
1601 (b) The statement has been canceled or restrictively
1602 amended under subsection (2); or
1603 (c) A limitation on the grant is contained in another
1604 statement of authority that became effective after the statement
1605 containing the grant became effective.
1606 (6) Subject to subsection (3), an effective statement of
1607 authority that grants authority to transfer real property held
1608 in the name of the limited liability company, a certified copy
1609 of which statement is recorded in the office for recording
1610 transfers of the real property, is conclusive in favor of a
1611 person that gives value in reliance on the grant without
1612 knowledge to the contrary, except to the extent that when the
1613 person gives value:
1614 (a) The statement has been canceled or restrictively
1615 amended under subsection (2), and a certified copy of the
1616 cancellation or restrictive amendment has been recorded in the
1617 office for recording transfers of the real property; or
1618 (b) A limitation on the grant is contained in another
1619 statement of authority that became effective after the statement
1620 containing the grant became effective, and a certified copy of
1621 the later effective statement is recorded in the office for
1622 recording transfers of the real property.
1623 (7) Subject to subsection (3), if a certified copy of an
1624 effective statement containing a limitation on the authority to

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1625 transfer real property held in the name of a limited liability
1626 company is recorded in the office for recording transfers of
1627 that real property, all persons are deemed to know of the
1628 limitation.
1629 (8) Subject to subsection (9), effective articles of
1630 dissolution or termination are a cancellation of a filed
1631 statement of authority for the purposes of subsection (6) and
1632 are a limitation on authority for the purposes of subsection
1633 (7).
1634 (9) After a company's articles of dissolution become
1635 effective, a limited liability company may deliver to the
1636 department for filing and, if appropriate, may record a
1637 statement of authority in accordance with subsection (1) that is
1638 designated as a post-dissolution statement of authority. The
1639 statement operates as provided in subsections (6) and (7).
1640 (10) Unless earlier canceled, an effective statement of
1641 authority is canceled by operation of law 5 years after the date
1642 on which the statement, or its most recent amendment, becomes
1643 effective. This cancellation operates without need for a
1644 recording under subsection (6) or subsection (7). An effective
1645 statement of denial operates as a restrictive amendment under
1646 this section and may be recorded by certified copy for the
1647 purposes of paragraph (6)(a).
1648 (11) A statement of dissociation or a statement of
1649 resignation filed pursuant to s. 608.78297 terminates the
1650 authority of the person who filed the statement.
1651 608.7833 Statement of denial.—A person named in a filed
1652 statement of authority granting that person authority may
1653 deliver to the department for filing a statement of denial

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1654 signed by that person that:
1655 (1) Provides the name of the limited liability company and
1656 the caption of the statement of authority to which the statement
1657 of denial pertains.
1658 (2) Denies the grant of authority.
1659 608.7834 Liability of members and managers.—
1660 (1) A debt, obligation, or other liability of a limited
1661 liability company is solely the debt, obligation, or other
1662 liability of the company. A member or manager is not personally
1663 liable, directly or indirectly, by way of contribution or
1664 otherwise, for a debt, obligation, or other liability of the
1665 company solely by reason of being or acting as a member or
1666 manager. This subsection applies regardless of the dissolution
1667 of the company.
1668 (2) The failure of a limited liability company to observe
1669 formalities relating to the exercise of its powers or management
1670 of its activities and affairs is not a ground for imposing
1671 liability on a member or manager of the company for a debt,
1672 obligation, or other liability of the company.
1673 608.784 Becoming a member.—
1674 (1) If a limited liability company is to have only one
1675 member upon formation, the person becomes a member as agreed by
1676 that person and the authorized representative of the company.
1677 That person and the authorized representative may be, but need
1678 not be, different persons. If different persons, the authorized
1679 representative acts on behalf of the initial member.
1680 (2) If a limited liability company is to have more than one
1681 member upon formation, those persons become members as agreed by
1682 the persons before the formation of the company. The authorized

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1683 representative acts on behalf of the persons in forming the
1684 company and may be, but need not be, one of the persons.
1685 (3) After formation of a limited liability company, a
1686 person becomes a member:
1687 (a) As provided in the operating agreement;
1688 (b) As the result of a merger, interest exchange
1689 conversion, or domestication under ss. 608.961-608.972, as
1690 applicable;
1691 (c) With the consent of all the members; or
1692 (d) As provided in s. 608.7911(3).
1693 (4) A person may become a member without acquiring a
1694 transferable interest and without making or being obligated to
1695 make a contribution to the limited liability company.
1696 608.7841 Form of contribution.—A contribution may consist
1697 of tangible or intangible property or other benefit to a limited
1698 liability company, including money, services performed,
1699 promissory notes, other agreements to contribute money or
1700 property, and contracts for services to be performed.
1701 608.7842 Liability for contributions.—
1702 (1) A promise by a member to contribute to the limited
1703 liability company is not enforceable unless it is set out in a
1704 writing signed by the member.
1705 (2) A person's obligation to make a contribution to a
1706 limited liability company is not excused by the person's death,
1707 disability, or other inability to perform personally.
1708 (3) If a person does not fulfill an obligation to make a
1709 contribution other than money, the person is obligated at the
1710 option of the limited liability company to contribute money
1711 equal to the value of the part of the contribution that has not

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1712 been made. The foregoing option is in addition to, and not in
1713 lieu of, other rights, including the right to specific
1714 performance, that the limited liability company may have against
1715 such member under the articles of organization or operating
1716 agreement, or applicable law.
1717 (4) The obligation of a person to make a contribution may
1718 be compromised only by consent of all members. A creditor of a
1719 limited liability company which extends credit or otherwise acts
1720 in reliance on an obligation enforceable under subsection (1)
1721 without notice of a compromise may enforce the obligation.
1722 (5) An operating agreement may provide that the limited
1723 liability company interest of a member who fails to make a
1724 contribution that the member is obligated to make is subject to
1725 specified penalties for, or specified consequences of, the
1726 failure. The penalty or consequence may take the form of
1727 reducing or eliminating the defaulting member's proportionate
1728 interest in a limited liability company, subordinating the
1729 member's limited liability company interest to that of
1730 nondefaulting members, a forced sale of that limited liability
1731 company interest, forfeiture of the defaulting member's limited
1732 liability company interest, the lending by other members of the
1733 amount necessary to meet the defaulting member's commitment, a
1734 fixing of the value of the defaulting member's limited liability
1735 company interest by appraisal or by formula and redemption or
1736 sale of the limited liability company interest at such value, or
1737 other penalty or consequence.
1738 608.7843 Sharing of distributions before dissolution and
1739 profits and losses.—
1740 (1) Distributions made by a limited liability company

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1741 before its dissolution and winding up must be shared by the
1742 members and persons dissociated as members on the basis of the
1743 agreed value, as stated in the company's records, of the
1744 contributions made by each of them to the extent they have been
1745 received by the company, except to the extent necessary to
1746 comply with a transfer effective under s. 608.7856 or charging
1747 order in effect under s. 608.7857.
1748 (2) A person has a right to a distribution before the
1749 dissolution and winding up of a limited liability company only
1750 if the company decides to make an interim distribution. A
1751 person's dissociation does not entitle the person to a
1752 distribution.
1753 (3) A person does not have a right to demand or receive a
1754 distribution from a limited liability company in a form other
1755 than money. Except as otherwise provided in s. 608.7920(4), a
1756 limited liability company may distribute an asset in kind only
1757 if each part of the asset is fungible with each other part and
1758 each person receives a percentage of the asset equal in value to
1759 the person's share of distributions.
1760 (4) If a member or transferee becomes entitled to receive a
1761 distribution, the member or transferee has the status of, and is
1762 entitled to all remedies available to, a creditor of the limited
1763 liability company with respect to the distribution.
1764 (5) Profits and losses of a limited liability company must
1765 be allocated among the members and persons dissociated as
1766 members on the basis of the agreed value, as stated in the
1767 company's records, of the contributions made by each of them to
1768 the extent they have been received by the company.
1769 608.7844 Limitations on distributions.—

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1770 (1) A limited liability company may not make a
1771 distribution, including a distribution under s. 608.7920, if
1772 after the distribution:
1773 (a) The company would not be able to pay its debts as they
1774 become due in the ordinary course of the company's activities
1775 and affairs; or
1776 (b) The company's total assets would be less than the sum
1777 of its total liabilities, plus the amount that would be needed
1778 if the company were to be dissolved and wound up at the time of
1779 the distribution, to satisfy the preferential rights upon
1780 dissolution and winding up of members and transferees whose
1781 preferential rights are superior to those of persons receiving
1782 the distribution.
1783 (2) A limited liability company may base a determination
1784 that a distribution is not prohibited under subsection (1) on:
1785 (a) Financial statements prepared on the basis of
1786 accounting practices and principles that are reasonable under
1787 the circumstances; or
1788 (b) A fair valuation or other method that is reasonable
1789 under the circumstances.
1790 (3) Except as otherwise provided in subsection (5), the
1791 effect of a distribution under subsection (1) is measured:
1792 (a) In the case of a distribution by purchase, redemption,
1793 or other acquisition of a transferable interest in the company,
1794 as of the earlier of:
1795 1. The date money or other property is transferred or the
1796 debt is incurred by the company.
1797 2. The date the person entitled to distribution ceases to
1798 own the interest or right being acquired by the company in

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1799 return for the distribution.
1800 (b) In the case of another distribution of indebtedness, as
1801 of the date the indebtedness is distributed.
1802 (c) In all other cases, as of the date:
1803 1. The distribution is authorized, if the payment occurs
1804 within 120 days after that date; or
1805 2. The payment is made, if the payment occurs more than 120
1806 days after the distribution is authorized.
1807 (4) A limited liability company's indebtedness to a member
1808 or transferee incurred by reason of a distribution made in
1809 accordance with this section is at parity with the company's
1810 indebtedness to its general, unsecured creditors, except to the
1811 extent subordinated by agreement.
1812 (5) A limited liability company's indebtedness, including
1813 indebtedness issued as a distribution, is not a liability for
1814 purposes of subsection (1) if the terms of the indebtedness
1815 provide that payment of principal and interest is made only if
1816 and to the extent that a distribution could then be made under
1817 this section. If the indebtedness is issued as a distribution,
1818 and by its terms provides that the payments of principal and
1819 interest are made only to the extent a distribution could be
1820 made under this section, then each payment of principal or
1821 interest of that indebtedness is treated as a distribution, the
1822 effect of which is measured on the date the payment is actually
1823 made.
1824 (6) In measuring the effect of a distribution under s.
1825 608.7920, the liabilities of a dissolved limited liability
1826 company do not include a claim that is disposed of under ss.
1827 608.7920-608.7923.

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1828 608.7845 Liability for improper distributions.—
1829 (1) Except as otherwise provided in subsection (2), if a
1830 member of a member-managed limited liability company or manager
1831 of a manager-managed limited liability company consents to a
1832 distribution made in violation of s. 608.7844 and in consenting
1833 to the distribution fails to comply with s. 608.7851, the member
1834 or manager is personally liable to the company for the amount of
1835 the distribution which exceeds the amount that could have been
1836 distributed without the violation of s. 608.7844. A member of a
1837 member-managed limited liability company or manager of a
1838 manager-managed limited liability company may base a
1839 determination that a distribution is not prohibited under s.
1840 608.7844 on financial statements prepared on the basis of
1841 accounting practices and principles that are reasonable under
1842 the circumstances or on a fair valuation or other method that is
1843 reasonable under the circumstances.
1844 (2) To the extent the operating agreement of a member-
1845 managed limited liability company expressly relieves a member of
1846 the authority and responsibility to consent to distributions and
1847 imposes that authority and responsibility on one or more other
1848 members, the liability in subsection (1) applies to the other
1849 members and not the member that the operating agreement relieves
1850 of authority and responsibility.
1851 (3) A person who receives a distribution knowing that the
1852 distribution violated s. 608.7844 is personally liable to the
1853 limited liability company but only to the extent that the
1854 distribution received by the person exceeded the amount that
1855 could have been properly paid.
1856 (4) A person against whom an action is commenced because

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1857 that person is or may be liable under subsection (1) may:
1858 (a) Implead another person that is or may be liable under
1859 subsection (1) and seek to enforce a right of contribution from
1860 the person.
1861 (b) Implead a person that received a distribution in
1862 violation of subsection (3) and seek to enforce a right of
1863 contribution from an impleaded person in the amount the person
1864 received in violation of subsection (3).
1865 (5) An action under this section is barred unless commenced
1866 within 2 years after the distribution.
1867 608.7846 Management of limited liability company.—
1868 (1) A limited liability company is a member-managed limited
1869 liability company unless the operating agreement or articles of
1870 organization:
1871 (a) Expressly provide that:
1872 1. The company is or will be manager-managed;
1873 2. The company is or will be managed by managers; or
1874 3. Management of the company is or will be vested in
1875 managers; or
1876 (b) Includes words of similar import, except that, unless
1877 the context in which the expression is used otherwise requires,
1878 the terms "managing member" and "managing members" do not, in
1879 and of themselves, constitute words of similar import for this
1880 purpose.
1881 (2) In a member-managed limited liability company, the
1882 management and conduct of the company are vested in the members,
1883 except as expressly provided in this chapter.
1884 (3) In a manager-managed limited liability company, a
1885 matter relating to the activities and affairs of the company is

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1886 decided exclusively by the manager, or if there is more than one
1887 manager, by the managers, except as expressly provided in this
1888 chapter.
1889 (4) A member is not entitled to remuneration for services
1890 performed for a member-managed limited liability company, except
1891 for reasonable compensation for services rendered in winding up
1892 the activities and affairs of the company, in the absence of an
1893 agreement to the contrary.
1894 (5) A limited liability company shall reimburse a member
1895 for an advance to the company beyond the amount of capital the
1896 member agreed to contribute.
1897 (6) The dissolution of a limited liability company does not
1898 affect the applicability of ss. 608.7846-608.7849. However, a
1899 person who wrongfully causes dissolution of the company loses
1900 the right to participate in management as a member and a
1901 manager.
1902 608.7847 Selection and terms of managers in a manager-
1903 managed limited liability company.—In a manager-managed limited
1904 liability company, the following rules apply:
1905 (1) A manager may be chosen at any time by the consent of
1906 the member or members holding more than 50 percent of the then
1907 current percentage or other interest in the profits of the
1908 limited liability company owned by all of its members.
1909 (2) A person need not be a member to be a manager.
1910 (3) A person chosen as a manager continues as a manager
1911 until a successor is chosen, unless the manager at an earlier
1912 time resigns, is removed, or dies or, in the case of a manager
1913 that is not an individual, terminates.
1914 (4) A manager may be removed at any time without notice or

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1915 cause by the consent of the member or members holding more than
1916 50 percent of the then current percentage or other interest in
1917 the profits of the limited liability company owned by all of its
1918 members.
1919 (5) The dissociation of a member that is also a manager
1920 removes the person as a manager.
1921 (6) If a person who is both a manager and a member ceases
1922 to be a manager, that cessation does not, by itself, dissociate
1923 the person as a member.
1924 (7) A person's ceasing to be a manager does not discharge a
1925 debt, obligation, or other liability to the limited liability
1926 company or members which the person incurred while a manager.
1927 608.7848 Voting rights of members and managers.—
1928 (1) In a member-managed limited liability company, the
1929 following rules apply:
1930 (a) Each member has the right to vote with respect to the
1931 management and conduct of the company's activities and affairs.
1932 (b) Each member's vote is proportionate to that member's
1933 then current percentage or other interest in the profits of the
1934 limited liability company owned by all members.
1935 (c) Except as otherwise provided in this chapter, the
1936 affirmative vote or consent of a majority-in-interest of the
1937 members is required to undertake an act, whether within or
1938 outside the ordinary course of the company's activities and
1939 affairs, including a transaction under ss. 608.961-608.972.
1940 (d) The operating agreement and articles of organization
1941 may be amended only with the affirmative vote or consent of all
1942 members.
1943 (2) In a manager-managed limited liability company, the

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1944 following rules apply:
1945 (a) Each manager has equal rights in the management and
1946 conduct of the company's activities and affairs.
1947 (b) Except as expressly provided in this chapter, a matter
1948 relating to the activities and affairs of the company shall be
1949 decided by the manager; if there is more than one manager, by
1950 the affirmative vote or consent of a majority of the managers;
1951 or if the action is taken without a meeting, then by their
1952 unanimous consent in a record.
1953 (c) Each member's vote is proportionate to that member's
1954 then current percentage or other interest in the profits of the
1955 limited liability company owned by all members.
1956 (d) Except as otherwise provided in this chapter, the
1957 affirmative vote or consent of a majority-in-interest of the
1958 members is required to undertake an act outside the ordinary
1959 course of the company's activities and affairs, including a
1960 transaction under ss. 608.961-608.972.
1961 (e) The operating agreement and articles of organization
1962 may be amended only with the affirmative vote or consent of all
1963 members.
1964 (3) If a member has transferred all or a portion of the
1965 member's transferable interest in the limited liability company
1966 to a person who is not admitted as a member and the transferring
1967 member has not been dissociated in accordance with s.
1968 608.7862(4), the transferring member continues to be entitled to
1969 vote on an action reserved to the members, with the vote of the
1970 transferring member being proportionate to the current
1971 percentage or other interest in the profits of the limited
1972 liability company owned by all members that the transferring

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1973 member would have if the transfer had not occurred.
1974 (4) An action requiring the vote or consent of members
1975 under this chapter may be taken without a meeting, and a member
1976 may appoint a proxy or other agent to vote or consent for the
1977 member by signing an appointing record, personally or by the
1978 member's agent. On an action taken by less than all of the
1979 members without a meeting, notice of the action must be given to
1980 those members who did not consent in writing to the action or
1981 who were not entitled to vote on the action within 10 days after
1982 the action was taken.
1983 (5) An action requiring the vote or consent of managers
1984 under this chapter may be taken without a meeting, if the action
1985 is unanimously approved by the managers in a record, and a
1986 manager may appoint a proxy or other agent to vote or consent
1987 for the manager by signing an appointing record, personally or
1988 by the manager's agent.
1989 (6) Meetings of members and meetings of managers may be
1990 held by a conference telephone call or other communications
1991 equipment if all persons participating in the meeting can hear
1992 each other. Participation in a meeting pursuant to this section
1993 constitutes presence in person at the meeting.
1994 608.7849 Agency rights of members and managers.—
1995 (1) In a member-managed limited liability company, the
1996 following rules apply:
1997 (a) Except as provided in subsection (3), each member is an
1998 agent of the limited liability company for the purpose of its
1999 activities and affairs. An act of a member, including signing an
2000 agreement or instrument of transfer in the name of the company
2001 for apparently carrying on in the ordinary course the company's

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2002 activities and affairs, or activities and affairs of the kind
2003 carried on by the company, binds the company unless the member
2004 had no authority to act for the company in the particular matter
2005 and the person with whom the member was dealing knew or had
2006 notice that the member lacked authority.
2007 (b) An act of a member which is not done for apparently
2008 carrying on in the ordinary course the limited liability
2009 company's activities and affairs, or activities and affairs of
2010 the kind carried on by the company, binds the company only if
2011 the act was authorized by appropriate vote of the members.
2012 (2) In a manager-managed limited liability company, the
2013 following rules apply:
2014 (a) A member is not an agent of the limited liability
2015 company for the purpose of its business solely by reason of
2016 being a member.
2017 (b) Except as provided in subsection (3), each manager is
2018 an agent of the limited liability company for the purpose of its
2019 business, and an act of a manager, including signing an
2020 agreement or instrument of transfer in the name of the company,
2021 for apparently carrying on in the ordinary course the company's
2022 business or business of the kind carried on by the company binds
2023 the company, unless the manager had no authority to act for the
2024 company in the particular matter and the person with whom the
2025 manager was dealing knew or had notice that the manager lacked
2026 authority.
2027 (c) An act of a manager which is not apparently for
2028 carrying on in the ordinary course the limited liability
2029 company's business or business of the kind carried on by the
2030 company, binds the company only if the act was authorized by

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2031 appropriate vote of the members.
2032 (3) Unless a certified statement of authority recorded in
2033 the applicable real estate records limits the authority of a
2034 member, a member of a member-managed company or manager of a
2035 manager-managed company may sign and deliver an instrument
2036 transferring or affecting the limited liability company's
2037 interest in real property. The instrument is conclusive in favor
2038 of a person who gives value without knowledge of the lack of the
2039 authority of the person signing and delivering the instrument.
2040 608.7850 Reimbursement, indemnification, advancement, and
2041 insurance.—
2042 (1) A limited liability company may reimburse a member of a
2043 member-managed company or the manager of a manager-managed
2044 company for a payment made by the member or manager in the
2045 course of the member's or manager's activities on behalf of the
2046 company, if the member or manager complied with ss. 608.7846-
2047 608.7851, including this section, in making the payment.
2048 (2) A limited liability company may indemnify and hold
2049 harmless a person with respect to any claim or demand against
2050 the person and a debt, obligation, or other liability incurred
2051 by the person by reason of the person's former or present
2052 capacity as a member or manager, if the claim, demand, debt,
2053 obligation, or other liability does not arise from the person's
2054 breach of s. 608.405 or ss. 608.7846-608.7851.
2055 (3) In the ordinary course of its activities and affairs, a
2056 limited liability company may advance reasonable expenses,
2057 including attorney fees and costs, incurred by a person in
2058 connection with a claim or demand against the person by reason
2059 of the person's former or present capacity as a member or

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2060 manager, if the person promises to repay the company if the
2061 person ultimately is determined not to be entitled to be
2062 indemnified under subsection (2).
2063 (4) A limited liability company may purchase and maintain
2064 insurance on behalf of a member or manager of the company
2065 against liability asserted against or incurred by the member or
2066 manager in that capacity or arising from that status even if:
2067 (a) Under s. 608.7805(3)(g) the operating agreement could
2068 not eliminate or limit the person's liability to the company for
2069 the conduct giving rise to the liability.
2070 (b) Under s. 608.7805(3)(n) the operating agreement could
2071 not provide for indemnification for the conduct giving rise to
2072 the liability.
2073 608.7851 Standards of conduct for members and managers.—
2074 (1) Each manager of a manager-managed limited liability
2075 company and member of a member-managed limited liability company
2076 owes fiduciary duties of loyalty and care to the limited
2077 liability company and members of the limited liability company.
2078 (2) The duty of loyalty is limited to:
2079 (a) Accounting to the limited liability company and holding
2080 as trustee for it any property, profit, or benefit derived by
2081 the manager or member, as applicable:
2082 1. In the conduct or winding up of the company's activities
2083 and affairs;
2084 2. From the use by the member or manager of the company's
2085 property; or
2086 3. From the appropriation of a company opportunity.
2087 (b) Refraining from dealing with the company in the conduct
2088 or winding up of the company's activities and affairs as or on

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2089 behalf of a person having an interest adverse to the company,
2090 except to the extent that a transaction satisfies the
2091 requirements of this section.
2092 (c) Refraining from competing with the company in the
2093 conduct of the company's activities and affairs before the
2094 dissolution of the company.
2095 (3) The duty of care in the conduct or winding up of the
2096 company's activities and affairs is limited to refraining from
2097 engaging in grossly negligent or reckless conduct, willful or
2098 intentional misconduct, or a knowing violation of law.
2099 (4) A manager of a manager-managed limited liability
2100 company and member of a member-managed limited liability company
2101 shall discharge their duties and obligations under this chapter
2102 or under the operating agreement and exercise any rights
2103 consistently with the obligation of good faith and fair dealing.
2104 (5) A manager of a manager-managed limited liability
2105 company or a member of a member-managed limited liability
2106 company does not violate a duty or obligation under this chapter
2107 or under the operating agreement solely because the manager's or
2108 member's conduct furthers such manager's or member's own
2109 interest.
2110 (6) In discharging his, her, or its duties, a manager of a
2111 manager-managed limited liability company or a member of a
2112 member-managed limited liability company is entitled to rely on
2113 information, opinions, reports, or statements, including
2114 financial statements and other financial data, if prepared or
2115 presented by:
2116 (a) One or more members or employees of the limited
2117 liability company whom the manager or member reasonably believes

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2118 to be reliable and competent in the matters presented;
2119 (b) Legal counsel, public accountants, or other persons as
2120 to matters the manager or member reasonably believes are within
2121 the persons' professional or expert competence; or
2122 (c) A committee of managers or members of which the
2123 affected manager or member is not a participant if the manager
2124 or member reasonably believes the committee merits confidence.
2125 (7) A manager or member, as applicable, is not acting in
2126 good faith if the manager or member has knowledge concerning the
2127 matter in question that makes reliance otherwise permitted by
2128 subsection (6) unwarranted.
2129 (8) In discharging his, her, or its duties, a manager of a
2130 manager-managed limited liability company or member of a member-
2131 managed limited liability company may consider factors the
2132 manager or member deems relevant, including the long-term
2133 prospects and interests of the limited liability company and its
2134 members, and the social, economic, legal, or other effects of an
2135 action on the employees, suppliers, customers of the limited
2136 liability company, the communities and society in which the
2137 limited liability company operates, and the economy of the state
2138 and the nation.
2139 (9) This section applies to a person winding up the limited
2140 liability company business as the legal representative of the
2141 last surviving member as if such person were subject to this
2142 section.
2143 608.7852 Conflict of interest transactions.—
2144 (1) As used in this section, the following terms and
2145 definitions apply:
2146 (a) A member or manager is "indirectly" a party to a

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2147 transaction if that member or manager has a material financial
2148 interest in or is a director, officer, manager or partner of a
2149 person, other than the limited liability company, who is a party
2150 to the transaction.
2151 (b) A member or manager has an "indirect material financial
2152 interest" if a spouse or other family member has a material
2153 financial interest in the transaction, other than having an
2154 indirect interest as a member or manager of the limited
2155 liability company, or if the transaction is with an entity,
2156 other than the limited liability company, that has a material
2157 financial interest in the transaction and controls, or is
2158 controlled by, the member or manager or another person specified
2159 in this subsection.
2160 (c) "Fair to the limited liability company" means that the
2161 transaction, as a whole, is beneficial to the limited liability
2162 company and its members, taking into appropriate account whether
2163 it is:
2164 1. Fair in terms of the member's or manager's dealings with
2165 the limited liability in connection with that transaction.
2166 2. Comparable to what might have been obtainable in an
2167 arms-length transaction.
2168 (2) If the requirements of this section have been
2169 satisfied, no transaction between a limited liability company
2170 and one or more of its members or managers, or another entity in
2171 which one or more of the limited liability company's members or
2172 managers has a financial or other interest, is either void or
2173 voidable because of that relationship or interest, because the
2174 members or managers are present at the meeting of the members or
2175 managers at which the transaction was authorized, approved,

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2176 effectuated, or ratified, or because their votes are counted for
2177 such purpose.
2178 (3) If a transaction is fair to the limited liability
2179 company at the time it is authorized, approved, effectuated, or
2180 ratified, the fact that a member or manager of the limited
2181 liability company is directly or indirectly a party to the
2182 transaction, other than being an indirect party as a result of
2183 being a member or manager of the limited liability company, or
2184 has a direct or indirect material financial interest or other
2185 interest in the transaction, other than having an indirect
2186 interest as a result of being a member or manager of the limited
2187 liability company, is not grounds for equitable relief or give
2188 rise to an award of damages or other sanctions.
2189 (4)(a) In a proceeding challenging the validity of a
2190 transaction described in s. 608.7851(1) or (3), the person
2191 challenging the validity has the burden of proving the lack of
2192 fairness of the transaction if:
2193 1. In a manager-managed limited liability company, the
2194 material facts of the transaction and the member's or manager's
2195 interest in the transaction were disclosed or known to the
2196 managers or a committee of managers who voted upon the
2197 transaction and the transaction was authorized, approved, or
2198 ratified by a majority of the disinterested managers even if the
2199 disinterested managers constitute less than a quorum, if the
2200 transaction cannot be authorized, approved, or ratified under
2201 this subsection solely by a single manager.
2202 2. In a member-managed limited liability company, or a
2203 manager-managed limited liability company in which the managers
2204 have failed to or cannot act under s. 608.7851, the material

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2205 facts of the transaction and the member's or manager's interest
2206 in the transaction were disclosed or known to the members who
2207 voted upon such transaction and the transaction was authorized,
2208 approved or ratified by a majority-in-interest of the
2209 disinterested members even if the disinterested members
2210 constitute less than a quorum.
2211 (b) If neither of the conditions provided in paragraph (a)
2212 have been satisfied, the person defending or asserting the
2213 validity of a transaction described in subsection (3) has the
2214 burden of proving its fairness in a proceeding challenging the
2215 validity of the transaction.
2216 (5) The presence of, or a vote cast by, a manager or member
2217 with an interest in the transaction does not affect the validity
2218 of an action taken under paragraph (4)(a) if the transaction is
2219 otherwise authorized, approved, or ratified as provided in that
2220 subsection, but the presence or vote of the manager or member
2221 may be counted for purposes of determining whether the
2222 transaction is approved under other sections of this chapter.
2223 (6) In addition to other grounds for challenge, a party
2224 challenging the validity of the transaction is not precluded
2225 from asserting and proving that a particular member or manager
2226 was not disinterested on grounds of financial or other interest
2227 for purposes of the vote on, consent to, or approval of the
2228 transaction.
2229 608.7853 Records to be kept; rights of member, manager, and
2230 person dissociated to information.—
2231 (1) A limited liability company shall keep at its principal
2232 office or another location the following records:
2233 (a) A current list of the full names and last known

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2234 business, residence, or mailing addresses of each member and
2235 manager.
2236 (b) A copy of a then-effective operating agreement and all
2237 amendments thereto, if made in a record.
2238 (c) A copy of the articles of organization, articles of
2239 merger, articles of interest exchange, articles of conversion,
2240 or articles of domestication, and other documents and all
2241 amendments thereto, concerning the limited liability company
2242 that were filed with the department, together with executed
2243 copies of any powers of attorney pursuant to which any articles
2244 of organization or such other documents were executed.
2245 (d) Copies of the limited liability company's federal,
2246 state, and local income tax returns and reports, if any, for the
2247 3 most recent years.
2248 (e) Copies of the financial statements of the limited
2249 liability company for the 3 most recent years.
2250 (f) Unless contained in an operating agreement made in a
2251 record, a record stating the amount of cash and a description
2252 and statement of the agreed value of the property or other
2253 benefits contributed and agreed to be contributed by each
2254 member, and the times at which, or occurrence of events upon
2255 which, additional contributions agreed to be made by each member
2256 are to be made.
2257 (2) In a member-managed limited liability company, the
2258 following rules apply:
2259 (a) Upon reasonable notice, a member may inspect and copy
2260 during regular business hours, at a reasonable location
2261 specified by the company:
2262 1. The records described in subsection (1).

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2263 2. Another record maintained by the company regarding the
2264 company's activities, affairs, financial condition, and other
2265 circumstances, to the extent the information is material to the
2266 member's rights and duties under the operating agreement or this
2267 chapter.
2268 (b) The company shall furnish to each member:
2269 1. Without demand, any information concerning the company's
2270 activities, affairs, financial condition, and other
2271 circumstances that the company knows and is material to the
2272 proper exercise of the member's rights and duties under the
2273 operating agreement or this chapter, except to the extent the
2274 company can establish that it reasonably believes the member
2275 already knows the information.
2276 2. On demand, other information concerning the company's
2277 activities, affairs, financial condition, and other
2278 circumstances, except to the extent the demand or information
2279 demanded is unreasonable or otherwise improper under the
2280 circumstances.
2281 (c) The duty to furnish information under this subsection
2282 also applies to each member to the extent the member knows any
2283 of the information described in this subsection.
2284 (3) In a manager-managed limited liability company, the
2285 following rules apply:
2286 (a) The informational rights stated in subsection (2) and
2287 the duty stated in paragraph (2)(c) apply to the managers and
2288 not to the members.
2289 (b) During regular business hours and at a reasonable
2290 location specified by the company, a member may inspect and
2291 copy:

2292 1. The records described in subsection (1).
2293 2. Full information regarding the activities, affairs,
2294 financial condition, and other circumstances of the company as
2295 is just and reasonable if:
2296 a. The member seeks the information for a purpose
2297 reasonably related to the member's interest as a member.
2298 b. The member makes a demand in a record received by the
2299 company, describing with reasonable particularity the
2300 information sought and the purpose for seeking the information.
2301 c. The information sought is directly connected to the
2302 member's purpose.
2303 (c) Within 10 days after receiving a demand pursuant to
2304 paragraph (2)(b), the company shall, in a record, inform the
2305 member who made the demand of:
2306 1. The information that the company will provide in
2307 response to the demand and when and where the company will
2308 provide the information.
2309 2. The company's reasons for declining, if the company
2310 declines to provide any demanded information.
2311 (d) Whenever this chapter or an operating agreement
2312 provides for a member to give or withhold consent to a matter,
2313 before the consent is given or withheld, the company shall,
2314 without demand, provide the member with all information that is
2315 known to the company and is material to the member's decision.
2316 (4) Subject to subsection (9), on 10 days' demand made in a
2317 record received by a limited liability company, a person
2318 dissociated as a member may have access to information to which
2319 the person was entitled while a member if:
2320 (a) The information pertains to the period during which the

2321 person was a member.
2322 (b) The person seeks the information in good faith.
2323 (c) The person satisfies the requirements imposed on a
2324 member by paragraph (3)(b).
2325 (5) A limited liability company shall respond to a demand
2326 made pursuant to subsection (4) in the manner provided in
2327 paragraph (3)(c).
2328 (6) A limited liability company may charge a person who
2329 makes a demand under this section the reasonable costs of
2330 copying, which shall be limited to the costs of labor and
2331 materials.
2332 (7) A member or person dissociated as a member may exercise
2333 rights under this section through an agent or, in the case of an
2334 individual under legal disability, a legal representative. A
2335 restriction or condition imposed by the operating agreement or
2336 under subsection (9) applies both to the agent or legal
2337 representative and the member or person dissociated as a member.
2338 (8) Subject to subsection (10), the rights under this
2339 section do not extend to a person as transferee.
2340 (9) If a member dies, s. 608.7858 applies.
2341 (10) In addition to a restriction or condition stated in
2342 the operating agreement, a limited liability company, as a
2343 matter within the ordinary course of its activities and affairs,
2344 may impose reasonable restrictions and conditions on access to
2345 and use of information to be furnished under this section,
2346 including designating information confidential and imposing
2347 nondisclosure and safeguarding obligations on the recipient. In
2348 a dispute concerning the reasonableness of a restriction under
2349 this subsection, the company has the burden of proving

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2350 reasonableness. This subsection does not apply to the request by
2351 a member for the records described in subsection (1).
2352 608.7854 Court-ordered inspection.—
2353 (1) If a limited liability company does not allow a member,
2354 manager, or other person who complies with s. 608.7853(2)(a),
2355 (3)(a), (3)(b), or (4), as applicable, to inspect and copy any
2356 records required by that section to be available for inspection,
2357 the circuit court in the county where the limited liability
2358 company's principal office is located or, if there is none in
2359 this state, where its registered office is located, may
2360 summarily order inspection and copying of the records demanded
2361 at the limited liability company's expense upon application of
2362 the member, manager, or other person.
2363 (2) If the court orders inspection or copying of the
2364 records demanded, it shall also order the limited liability
2365 company to pay the costs, including reasonable attorney fees,
2366 reasonably incurred by the member, manager, or other person
2367 seeking the records to obtain the order and enforce its rights
2368 under this section unless the limited liability company proves
2369 that it refused inspection in good faith because it had a
2370 reasonable basis for doubt about the right of the member,
2371 manager, or such other person, to inspect or copy the records
2372 demanded.
2373 (3) If the court orders inspection or copying of the
2374 records demanded, it may impose reasonable restrictions on the
2375 use or distribution of the records by the member, manager, or
2376 other person demanding them.
2377 608.7855 Nature of transferable interest.—A transferable
2378 interest is personal property.

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2379 608.7856 Transfer of transferable interest.—
2380 (1) Subject to s. 608.7857(5), a transfer, in whole or in
2381 part, of a transferable interest:
2382 (a) Is permissible.
2383 (b) Does not by itself cause a member's dissociation or a
2384 dissolution and winding up of the limited liability company's
2385 activities and affairs.
2386 (c) Does not entitle the transferee to:
2387 1. Participate in the management or conduct of the
2388 company's activities and affairs; or
2389 2. Except as otherwise provided in subsection (3), have
2390 access to records or other information concerning the company's
2391 activities and affairs.
2392 (2) A transferee has the right to receive, in accordance
2393 with the transfer, distributions to which the transferor would
2394 otherwise be entitled.
2395 (3) In a dissolution and winding up of a limited liability
2396 company, a transferee is entitled to an account of the company's
2397 transactions only from the date of dissolution.
2398 (4) A transferable interest may be evidenced by a
2399 certificate of the interest issued by the limited liability
2400 company in a record, and, subject to this section, the interest
2401 represented by the certificate may be transferred by a transfer
2402 of the certificate.
2403 (5) A limited liability company need not give effect to a
2404 transferee's rights under this section until the company knows
2405 or has notice of the transfer.
2406 (6) A transfer of a transferable interest in violation of a
2407 restriction on transfer contained in the operating agreement is

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2408 ineffective as to a person having knowledge or notice of the
2409 restriction at the time of transfer.
2410 (7) Except as otherwise provided in s. 608.7862(5)(b), if a
2411 member transfers a transferable interest, the transferor retains
2412 the rights of a member other than the transferable interest
2413 transferred and retains all the duties and obligations of a
2414 member.
2415 (8) If a member transfers a transferable interest to a
2416 person who becomes a member with respect to the transferred
2417 interest, the transferee is liable for the member's obligations
2418 under ss. 608.7842 and 608.7845(3) known to the transferee when
2419 the transferee becomes a member.
2420 608.7857 Charging order.—
2421 (1) On application to a court of competent jurisdiction by
2422 a judgment creditor of a member or a transferee, the court may
2423 enter a charging order against the transferable interest of the
2424 member or transferee for payment of the unsatisfied amount of
2425 the judgment with interest. Except as provided in subsection
2426 (5), a charging order constitutes a lien upon a judgment
2427 debtor's transferable interest and requires the limited
2428 liability company to pay over to the judgment creditor a
2429 distribution that would otherwise be paid to the judgment
2430 debtor.
2431 (2) This chapter does not deprive a member or transferee of
2432 the benefit of an exemption law applicable to the transferable
2433 interest of the member or transferee.
2434 (3) Except as provided in subsections (4) and (5), a
2435 charging order is the sole and exclusive remedy by which a
2436 judgment creditor of a member or member's transferee may satisfy

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2437 a judgment from the judgment debtor's interest in a limited
2438 liability company or rights to distributions from the limited
2439 liability company.
2440 (4) In the case of a limited liability company having only
2441 one member, if a judgment creditor of a member or member's
2442 transferee establishes to the satisfaction of a court of
2443 competent jurisdiction that distributions under a charging order
2444 will not satisfy the judgment within a reasonable time, a
2445 charging order is not the sole and exclusive remedy by which the
2446 judgment creditor may satisfy the judgment against a judgment
2447 debtor who is the sole member of a limited liability company or
2448 the transferee of the sole member, and upon such showing, the
2449 court may order the sale of that interest in the limited
2450 liability company pursuant to a foreclosure sale. A judgment
2451 creditor may make a showing to the court that distributions
2452 under a charging order will not satisfy the judgment within a
2453 reasonable time at any time after the entry of the judgment and
2454 may do so at the same time that the judgment creditor applies
2455 for the entry of a charging order.
2456 (5) When a limited liability company has only one member,
2457 if the court orders a foreclosure sale of a judgment debtor's
2458 interest in the limited liability company or of a charging order
2459 lien against the sole member of the limited liability company
2460 pursuant to subsection (4):
2461 (a) The purchaser at the court-ordered foreclosure sale
2462 obtains the member's entire limited liability company interest,
2463 not merely the rights of a transferee.
2464 (b) The purchaser at the sale becomes the member of the
2465 limited liability company.

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2466 (c) The person whose limited liability company interest is
2467 sold pursuant to the foreclosure sale or is the subject of the
2468 foreclosed charging order ceases to be a member of the limited
2469 liability company.
2470 (6) In the case of a limited liability company having more
2471 than one member, the remedy of foreclosure on a judgment
2472 debtor's interest in the limited liability company or against
2473 rights to distribution from the limited liability company is not
2474 available to a judgment creditor attempting to satisfy the
2475 judgment and may not be ordered by a court.
2476 (7) This section does not limit:
2477 (a) The rights of a creditor who has been granted a
2478 consensual security interest in a limited liability company
2479 interest to pursue the remedies available to the secured
2480 creditor under other law applicable to secured creditors.
2481 (b) The principles of law and equity which affect
2482 fraudulent transfers.
2483 (c) The availability of the equitable principles of alter
2484 ego, equitable lien, or constructive trust, or other equitable
2485 principles not inconsistent with this section.
2486 (d) The continuing jurisdiction of the court to enforce its
2487 charging order in a manner consistent with this section.
2488 608.7858 Power of legal representative.—If a member who is
2489 an individual dies or a court of competent jurisdiction adjudges
2490 the member to be incompetent to manage the member's person or
2491 property, the member's legal representative may exercise all of
2492 the member's rights for the purpose of settling the member's
2493 estate or administering the member's property, including any
2494 power under an operating agreement of a transferee to become a

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2495 member. If a member is a corporation, trust, or other entity and
2496 is dissolved or terminated, the powers of that member may be
2497 exercised by its legal representative.
2498 608.7861 Power to dissociate as member; wrongful
2499 dissociation.—
2500 (1) A person has the power to dissociate as a member at any
2501 time, rightfully or wrongfully, by withdrawing as a member by
2502 express will under s. 608.7862(1).
2503 (2) A person's dissociation as a member is wrongful only if
2504 the dissociation:
2505 (a) Is in breach of an express provision of the operating
2506 agreement; or
2507 (b) Occurs before completion of the winding up of the
2508 company and:
2509 1. The person withdraws as a member by express will;
2510 2. The person is expelled as a member by judicial order
2511 under s. 608.7862(6);
2512 3. The person is dissociated under s. 608.7862(8); or
2513 4. In the case of a person that is not a trust other than a
2514 business trust, an estate, or an individual, the person is
2515 expelled or otherwise dissociated as a member because it
2516 willfully dissolved or terminated.
2517 (3) A person who wrongfully dissociates as a member is
2518 liable to the limited liability company and, subject to s.
2519 608.7931, to the other members for damages caused by the
2520 dissociation. The liability is in addition to a debt,
2521 obligation, or other liability of the member to the company or
2522 the other members.
2523 608.7862 Events causing dissociation.—A person is

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2524 dissociated as a member when:
2525 (1) The company has notice of the person's express will to
2526 withdraw as a member, but, if the person specified a withdrawal
2527 date later than the date the company had notice, on that later
2528 date.
2529 (2) An event stated in the operating agreement as causing
2530 the person's dissociation occurs.
2531 (3) The person's entire interest is transferred in a
2532 foreclosure sale under s. 608.7857(5).
2533 (4) The person is expelled as a member pursuant to the
2534 operating agreement.
2535 (5) The person is expelled as a member by the unanimous
2536 consent of the other members if:
2537 (a) It is unlawful to carry on the company's activities and
2538 affairs with the person as a member.
2539 (b) There has been a transfer of all the person's
2540 transferable interest in the company, other than:
2541 1. A transfer for security purposes; or
2542 2. A charging order in effect under s. 608.7857 which has
2543 not been foreclosed.
2544 (c) The person is a corporation.
2545 1. The company notifies the person that it will be expelled
2546 as a member because the person has filed articles or a
2547 certificate of dissolution or the equivalent, its charter has
2548 been revoked, or its right to conduct business has been
2549 suspended by the jurisdiction of its formation.
2550 2. Within 90 days after the notification, the articles or
2551 certificate of dissolution or the equivalent has not been
2552 revoked or its charter or right to conduct business has not been

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2553 reinstated.
2554 (d) The person is an unincorporated entity that has been
2555 dissolved and whose business is being wound up.
2556 (6) On application by the company or a member in a direct
2557 action under s. 608.7931, the person is expelled as a member by
2558 judicial order because the person:
2559 (a) Has engaged or is engaging in wrongful conduct that has
2560 affected adversely and materially, or will affect adversely and
2561 materially, the company's activities and affairs;
2562 (b) Has committed willfully or persistently, or is
2563 committing willfully and persistently, a material breach of the
2564 operating agreement or a duty or obligation under s. 608.7851;
2565 or
2566 (c) Has engaged, or is engaging, in conduct relating to the
2567 company's activities and affairs which makes it not reasonably
2568 practicable to carry on the activities and affairs with the
2569 person as a member.
2570 (7) In the case of an individual:
2571 (a) The individual dies; or
2572 (b) In a member-managed limited liability company:
2573 1. A guardian or general conservator for the individual is
2574 appointed; or
2575 2. There is a judicial order that the individual has
2576 otherwise become incapable of performing the individual's duties
2577 as a member under this chapter or the operating agreement.
2578 (8) In a member-managed limited liability company, the
2579 person:
2580 (a) Becomes a debtor in bankruptcy;
2581 (b) Executes an assignment for the benefit of creditors; or

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2582 (c) Seeks, consents to, or acquiesces in the appointment of
2583 a trustee, receiver, or liquidator of the person or of all or
2584 substantially all the person's property.
2585 (9) In the case of a person who is a testamentary or inter
2586 vivos trust or is acting as a member by virtue of being a
2587 trustee of such a trust, the trust's entire transferable
2588 interest in the company is distributed.
2589 (10) In the case of a person who is an estate or is acting
2590 as a member by virtue of being a legal representative of an
2591 estate, the estate's entire transferable interest in the company
2592 is distributed.
2593 (11) In the case of a person that is not an individual,
2594 corporation, unincorporated entity, trust, or estate, the
2595 existence of the person terminates.
2596 (12) The company participates in a merger under ss.
2597 608.925-608.930; and
2598 (a) The company is not the surviving entity; or
2599 (b) Otherwise as a result of the merger, the person ceases
2600 to be a member.
2601 (13) The company participates in a conversion under ss.
2602 608.941-608.950 and the person ceases to be member.
2603 (14) The company participates in an interest exchange under
2604 ss. 608.935-608.940 and the person ceases to be a member.
2605 (15) The company dissolves and completes winding up.
2606 608.7863 Effect of dissociation.—
2607 (1) If a person is dissociated as a member:
2608 (a) The person's right to participate as a member in the
2609 management and conduct of the company's activities and affairs
2610 terminates.

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2611 (b) If the company is member-managed, the person's duties
2612 and obligations under s. 608.7851 as a member end with regard to
2613 matters arising and events occurring after the person's
2614 dissociation.
2615 (c) Subject to s. 608.7858 and ss. 608.961-608.972, a
2616 transferable interest owned by the person in the person's
2617 capacity immediately before dissociation as a member is owned by
2618 the person solely as a transferee.
2619 (2) A person's dissociation as a member does not, of
2620 itself, discharge the person from a debt, obligation, or other
2621 liability to the company or the other members which the person
2622 incurred while a member.
2623 608.7911 Events causing dissolution.—A limited liability
2624 company is dissolved and its activities and affairs must be
2625 wound up upon the occurrence of:
2626 (1) An event or circumstance that the operating agreement
2627 states causes dissolution.
2628 (2) The consent of all the members.
2629 (3) The passage of 90 consecutive days during which the
2630 company has no members, unless:
2631 (a) Consent to admit at least one specified person as a
2632 member is given by transferees owning the rights to receive a
2633 majority of distributions as transferees at the time the consent
2634 is to be effective.
2635 (b) At least one person becomes a member in accordance with
2636 the consent.
2637 (4) The entry of a decree of judicial dissolution in
2638 accordance with s. 608.7915.
2639 (5) The filing of a statement of administrative dissolution

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2640 by the department under s. 608.7924.
2641 608.7912 Grounds for judicial dissolution.—A circuit court
2642 may dissolve a limited liability company:
2643 (1) In a proceeding by the Department of Legal Affairs if
2644 it is established that:
2645 (a) The limited liability company obtained its articles of
2646 organization through fraud; or
2647 (b) The limited liability company has continued to exceed
2648 or abuse the authority conferred upon it by law.
2649
2650 The enumeration in paragraphs (a) and (b) of grounds for
2651 involuntary dissolution does not exclude actions or special
2652 proceedings by the Department of Legal Affairs or a state
2653 official for the annulment or dissolution of a limited liability
2654 company for other causes as provided in another law of this
2655 state.
2656 (2) In a proceeding by a manager or member if it is
2657 established that:
2658 (a) The conduct of all or substantially all of the
2659 company's activities and affairs is unlawful;
2660 (b) It is not reasonably practicable to carry on the
2661 company's activities and affairs in conformity with the articles
2662 of organization and the operating agreement;
2663 (c) The managers or members in control of the company have
2664 acted, are acting, or are reasonably expected to act in a manner
2665 that is illegal or fraudulent;
2666 (d) The limited liability company's assets are being
2667 misappropriated or wasted, causing material injury to the
2668 limited liability company, or in a proceeding by a member,

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2669 causing material injury to one or more of its members; or
2670 (e) Subject to subsection (4), the managers or those
2671 members in control of the limited liability company are
2672 deadlocked in the management of the limited liability company
2673 affairs, the members are unable to break the deadlock, and
2674 irreparable injury to the limited liability company is
2675 threatened or being suffered.
2676 (3) In a proceeding by the limited liability company to
2677 have its voluntary dissolution continued under court
2678 supervision.
2679 (4) If a deadlock exists among the managers or members in
2680 control of a limited liability company and the managers or
2681 members are unable to break the deadlock, irreparable injury to
2682 the company is threatened or being suffered, and the operating
2683 agreement contains a deadlock sale provision that has been
2684 automatically triggered or has been triggered by a member before
2685 the establishment of the grounds for judicial dissolution under
2686 paragraph (2)(e), then the grounds for judicial dissolution
2687 under paragraph (2)(e) are no longer applicable to that
2688 deadlock. For purposes of this section, a deadlock sale
2689 provision means a provision in an operating agreement that is or
2690 may be applicable in the event of a deadlock among the managers
2691 or members in control of the limited liability company that the
2692 members are unable to break, which provides for an automatically
2693 triggered or a member-triggered purchase and sale of interests
2694 or governance interests among or between members or an
2695 automatically triggered or a member-triggered sale of all or
2696 substantially all of the assets of the company or a subsidiary
2697 of the company, or a similar provision that, if triggered,

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2698 breaks the deadlock by causing the transfer of the interests or
2699 governance interests of one or more members or the sale of all
2700 or substantially all of the company's or a subsidiary's assets.
2701 A deadlock provision in an operating agreement that is not
2702 triggered before the establishment of the grounds for judicial
2703 dissolution under paragraph (2)(e) does not adversely affect the
2704 rights of members and managers to seek judicial dissolution
2705 under paragraph (2)(e).
2706 608.7913 Procedure for judicial dissolution; alternative
2707 remedies.—
2708 (1) Venue for a proceeding brought under s. 608.7912 lies
2709 in the circuit court of the county where the limited liability
2710 company's principal office is or was last located, as shown by
2711 the records of the department or, if none in this state, where
2712 its registered office is or was last located.
2713 (2) It is not necessary to make members parties to a
2714 proceeding to dissolve a limited liability company unless relief
2715 is sought against them individually.
2716 (3) A court in a proceeding brought to dissolve a limited
2717 liability company may issue injunctions, appoint a receiver or
2718 custodian pendente lite with all powers and duties the court
2719 directs, take other action required to preserve the limited
2720 liability company's assets wherever located, and carry on the
2721 business of the limited liability company until a full hearing
2722 can be held.
2723 (4) In a proceeding brought under s. 608.7912, the court
2724 may, upon a showing of sufficient merit to warrant such a
2725 remedy:
2726 (a) Appoint a receiver or custodian under s. 608.7914;

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2727 (b) Order a purchase of a petitioning member's interest
2728 pursuant to s. 608.7916; or
2729 (c) Upon a showing of good cause, order another remedy the
2730 court deems appropriate in its discretion, including an
2731 equitable remedy.
2732 (5) Section 57.105 applies to a proceeding brought under s.
2733 608.7912.
2734 608.7914 Receivership or custodianship.—
2735 (1) A court in a judicial proceeding brought to dissolve a
2736 limited liability company may appoint one or more receivers to
2737 wind up and liquidate, or one or more custodians to manage the
2738 business and affairs of the limited liability company. The court
2739 shall hold a hearing, after notifying all parties to the
2740 proceeding and an interested person designated by the court,
2741 before appointing a receiver or custodian. The court appointing
2742 a receiver or custodian has exclusive jurisdiction over the
2743 limited liability company and all of its property, wherever
2744 located.
2745 (2) The court may appoint a person authorized to act as a
2746 receiver or custodian. The court may require the receiver or
2747 custodian to post bond, with or without sureties, in an amount
2748 the court directs.
2749 (3) The court shall describe the powers and duties of the
2750 receiver or custodian in its appointing order, which may be
2751 amended. Among other powers:
2752 (a) The receiver:
2753 1. May dispose of all or a part of the assets of the
2754 limited liability company wherever located, at a public or
2755 private sale, if authorized by the court.

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2756 2. May sue and defend in the receiver's own name, as
2757 receiver of the limited liability company, in all courts of this
2758 state.
2759 (b) The custodian may exercise all of the powers of the
2760 limited liability company, through or in place of its managers
2761 or members, to the extent necessary to manage the activities and
2762 affairs of the limited liability company in the best interests
2763 of its members and creditors.
2764 (4) The court, during a receivership, may redesignate the
2765 receiver as a custodian, and during a custodianship may
2766 redesignate the custodian as a receiver, if doing so is in the
2767 best interests of the limited liability company and its members
2768 and creditors.
2769 (5) During the receivership or custodianship the court may
2770 order compensation paid and expense disbursements or
2771 reimbursements made to the receiver or custodian and the
2772 receiver's or custodian's counsel from the assets of the limited
2773 liability company or proceeds from the sale of part or all of
2774 those assets.
2775 (6) The court has jurisdiction to appoint an ancillary
2776 receiver for the assets and business of a limited liability
2777 company. The ancillary receiver shall serve ancillary to a
2778 receiver located in another state, whenever the court deems that
2779 circumstances exist requiring the appointment of such a
2780 receiver. The court may appoint such an ancillary receiver for a
2781 foreign limited liability company even though no receiver has
2782 been appointed elsewhere. The receivership shall be converted
2783 into an ancillary receivership when an order entered by a court
2784 of competent jurisdiction in the other state provides for a

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2785 receivership of the foreign limited liability company.
2786 608.7915 Decree of dissolution.—
2787 (1) If, after a hearing, the court determines that one or
2788 more grounds for judicial dissolution described in s. 608.7912
2789 exist, the court may enter a decree dissolving the limited
2790 liability company and specifying the effective date of the
2791 dissolution, and the clerk of the court shall deliver a
2792 certified copy of the decree to the department, which shall file
2793 the decree.
2794 (2) After entering the decree of dissolution, the court
2795 shall direct the winding up and liquidation of the limited
2796 liability company's activities and affairs in accordance with
2797 ss. 608.7919-608.7923, subject to subsection (3).
2798 (3) In a proceeding for judicial dissolution, the court may
2799 require all creditors of the limited liability company to file
2800 with the clerk of the court or with the receiver, in a form as
2801 the court may prescribe, proofs under oath of their respective
2802 claims. If the court requires the filing of claims, the court
2803 shall fix a date, which may not be less than 4 months after the
2804 date of the order, as the last day for filing claims. The court
2805 shall prescribe the deadline for filing claims that shall be
2806 given to creditors and claimants. Before the date so fixed, the
2807 court may extend the time for the filing of claims by court
2808 order. Creditors and claimants failing to file proofs of claim
2809 on or before the date so fixed may be barred, by order of court,
2810 from participating in the distribution of the assets of the
2811 limited liability company. Nothing in this section affects the
2812 enforceability of a recorded mortgage or lien or the perfected
2813 security interest or rights of a person in possession of real or

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2814 personal property.
2815 608.7916 Election to purchase instead of dissolution.—
2816 (1) In a proceeding initiated by a member of a limited
2817 liability company under s. 608.7912(2) to dissolve the company,
2818 the company may elect, or, if it fails to elect, one or more
2819 other members may elect to purchase the entire interest of the
2820 petitioner in the company at the fair value of the interest. An
2821 election pursuant to this section is irrevocable unless the
2822 court determines that it is equitable to set aside or modify the
2823 election.
2824 (2) An election to purchase pursuant to this section may be
2825 filed with the court within 90 days after the filing of the
2826 petition by the petitioning member under s. 608.7912(2) or at
2827 such later time as the court in its discretion may allow. If the
2828 election to purchase is filed, the company shall, within 10 days
2829 thereafter, give written notice to all members, other than the
2830 petitioning member. The notice must describe the interest in the
2831 company owned by each petitioning member and must advise the
2832 recipients of their right to join in the election to purchase
2833 the petitioning member's interest in accordance with this
2834 section. Members who wish to participate must file notice of
2835 their intention to join in the purchase within 30 days after the
2836 effective date of the notice. A member who has filed an election
2837 or notice of the intent to participate in the election to
2838 purchase thereby becomes a party to the proceeding and shall
2839 participate in the purchase in proportion to the ownership
2840 interest as of the date the first election was filed, unless he
2841 or she otherwise agrees or the court otherwise directs. After an
2842 election to purchase has been filed by the limited liability

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2843 company or one or more members, the proceeding under s.
2844 608.7912(2) may not be discontinued or settled, nor may the
2845 petitioning member sell or otherwise dispose of interest of the
2846 petitioner in the company, unless the court determines that it
2847 would be equitable to the company and the members, other than
2848 the petitioner, to permit such discontinuance, settlement, sale,
2849 or other disposition.
2850 (3) If, within 60 days after the filing of the first
2851 election, the parties reach agreement as to the fair value and
2852 terms of the purchase of the petitioner's interest, the court
2853 shall enter an order directing the purchase of petitioner's
2854 interest upon the terms and conditions agreed to by the parties.
2855 (4) If the parties are unable to reach an agreement as
2856 provided for in subsection (3), the court, upon application of a
2857 party, shall stay the proceedings and determine the fair value
2858 of the petitioner's interest as of the day before the date on
2859 which the petition was filed or as of such other date as the
2860 court deems appropriate under the circumstances.
2861 (5) Upon determining the fair value of the petitioner's
2862 interest in the company, the court shall enter an order
2863 directing the purchase upon such terms and conditions as the
2864 court deems appropriate, which may include payment of the
2865 purchase price in installments, when necessary in the interests
2866 of equity; provision for security to ensure payment of the
2867 purchase price and additional costs, fees, and expenses as may
2868 have been awarded; and, if the interest is to be purchased by
2869 members, the allocation of the interest among those members. In
2870 allocating petitioner's interest among holders of different
2871 classes or series of interests in the company, the court shall

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2872 attempt to preserve the existing distribution of voting rights
2873 among holders of different classes insofar as practicable and
2874 may direct that holders of a specific class or classes or series
2875 not participate in the purchase. Interest may be allowed at the
2876 rate and from the date determined by the court to be equitable;
2877 however, if the court finds that the refusal of the petitioning
2878 member to accept an offer of payment was arbitrary or otherwise
2879 not in good faith, no payment of interest is allowed. If the
2880 court finds that the petitioning member had probable grounds for
2881 relief under s. 608.7912(2)(d) or (e), it may award to the
2882 petitioning member reasonable fees and expenses of counsel and
2883 of experts employed by petitioner.
2884 (6) Upon entry of an order under subsection (3) or
2885 subsection (5), the court shall dismiss the petition to dissolve
2886 the limited liability company and the petitioning member shall
2887 no longer have rights or status as a member of the limited
2888 liability company, except the right to receive the amounts
2889 awarded by the order of the court, which shall be enforceable in
2890 the same manner as another judgment.
2891 (7) The purchase ordered pursuant to subsection (5) must be
2892 made within 10 days after the date the order becomes final
2893 unless, before that time, the limited liability company files
2894 with the court a notice of its intention to dissolve pursuant to
2895 s. 608.7911(2), in which case articles of dissolution for the
2896 company must be filed within 50 days thereafter. Upon filing of
2897 such articles of dissolution, the limited liability company
2898 shall be dissolved in accordance with ss. 608.7919-608.7923, and
2899 the order entered pursuant to subsection (5) shall no longer be
2900 of force or effect, except that the court may award the

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2901 petitioning member reasonable fees and expenses of counsel and
2902 experts in accordance with subsection (5) and the petitioner may
2903 continue to pursue any claims previously asserted on behalf of
2904 the limited liability company.
2905 (8) A payment by the limited liability company pursuant to
2906 an order under subsection (3) or subsection (5), other than an
2907 award of fees and expenses pursuant to subsection (5), is
2908 subject to s. 608.7844.
2909 608.7917 Articles of dissolution; filing of articles of
2910 dissolution.—
2911 (1) Upon the occurrence of an event described in s.
2912 608.7911(1)-(3), the limited liability company shall deliver for
2913 filing articles of dissolution as provided in this section.
2914 (2) The articles of dissolution must set forth:
2915 (a) The name of the limited liability company.
2916 (b) The effective date of the limited liability company's
2917 dissolution.
2918 (c) The occurrence that resulted in the limited liability
2919 company's dissolution.
2920 (d) If there are no members, the name, address, and
2921 signature of the person appointed in accordance with this
2922 subsection to wind up the company.
2923 (3) The articles of dissolution of the limited liability
2924 company shall be delivered to the department. If the department
2925 finds that the articles of dissolution conform to law, it shall,
2926 when all fees have been paid as prescribed in this chapter, file
2927 the articles of dissolution and issue a certificate of
2928 dissolution.
2929 (4) Upon the filing of the articles of dissolution, the

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2930 limited liability company shall cease conducting its business
2931 and shall continue solely for the purpose of winding up its
2932 affairs in accordance with s. 608.7919, except for the purpose
2933 of lawsuits, other proceedings, and appropriate action as
2934 provided in this chapter.
2935 608.7918 Revocation of articles of dissolution.—
2936 (1) A limited liability company that has dissolved as the
2937 result of an event described in s. 608.7911(1)-(3) and filed
2938 articles of dissolution with the department, but has not filed a
2939 statement of termination that has become effective, may revoke
2940 its dissolution at any time before 120 days after the effective
2941 date of its articles of dissolution.
2942 (2) The revocation of the dissolution shall be authorized
2943 in the same manner as the dissolution was authorized.
2944 (3) After the revocation of dissolution is authorized, the
2945 limited liability company shall deliver a statement of
2946 revocation of dissolution to the department for filing, together
2947 with a copy of its articles of dissolution, that sets forth:
2948 (a) The name of the limited liability company.
2949 (b) The effective date of the dissolution that was revoked.
2950 (c) The date that the statement of revocation of
2951 dissolution was authorized.
2952 (4) If there has been substantial compliance with
2953 subsection (3), the revocation of dissolution is effective when
2954 the department files the statement of revocation of dissolution.
2955 (5) When the revocation of dissolution becomes effective:
2956 (a) The company resumes carrying on its activities and
2957 affairs as if dissolution had never occurred.
2958 (b) Subject to paragraph (c), a liability incurred by the

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2959 company after the dissolution and before the revocation is
2960 effective is determined as if dissolution had never occurred.
2961 (c) The rights of a third party arising out of conduct in
2962 reliance on the dissolution before the third party knew or had
2963 notice of the revocation may not be adversely affected.
2964 608.7919 Winding up.—
2965 (1) A dissolved limited liability company shall wind up its
2966 activities and affairs and, except as otherwise provided in ss.
2967 608.7918 and 608.7925, the company continues after dissolution
2968 only for the purpose of winding up.
2969 (2) In winding up its activities and affairs, a limited
2970 liability company:
2971 (a) Shall discharge or make provision for the company's
2972 debts, obligations, and other liabilities as provided in ss.
2973 608.7920-608.7923, settle and close the company's activities and
2974 affairs, and marshal and distribute the assets of the company.
2975 (b) May:
2976 1. Preserve the company's activities, affairs, and property
2977 as a going concern for a reasonable time.
2978 2. Prosecute and defend actions and proceedings, whether
2979 civil, criminal, or administrative.
2980 3. Transfer title to the company's real estate and other
2981 property.
2982 4. Settle disputes by mediation or arbitration.
2983 5. Dispose of its properties that will not be distributed
2984 in kind to its members.
2985 6. Perform other acts necessary or appropriate to the
2986 winding up.
2987 (3) If a dissolved limited liability company has no

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2988 members, the legal representative of the last person to have
2989 been a member may wind up the activities and affairs of the
2990 company. If the legal representative does so, the person has the
2991 powers of a sole manager under s. 608.7846(3) and is deemed to
2992 be a manager for the purposes of s. 608.7834(1).
2993 (4) If the legal representative under subsection (3)
2994 declines or fails to wind up the company's activities and
2995 affairs, a person may be appointed to do so by the consent of
2996 transferees owning a majority of the rights to receive
2997 distributions as transferees at the time the consent is to be
2998 effective. A person appointed under this subsection has the
2999 powers of a sole manager under s. 608.7846(3) and is deemed to
3000 be a manager for the purposes of s. 608.7834(1).
3001 (5) A circuit court may order judicial supervision of the
3002 winding up of a dissolved limited liability company, including
3003 the appointment of one or more persons to wind up the company's
3004 activities and affairs:
3005 (a) On application of a member or manager, if the applicant
3006 establishes good cause;
3007 (b) On the application of a transferee, if:
3008 1. The company does not have any members.
3009 2. The legal representative of the last person to have been
3010 a member declines or fails to wind up the company's activities
3011 and affairs.
3012 3. Within a reasonable time following the dissolution a
3013 person has not been appointed pursuant to subsection (3);
3014 (c) On application of a creditor of the company if the
3015 applicant establishes good cause, but only if a receiver,
3016 custodian, or another person has not already been appointed for

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3017 that purpose under this chapter; or
3018 (d) In connection with a proceeding under s. 608.7912, if a
3019 receiver, custodian, or another person has not already been
3020 appointed for that purpose under s. 608.7914.
3021 (6) The person or persons appointed by a court under
3022 subsection (5) may also be designated trustees or receivers of
3023 and for the company with the authority and power to take charge
3024 of the limited liability company's property; to collect the
3025 debts and property due and belonging to the limited liability
3026 company, to prosecute and defend, in the name of the limited
3027 liability company, or otherwise, all such suits as may be
3028 necessary or proper for the purposes described above, and to
3029 appoint an agent or agents under them; and to do all other acts
3030 that might be done by the limited liability company, if in
3031 being, that may be necessary for the final settlement of the
3032 unfinished activities and affairs of the limited liability
3033 company. The powers of the trustees or receivers may be
3034 continued as long as the court determines necessary for the
3035 above purposes.
3036 (7) A dissolved limited liability company that has
3037 completed winding up may deliver to the department for filing a
3038 statement of termination that provides:
3039 (a) The name of the limited liability company.
3040 (b) The date of filing of its initial articles of
3041 organization.
3042 (c) The date of the filing of its articles of dissolution.
3043 (d) The limited liability company has completed winding up
3044 its affairs and has determined that it will file a statement of
3045 termination.

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3046 (e) Other information as determined by the authorized
3047 representative.
3048 (8) The manager or managers in office at the time of
3049 dissolution or the survivors of them, or, if none, the members,
3050 shall thereafter be trustees for the members and creditors of
3051 the dissolved limited liability company. The trustees may
3052 distribute property of the limited liability company discovered
3053 after dissolution, convey real estate and other property, and
3054 take such other action as may be necessary on behalf of and in
3055 the name of the dissolved limited liability company.
3056 608.7920 Disposition of assets in winding up.—
3057 (1) In winding up its activities and affairs, a limited
3058 liability company must apply its assets to discharge its
3059 obligations to creditors, including members who are creditors.
3060 (2) After a limited liability company complies with
3061 subsection (1), the surplus must be distributed in the following
3062 order, subject to a charging order in effect under s. 608.7857:
3063 (a) To each person owning a transferable interest that
3064 reflects contributions made and not previously returned, an
3065 amount equal to the value of the unreturned contributions.
3066 (b) To members and dissociated members, in the proportions
3067 in which they shared in distributions before dissolution, except
3068 to the extent necessary to comply with a transfer effective
3069 under s. 608.7856.
3070 (3) If the limited liability company does not have
3071 sufficient surplus to comply with paragraph (2)(a), any surplus
3072 must be distributed among the owners of transferable interests
3073 in proportion to the value of their respective unreturned
3074 contributions.

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3075 (4) All distributions made under subsections (2) and (3)
3076 must be paid in money.
3077 608.7921 Known claims against dissolved limited liability
3078 company.—
3079 (1) A dissolved limited liability company or successor
3080 entity, as defined in subsection (14), may dispose of the known
3081 claims against it by following the procedure described in
3082 subsections (2)-(7).
3083 (2) A dissolved limited liability company or successor
3084 entity shall deliver to each of its known claimants written
3085 notice of the dissolution after its effective date. The written
3086 notice must:
3087 (a) Provide a reasonable description of the claim that the
3088 claimant may be entitled to assert.
3089 (b) State whether the claim is admitted or not admitted, in
3090 whole or in part, and, if admitted:
3091 1. The amount that is admitted, which may be as of a given
3092 date.
3093 2. An interest obligation if fixed by an instrument of
3094 indebtedness.
3095 (c) Provide a mailing address to which a claim may be sent.
3096 (d) State the deadline, which may not be less than 120 days
3097 after the effective date of the written notice, by which
3098 confirmation of the claim must be delivered to the dissolved
3099 limited liability company or successor entity.
3100 (e) State that the dissolved limited liability company or
3101 successor entity may make distributions to other claimants and
3102 to the members or transferees of the limited liability company
3103 or persons interested without further notice.

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3104 (3) A dissolved limited liability company or successor
3105 entity may reject, in whole or in part, a claim made by a
3106 claimant pursuant to this section by mailing notice of the
3107 rejection to the claimant within 90 days after receipt of the
3108 claim and, in all events, at least 150 days before expiration of
3109 3 years after the effective date of dissolution. A notice sent
3110 by the dissolved limited liability company or successor entity
3111 pursuant to this subsection must be accompanied by a copy of
3112 this section.
3113 (4) A dissolved limited liability company or successor
3114 entity electing to follow the procedures described in
3115 subsections (2) and (3) shall also give notice of the
3116 dissolution of the limited liability company to persons with
3117 known claims that are contingent upon the occurrence or
3118 nonoccurrence of future events or otherwise conditional or
3119 unmatured, and request that the persons present the claims in
3120 accordance with the terms of the notice. The notice must be in
3121 substantially the form and sent in the same manner as described
3122 in subsection (2).
3123 (5) A dissolved limited liability company or successor
3124 entity shall offer a claimant whose known claim is contingent,
3125 conditional, or unmatured such security as the limited liability
3126 company or entity determines is sufficient to provide
3127 compensation to the claimant if the claim matures. The dissolved
3128 limited liability company or successor entity shall deliver such
3129 offer to the claimant within 90 days after receipt of the claim
3130 and, in all events, at least 150 days before expiration of 3
3131 years after the effective date of dissolution. If the claimant
3132 who is offered the security does not deliver in writing to the

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3133 dissolved limited liability company or successor entity a notice
3134 rejecting the offer within 120 days after receipt of the offer
3135 for security, the claimant is deemed to have accepted such
3136 security as the sole source from which to satisfy his or her
3137 claim against the limited liability company.
3138 (6) A dissolved limited liability company or successor
3139 entity that gives notice in accordance with subsections (2) and
3140 (4) shall petition the circuit court in the applicable county to
3141 determine the amount and form of security that is sufficient to
3142 provide compensation to a claimant who has rejected the offer
3143 for security made pursuant to subsection (5).
3144 (7) A dissolved limited liability company or successor
3145 entity that has given notice in accordance with subsection (2)
3146 shall petition the circuit court in the applicable county to
3147 determine the amount and form of security that will be
3148 sufficient to provide compensation to claimants whose claims are
3149 known to the limited liability company or successor entity but
3150 whose identities are unknown. The court shall appoint a guardian
3151 ad litem to represent all claimants whose identities are unknown
3152 in a proceeding brought under this subsection. The reasonable
3153 fees and expenses of the guardian, including all reasonable
3154 expert witness fees, shall be paid by the petitioner in the
3155 proceeding.
3156 (8) The giving of notice or making of an offer pursuant to
3157 this section does not revive a claim then barred, extend an
3158 otherwise applicable statute of limitations, or constitute
3159 acknowledgment by the dissolved limited liability company or
3160 successor entity that a person to whom such notice is sent is a
3161 proper claimant, and does not operate as a waiver of a defense

3162 or counterclaim in respect of a claim asserted by a person to
3163 whom such notice is sent.
3164 (9) A dissolved limited liability company or successor
3165 entity that followed the procedures described in subsections
3166 (2)-(7) must:
3167 (a) Pay the claims admitted or made and not rejected in
3168 accordance with subsection (3).
3169 (b) Post the security offered and not rejected pursuant to
3170 subsection (5).
3171 (c) Post a security ordered by the circuit court in a
3172 proceeding under subsections (6) and (7).
3173 (d) Pay or make provision for all other known obligations
3174 of the limited liability company or the successor entity.
3175
3176 If there are sufficient funds, such claims or obligations must
3177 be paid in full, and a provision for payments must be made in
3178 full. If there are insufficient funds, the claims and
3179 obligations shall be paid or provided for according to their
3180 priority and, among claims of equal priority, ratably to the
3181 extent of funds that are legally available therefor. Remaining
3182 funds shall be distributed to the members and transferees of the
3183 dissolved limited liability company. However, the distribution
3184 may not be made before the expiration of 150 days after the date
3185 of the last notice of a rejection given pursuant to subsection
3186 (3). In the absence of actual fraud, the judgment of the
3187 managers of a dissolved manager-managed limited liability
3188 company, or the members of a dissolved member-managed limited
3189 liability company, or other person or persons winding up the
3190 limited liability company or the governing persons of the

3191 successor entity, as to the provisions made for the payment of
3192 all obligations under paragraph (d), is conclusive.
3193 (10) A dissolved limited liability company or successor
3194 entity that has not followed the procedures described in
3195 subsections (2) and (3) shall pay or make reasonable provision
3196 to pay all known claims and obligations, including all
3197 contingent, conditional, or unmatured claims known to the
3198 dissolved limited liability company or the successor entity and
3199 all claims that are known to the dissolved limited liability
3200 company or the successor entity but for which the identity of
3201 the claimant is unknown. If there are sufficient funds, the
3202 claims must be paid in full, and a provision made for payment
3203 must be made in full. If there are insufficient funds, the
3204 claims and obligations shall be paid or provided for according
3205 to their priority and, among claims of equal priority, ratably
3206 to the extent of funds that are legally available. Remaining
3207 funds shall be distributed to the members and transferees of the
3208 dissolved limited liability company.
3209 (11) A member or transferee of a dissolved limited
3210 liability company to which the assets were distributed pursuant
3211 to subsection (9) or subsection (10) is not liable for a claim
3212 against the limited liability company in an amount in excess of
3213 the member's or transferee's pro rata share of the claim or the
3214 amount distributed to the member or transferee, whichever is
3215 less.
3216 (12) A member or transferee of a dissolved limited
3217 liability company to which the assets were distributed pursuant
3218 to subsection (9) is not liable for a claim against the limited
3219 liability company, which claim is known to the limited liability

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3220 company or successor entity and on which a proceeding is not
3221 begun before the expiration of 3 years after the effective date
3222 of dissolution.
3223 (13) The aggregate liability of a person for claims against
3224 the dissolved limited liability company arising under this
3225 section or s. 608.7920 may not exceed the amount distributed to
3226 the person in dissolution.
3227 (14) As used in this section and s. 608.7920, the term
3228 "successor entity" includes a trust, receivership, or other
3229 legal entity governed by the laws of this state to which the
3230 remaining assets and liabilities of a dissolved limited
3231 liability company are transferred and which exists solely for
3232 the purposes of prosecuting and defending suits by or against
3233 the dissolved limited liability company, thereby enabling the
3234 dissolved limited liability company to settle and close the
3235 activities and affairs of the dissolved limited liability
3236 company, to dispose of and convey the property of the dissolved
3237 limited liability company, to discharge the liabilities of the
3238 dissolved limited liability company, and to distribute to the
3239 dissolved limited liability company's members or transferees any
3240 remaining assets, but not for the purpose of continuing the
3241 activities and affairs for which the dissolved limited liability
3242 company was organized.
3243 (15) As used in this section and s. 608.7923, the term
3244 "circuit court in the applicable county" means the county in
3245 this state in which the limited liability company's principal
3246 office is located or was located at the effective date of
3247 dissolution; if it has, and at the effective date of dissolution
3248 had, no principal office in this state, then in the county in

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3249 which the limited liability company has, or at the effective
3250 date of dissolution had, an office in this state; or if none in
3251 this state, then in the county in which the limited liability
3252 company's registered office is or was last located.
3253 (16) As used in this section, the term "known claim" or
3254 "claim" includes unliquidated claims, but does not include a
3255 contingent liability that has not matured so that there is no
3256 immediate right to bring suit or a claim based on an event
3257 occurring after the effective date of dissolution.
3258 608.7922 Other claims against a dissolved limited liability
3259 company.—
3260 (1) A dissolved limited liability company or successor
3261 entity, as defined in s. 608.7921(14), may choose to execute one
3262 of the following procedures to resolve payment of unknown
3263 claims:
3264 (a) The company or successor entity may file notice of its
3265 dissolution with the department on the form prescribed by the
3266 department and request that persons with claims against the
3267 company which are not known to the company or successor entity
3268 present them in accordance with the notice. The notice must:
3269 1. State the name of the company and the date of
3270 dissolution.
3271 2. Describe the information that must be included in a
3272 claim, state that the claim must be in writing, and provide a
3273 mailing address to which the claim may be sent.
3274 3. State that a claim against the company is barred unless
3275 a proceeding to enforce the claim is commenced within 4 years
3276 after the filing of the notice.
3277 (b) The company or successor entity may publish notice of

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3278 its dissolution and request persons having claims against the
3279 company to present them in accordance with the notice. The
3280 notice must:
3281 1. Be published in a newspaper of general circulation in
3282 the county in which the dissolved limited liability company's
3283 principal office is located or, if the principal office is not
3284 located in this state, in the county in which the office of the
3285 company's registered agent is or was last located.
3286 2. Describe the information required to be contained in a
3287 claim, state that the claim must be in writing, and provide a
3288 mailing address to which the claim is to be sent.
3289 3. State that a claim against the company is barred unless
3290 an action to enforce the claim is commenced within 4 years after
3291 publication of the notice.
3292 (2) If a dissolved limited liability company complies with
3293 either paragraph (1)(a) or paragraph (1)(b), unless sooner
3294 barred by another statute limiting actions, the claim of each of
3295 the following claimants is barred unless the claimant commences
3296 an action to enforce the claim against the dissolved limited
3297 liability company within 4 years after the publication date of
3298 the notice:
3299 (a) A claimant that did not receive notice in a record
3300 under s. 608.7921.
3301 (b) A claimant whose claim was timely sent to the dissolved
3302 limited liability company but not acted on.
3303 (c) A claimant whose claim is contingent at, or based on an
3304 event occurring after, the effective date of dissolution.
3305 (3) A claim that is not barred by this section, s.
3306 608.7921, or another statute limiting actions, may be enforced:

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3307 (a) Against a dissolved limited liability company, to the
3308 extent of its undistributed assets.
3309 (b) Except as otherwise provided in s. 608.7923, if assets
3310 of the limited liability company have been distributed after
3311 dissolution, against a member or transferee to the extent of
3312 that person's proportionate share of the claim or of the
3313 company's assets distributed to the member or transferee after
3314 dissolution, whichever is less, but a person's total liability
3315 for all claims under this subsection may not exceed the total
3316 amount of assets distributed to the person after dissolution.
3317 (4) This section does not extend an otherwise applicable
3318 statute of limitations.
3319 608.7923 Court proceedings.—
3320 (1) A dissolved limited liability company that has filed or
3321 published a notice under s. 608.7922(1)(a) or (1)(b) may file an
3322 application with the circuit court in the applicable county, for
3323 a determination of the amount and form of security to be
3324 provided for payment of claims that are contingent, have not
3325 been made known to the company, or are based on an event
3326 occurring after the effective date of dissolution but which,
3327 based on the facts known to the dissolved company, are
3328 reasonably expected to arise after the effective date of
3329 dissolution. Security is not required for a claim that is or is
3330 reasonably anticipated to be barred under s. 608.7922.
3331 (2) Within 10 days after filing an application under
3332 subsection (1), the dissolved limited liability company must
3333 give notice of the proceeding to each claimant holding a
3334 contingent claim known to the company.
3335 (3) In a proceeding under this section, the court may

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3336 appoint a guardian ad litem to represent all claimants whose
3337 identities are unknown. The reasonable fees and expenses of the
3338 guardian, including all reasonable expert witness fees, must be
3339 paid by the dissolved limited liability company.
3340 (4) A dissolved limited liability company that provides
3341 security in the amount and form ordered by the court under
3342 subsection (1) satisfies the company's obligations with respect
3343 to claims that are contingent, have not been made known to the
3344 company, or are based on an event occurring after the effective
3345 date of dissolution, and such claims may not be enforced against
3346 a member or transferee that received assets in liquidation.
3347 608.7924 Administrative dissolution.—
3348 (1) The department may dissolve a limited liability company
3349 administratively if the company does not:
3350 (a) Deliver its annual report to the department by 5:00
3351 p.m. Eastern Time on the third Friday in September;
3352 (b) Pay a fee or penalty due to the department under this
3353 chapter;
3354 (c) Appoint and maintain a registered agent as required by
3355 s. 608.7813; or
3356 (d) Deliver for filing a statement of a change under s.
3357 608.7814 within 30 days after a change has occurred in the name
3358 or address of the agent, unless, within 30 days after the change
3359 occurred, either:
3360 1. The agent filed a statement of change under s. 608.7816;
3361 or
3362 2. The change was made in accordance with s. 608.7814(4).
3363 (2) Administrative dissolution of a limited liability
3364 company for failure to file an annual report shall occur on the

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3365 fourth Friday in September of each year. The department shall
3366 issue a notice in a record of administrative dissolution to the
3367 limited liability company dissolved for failure to file an
3368 annual report. Issuance of the notice may be by electronic
3369 transmission to a limited liability company that has provided
3370 the department with an e-mail address.
3371 (3) If the department determines that one or more grounds
3372 exist for administratively dissolving a limited liability
3373 company under paragraphs (1)(b)-(d), the department shall serve
3374 notice in a record to the limited liability company of its
3375 intent to administratively dissolve the limited liability
3376 company. Issuance of the notice may be by electronic
3377 transmission to a limited liability company that has provided
3378 the department with an e-mail address.
3379 (4) If within 60 days after sending the notice of intent to
3380 administratively dissolve pursuant to subsection (3), a limited
3381 liability company does not correct each ground for dissolution
3382 under paragraphs (1)(b)-(d), or demonstrate to the reasonable
3383 satisfaction of the department that each ground determined by
3384 the department does not exist, the department shall dissolve the
3385 limited liability company administratively and issue to the
3386 company a notice in a record of administrative dissolution that
3387 states the grounds for dissolution. Issuance of the notice of
3388 administrative dissolution may be by electronic transmission to
3389 a limited liability company that has provided the department
3390 with an e-mail address.
3391 (5) A limited liability company that has been
3392 administratively dissolved continues in existence but, subject
3393 to s. 608.7925, may only carry on activities necessary to wind

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3394 up its activities and affairs, liquidate and distribute its
3395 assets, and notify claimants under ss. 608.7921 and 608.7922.
3396 (6) The administrative dissolution of a limited liability
3397 company does not terminate the authority of its agent for
3398 service of process.
3399 608.7925 Reinstatement.—
3400 (1) A limited liability company that is administratively
3401 dissolved under s. 608.7924 may apply to the department for
3402 reinstatement at any time after the effective date of
3403 dissolution. The company must submit a form of application for
3404 reinstatement prescribed and furnished by the department and
3405 provide all of the information required by the department,
3406 together with all fees then owed by the company at the rates
3407 provided by law at the time the company applies for
3408 reinstatement.
3409 (2) If the department determines that an application for
3410 reinstatement contains the information required by subsection
3411 (1) and that the information is correct, and upon payment of all
3412 required fees, the department shall reinstate the limited
3413 liability company.
3414 (3) When reinstatement under this section becomes
3415 effective:
3416 (a) The reinstatement relates back to and takes effect as
3417 of the effective date of the administrative dissolution.
3418 (b) The limited liability company may resume its activities
3419 and affairs as if the administrative dissolution had not
3420 occurred.
3421 (c) The rights of a person arising out of an act or
3422 omission in reliance on the dissolution before the person knew

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3423 or had notice of the reinstatement are not affected.
3424 (4) The name of the dissolved limited liability company is
3425 not available for assumption or use by another limited liability
3426 company until 1 year after the effective date of dissolution
3427 unless the dissolved limited liability company provides the
3428 department with a record executed as required by s. 608.7823
3429 permitting the immediate assumption or use of the name by
3430 another limited liability company.
3431 608.7926 Judicial review of denial of reinstatement.—
3432 (1)(a) If the department denies a limited liability
3433 company's application for reinstatement after administrative
3434 dissolution, the department shall serve the company with a
3435 notice in a record that explains the reason or reasons for the
3436 denial.
3437 (b) Within 30 days after service of a notice of denial of
3438 reinstatement, a limited liability company may appeal from the
3439 denial by petitioning the circuit court to set aside the
3440 dissolution. The petition must be served on the department and
3441 contain a copy of the department's notice of administrative
3442 dissolution, the company's application for reinstatement, and
3443 the department's notice of denial.
3444 (2) The court may order the department to reinstate a
3445 dissolved limited liability company or take other action the
3446 court considers appropriate.
3447 608.7927 Effect of dissolution.—
3448 (1) Dissolution of a limited liability company does not:
3449 (a) Transfer title to the limited liability company's
3450 assets.
3451 (b) Prevent commencement of a proceeding by or against the

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3452 limited liability company in its name.
3453 (c) Abate or suspend a proceeding pending by or against the
3454 limited liability company on the effective date of dissolution.
3455 (d) Terminate the authority of the registered agent of the
3456 limited liability company.
3457 (2) Except as provided in s. 608.7925(4), the name of the
3458 dissolved limited liability company is not available for
3459 assumption or use by another limited liability company until 120
3460 days after the effective date of dissolution, or filing of a
3461 statement of termination, if earlier.
3462 608.7931 Direct action by member.—
3463 (1) Subject to subsection (2), a member may maintain a
3464 direct action against another member, a manager, or the limited
3465 liability company to enforce the member's rights and otherwise
3466 protect the member's interests, including rights and interests
3467 under the operating agreement or this chapter or arising
3468 independently of the membership relationship.
3469 (2) A member maintaining a direct action under this section
3470 must plead and prove an actual or threatened injury that is not
3471 solely the result of an injury suffered or threatened to be
3472 suffered by the limited liability company.
3473 608.7932 Derivative action.—A member may maintain a
3474 derivative action to enforce a right of a limited liability
3475 company if:
3476 (1) The member first makes a demand on the other members in
3477 a member-managed limited liability company, or the managers of a
3478 manager-managed limited liability company, requesting that they
3479 cause the company to take suitable action to enforce the right,
3480 and the managers or other members do not take the action within

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3481 a reasonable time, not to exceed 90 days; or
3482 (2) A demand under subsection (1) would be futile, or
3483 irreparable injury would result to the company by waiting for
3484 the other members or the managers to take action to enforce the
3485 right in accordance with subsection (1).
3486 608.7933 Proper plaintiff.—A derivative action to enforce a
3487 right of a limited liability company may be maintained only by a
3488 person that is a member at the time the action is commenced and:
3489 (1) Was a member when the conduct giving rise to the action
3490 occurred; or
3491 (2) Whose status as a member devolved on the person by
3492 operation of law or pursuant to the terms of the operating
3493 agreement from a person that was a member at the time of the
3494 conduct.
3495 608.7934 Special litigation committee.—
3496 (1) If a limited liability company is named as or made a
3497 party in a derivative action, the company may appoint a special
3498 litigation committee to investigate the claims asserted in the
3499 derivative action and determine whether pursuing the action is
3500 in the best interests of the company. If the company appoints a
3501 special litigation committee, on motion, except for good cause
3502 shown, the court may stay any derivative action for the time
3503 reasonably necessary to permit the committee to make its
3504 investigation. This subsection does not prevent the court from:
3505 (a) Enforcing a person's rights under the company's
3506 operating agreement or this chapter, including the person's
3507 rights to information under s. 608.7853; or
3508 (b) Exercising its equitable or other powers, including
3509 granting extraordinary relief in the form of a temporary

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3510 restraining order or preliminary injunction.
3511 (2) A special litigation committee must be composed of one
3512 or more disinterested and independent individuals, who may be
3513 members.
3514 (3) A special litigation committee may be appointed:
3515 (a) In a member-managed limited liability company, by the
3516 consent of the members who are not named as parties in the
3517 derivative action, who are otherwise disinterested and
3518 independent, and who hold a majority of the current percentage
3519 or other interest in the profits of the company owned by all
3520 members of the company who are not named as parties in the
3521 derivative action and who are otherwise disinterested and
3522 independent;
3523 (b) In a manager-managed limited liability company, by a
3524 majority of the managers not named as parties in the derivative
3525 action and who are otherwise disinterested and independent; or
3526 (c) Upon motion by the limited liability company,
3527 consisting of a panel of one or more disinterested and
3528 independent persons.
3529 (4) After appropriate investigation, a special litigation
3530 committee shall determine what action is in the best interest of
3531 the limited liability company, including continuing, dismissing,
3532 or settling the derivative action, or taking another action that
3533 the special litigation committee deems appropriate.
3534 (5) After making a determination under subsection (4), a
3535 special litigation committee shall file or cause to be filed
3536 with the court a statement of its determination and its report
3537 supporting its determination, and shall serve each party to the
3538 derivative action with a copy of the determination and report.

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3539 Upon motion to enforce the determination of the special
3540 litigation committee, the court shall determine whether the
3541 members of the committee were disinterested and independent and
3542 whether the committee conducted its investigation and made its
3543 recommendation in good faith, independently, and with reasonable
3544 care, with the committee having the burden of proof. If the
3545 court finds that the members of the committee were disinterested
3546 and independent and that the committee acted in good faith,
3547 independently, and with reasonable care, the court may enforce
3548 the determination of the committee. Otherwise, the court shall
3549 dissolve any stay of derivative action entered under subsection
3550 (1) and allow the derivative action to continue under the
3551 control of the plaintiff.
3552 608.7935 Proceeds and expenses.—
3553 (1) Except as otherwise provided in subsection (2):
3554 (a) Proceeds or other benefits of a derivative action under
3555 s. 608.7932, whether by judgment, compromise, or settlement,
3556 belong to the limited liability company and not to the
3557 plaintiff.
3558 (b) If the plaintiff receives any proceeds, the plaintiff
3559 shall remit them immediately to the company.
3560 (2) If a derivative action under s. 608.7932 is successful
3561 in whole or in part, the court may award the plaintiff
3562 reasonable expenses, including reasonable attorney fees and
3563 costs, from the recovery of the limited liability company.
3564 608.7936 Voluntary dismissal or settlement; notice.—
3565 (1) A derivative action on behalf of a limited liability
3566 company may not be voluntarily dismissed or settled without the
3567 court's approval.

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3568 (2) If the court determines that a proposed voluntary
3569 dismissal or settlement will substantially affect the interest
3570 of the limited liability company's members or a class, series,
3571 or voting group of members, the court shall direct that notice
3572 be given to the members affected. The court may determine which
3573 party or parties to the derivative action shall bear the expense
3574 of giving the notice.
3575 608.901 Governing law.—
3576 (1) The law of the state or other jurisdiction under which
3577 a foreign limited liability company exists governs:
3578 (a) The organization and internal affairs of the company.
3579 (b) The liability of a member as member and a manager as
3580 manager for the debts, obligations, or other liabilities of the
3581 company.
3582 (2) A foreign limited liability company may not be denied a
3583 certificate of authority by reason of a difference between its
3584 jurisdiction of formation and the laws of this state.
3585 (3) A certificate of authority does not authorize a foreign
3586 limited liability company to engage in any business or exercise
3587 any power that a limited liability company may not engage in or
3588 exercise in this state.
3589 608.902 Application for certificate of authority.—
3590 (1) A foreign limited liability company may not transact
3591 business in this state until it obtains a certificate of
3592 authority from the department. A foreign limited liability
3593 company may apply for a certificate of authority to transact
3594 business in this state by delivering an application to the
3595 department for filing. Such application must be made on forms
3596 prescribed by the department. The application must contain:

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3597 (a) The name of the company and, if the name does not
3598 comply with s. 608.7812, an alternate name adopted pursuant to
3599 s. 608.905(1).
3600 (b) The name of the company's jurisdiction of formation.
3601 (c) The principal office and mailing addresses of the
3602 company.
3603 (d) The name and street address in this state of, and
3604 written acceptance by, the company's initial registered agent in
3605 this state.
3606 (e) The name, title or capacity, and address of at least
3607 one person who has the authority to manage the company.
3608 (f) Additional information as may be necessary or
3609 appropriate in order to enable the department to determine
3610 whether the company is entitled to file an application for a
3611 certificate of authority to transact business in this state and
3612 to determine and assess the fees as prescribed in this chapter.
3613 (2) A foreign limited liability company shall deliver with
3614 a completed application under subsection (1) a certificate of
3615 existence or a record of similar import signed by the secretary
3616 of state or other official having custody of the foreign limited
3617 liability company's publicly filed records in its jurisdiction
3618 of formation, dated not more than 90 days before the delivery of
3619 the application to the department.
3620 (3) For purposes of complying with the requirements of this
3621 chapter, the department may require each individual series or
3622 cell of a foreign series limited liability company that
3623 transacts business in this state to make a separate application
3624 for certificate of authority, and to make such other filings as
3625 may be required for purposes of complying with the requirements

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3626 of this chapter as if each such series or cell were a separate
3627 foreign limited liability company.
3628 608.903 Activities that do not constitute transacting
3629 business.—
3630 (1) The following activities, among others, do not
3631 constitute transacting business within the meaning of s.
3632 608.902(1):
3633 (a) Maintaining, defending, or settling any proceeding.
3634 (b) Holding meetings of the managers or members or carrying
3635 on other activities concerning internal company affairs.
3636 (c) Maintaining bank accounts.
3637 (d) Maintaining managers or agencies for the transfer,
3638 exchange, and registration of the foreign limited liability
3639 company's own securities or maintaining trustees or depositaries
3640 with respect to those securities.
3641 (e) Selling through independent contractors.
3642 (f) Soliciting or obtaining orders, whether by mail or
3643 through employees, agents, or otherwise, if the orders require
3644 acceptance outside this state before they become contracts.
3645 (g) Creating or acquiring indebtedness, mortgages, and
3646 security interests in real or personal property.
3647 (h) Securing or collecting debts or enforcing mortgages and
3648 security interests in property securing the debts.
3649 (i) Transacting business in interstate commerce.
3650 (j) Conducting an isolated transaction that is completed
3651 within 30 days and that is not one in the course of repeated
3652 transactions of a like nature.
3653 (k) Owning and controlling a subsidiary corporation
3654 incorporated, or limited liability company formed, in or

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3655 transacting business within this state or voting the stock of a
3656 corporation that it has lawfully acquired.
3657 (l) Owning a limited partner interest in a limited
3658 partnership that is transacting business within this state,
3659 unless the limited partner manages or controls the partnership
3660 or exercises the powers and duties of a general partner.
3661 (m) Owning, without more, real or personal property.
3662 (2) The list of activities in subsection (1) is not an
3663 exhaustive list of activities that constitute transacting
3664 business within the meaning of s. 608.902(1).
3665 (3) The ownership in this state of income-producing real
3666 property or tangible personal property, other than property
3667 excluded under subsection (1), constitutes transacting business
3668 in this state for purposes of s. 608.902(1).
3669 (4) This section does not apply when determining the
3670 contacts or activities that may subject a foreign limited
3671 liability company to service of process, taxation, or regulation
3672 under the law of this state other than this chapter.
3673 608.904 Application for certificate of authority.—
3674 (1) Unless the department determines that an application
3675 for a certificate of authority of a foreign limited liability
3676 company to transact business in this state does not comply with
3677 the filing requirements of this chapter, the department shall,
3678 upon payment of all filing fees, authorize the foreign limited
3679 liability company to transact business in this state and file
3680 the application for a certificate of authority.
3681 (2) The filing by the department of an application for a
3682 certificate of authority authorizes the foreign limited
3683 liability company to which it is issued to transact business in

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3684 this state subject, however, to the right of the department to
3685 suspend or revoke the certificate of authority as provided in
3686 this chapter.
3687 608.905 Noncomplying name of foreign limited liability
3688 company.—
3689 (1) A foreign limited liability company whose name is
3690 unavailable under or does not otherwise comply with s. 608.7812
3691 may use an alternate name that complies with s. 608.7812 to
3692 transact business in this state. An alternate name adopted for
3693 use in this state shall be cross-referenced to the actual name
3694 of the foreign limited liability company in the records of the
3695 department. If the actual name of the foreign limited liability
3696 company subsequently becomes available in this state or the
3697 company chooses to change its alternate name, a copy of the
3698 record approving the change by its members, managers, or other
3699 persons having the authority to do so, and executed as required
3700 by s. 608.7823, shall be delivered to the department for filing.
3701 (2) A foreign limited liability company that adopts an
3702 alternate name under subsection (1) and obtains a certificate of
3703 authority with the alternate name need not comply with s.
3704 865.09.
3705 (3) After obtaining a certificate of authority with an
3706 alternate name, a foreign limited liability company shall
3707 transact business in this state under the alternate name unless
3708 the company is authorized under s. 865.09 to transact business
3709 in this state under another name.
3710 (4) If a foreign limited liability company authorized to
3711 transact business in this state changes its name to one that
3712 does not comply with s. 608.7812, it may not thereafter transact

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3713 business in this state until it complies with subsection (1) and
3714 obtains an amended certificate of authority.
3715 608.906 Amendment to certificate of authority.—
3716 (1) A foreign limited liability company authorized to
3717 transact business in this state shall deliver for filing an
3718 amendment to its certificate of authority to reflect the change
3719 of:
3720 (a) Its name on the records of the department;
3721 (b) Its jurisdiction of formation;
3722 (c) The principal office and mailing addresses of the
3723 company unless the change was made in a timely filed annual
3724 report;
3725 (d) The name and street address in this state of the
3726 company's registered agent in this state, unless the change was
3727 timely made in accordance with s. 608.7814 or s. 608.7816; or
3728 (e) A person identified in accordance with s.
3729 608.902(1)(e), or a change in the title or capacity or address
3730 of that person.
3731 (2) The application must be made within 30 days after the
3732 occurrence of a change mentioned in subsection (1), must be
3733 signed by an authorized representative of the foreign limited
3734 liability company, and must include:
3735 (a) The name of the foreign limited liability company as it
3736 appears on the records of the department.
3737 (b) Its jurisdiction of formation.
3738 (c) The date the foreign limited liability company was
3739 authorized to transact business in this state.
3740 (d) If the name of the foreign limited liability company
3741 has been changed, the name relinquished and its new name.

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3742 (e) If the amendment changes the jurisdiction of formation
3743 of the foreign limited liability company, a statement of that
3744 change.
3745 (3) Subject to subsection (4), a foreign limited liability
3746 company authorized to do business in this state may make
3747 application to the department to obtain an amended certificate
3748 of authority to add, remove, or change the name, title,
3749 capacity, or address of a person who has the authority to manage
3750 the foreign limited liability company.
3751 (4) The requirements of s. 608.902(2) for obtaining an
3752 original certificate of authority apply to obtaining an amended
3753 certificate under this section, unless the secretary of state or
3754 other official having custody of the foreign limited liability
3755 company's publicly filed records in its jurisdiction of
3756 formation did not require an amendment to effectuate the change
3757 on its records.
3758 608.907 Revocation of certificate of authority.—
3759 (1) A certificate of authority of a foreign limited
3760 liability company to transact business in this state may be
3761 revoked by the department if:
3762 (a) The company did not deliver its annual report to the
3763 department by 5:00 p.m. Eastern Time on the third Friday in
3764 September;
3765 (b) The company did not pay a fee or penalty due to the
3766 department under this chapter;
3767 (c) The company did not appoint and maintain an agent for
3768 service of process as required by s. 608.7813;
3769 (d) The company did not deliver for filing a statement of a
3770 change under s. 608.7814 within 30 days after a change has

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3771 occurred in the name or address of the agent, unless, within 30
3772 days after the change occurred, either:
3773 1. The agent filed a statement of change under s. 608.7816,
3774 or
3775 2. The change was made in accordance with s. 608.7814(4) or
3776 s. 608.906(1)(d);
3777 (e) The company failed to amend its certificate of
3778 authority to reflect a change in its name on the records of the
3779 department or its jurisdiction of formation;
3780 (f) The department receives a duly authenticated
3781 certificate from the official having custody of records in the
3782 company's jurisdiction of formation stating that it has been
3783 dissolved or is no longer active on its records;
3784 (g) The company's period of duration has expired;
3785 (h) A member, manager, or agent of the company signed a
3786 document that the member, manager, or agent knew was false in a
3787 material respect with the intent that the document be delivered
3788 to the department for filing; or
3789 (i) The company has failed to answer truthfully and fully,
3790 within the time prescribed in s. 608.978, interrogatories
3791 propounded by the department.
3792 (2) Revocation of a foreign limited liability company's
3793 certificate of authority for failure to file an annual report
3794 shall occur on the fourth Friday in September of each year. The
3795 department shall issue a notice in a record of the revocation to
3796 the revoked foreign limited liability company. Issuance of the
3797 notice may be by electronic transmission to a foreign limited
3798 liability company that has provided the department with an e-
3799 mail address.

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3800 (3) If the department determines that one or more grounds
3801 exist under paragraphs (1)(b)-(i) for revoking a foreign limited
3802 liability company's certificate of authority, the department
3803 shall issue a notice in a record to the foreign limited
3804 liability company of the department's intent to revoke the
3805 certificate of authority. Issuance of the notice may be by
3806 electronic transmission to a foreign limited liability company
3807 that has provided the department with an e-mail address.
3808 (4) If within 60 days after the department sent the notice
3809 of intent to revoke in accordance with subsection (3), the
3810 foreign limited liability company does not correct each ground
3811 for revocation or demonstrate to the reasonable satisfaction of
3812 the department that each ground determined by the department
3813 does not exist, the department shall revoke the foreign limited
3814 liability company's authority to transact business in this state
3815 and issue a notice in a record of revocation that states the
3816 grounds for revocation. Issuance of the notice may be by
3817 electronic transmission to a foreign limited liability company
3818 that has provided the department with an e-mail address.
3819 608.908 Cancellation of certificate of authority.—To cancel
3820 its certificate of authority to transact business in this state,
3821 a foreign limited liability company must deliver to the
3822 department for filing a notice of withdrawal of certificate of
3823 authority. The certificate is canceled when the notice becomes
3824 effective under s. 608.7827. The notice of withdrawal of
3825 certificate of authority must be signed by an authorized
3826 representative and state the following:
3827 (1) The name of the company as it appears on the records of
3828 the department.

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3829 (2) The name of the company's jurisdiction of formation.
3830 (3) The date the company was authorized to transact
3831 business in this state.
3832 (4) The company is withdrawing its certificate of authority
3833 in this state.
3834 608.909 Effect of failure to have certificate of
3835 authority.—
3836 (1) A foreign limited liability company transacting
3837 business in this state or its successors may not maintain an
3838 action or proceeding in this state unless it has a certificate
3839 of authority to transact business in this state.
3840 (2) The successor to a foreign limited liability company
3841 that transacted business in this state without a certificate of
3842 authority and the assignee of a cause of action arising out of
3843 that business may not maintain a proceeding based on that cause
3844 of action in a court in this state until the foreign limited
3845 liability company or its successor obtains a certificate of
3846 authority.
3847 (3) A court may stay a proceeding commenced by a foreign
3848 limited liability company or its successor or assignee until it
3849 determines whether the foreign limited liability company or its
3850 successor requires a certificate of authority. If it so
3851 determines, the court may further stay the proceeding until the
3852 foreign limited liability company or its successor obtains the
3853 certificate.
3854 (4) The failure of a foreign limited liability company to
3855 have a certificate of authority to transact business in this
3856 state does not impair the validity of a contract or act of the
3857 company or prevent the foreign limited liability company from

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3858 defending an action or proceeding in this state.
3859 (5) A member or manager of a foreign limited liability
3860 company is not liable for the debts, obligations, or other
3861 liabilities of the foreign limited liability company solely
3862 because the foreign limited liability company transacted
3863 business in this state without a certificate of authority.
3864 (6) If a foreign limited liability company transacts
3865 business in this state without a certificate of authority or
3866 cancels its certificate of authority, it appoints the department
3867 as its agent for service of process for rights of action arising
3868 out of the transaction of business in this state.
3869 (7) A foreign limited liability company that transacts
3870 business in this state without authority to do so is liable to
3871 this state for the years or parts thereof during which it
3872 transacted business in this state without authority in an amount
3873 equal to all fees or penalties which would have been imposed by
3874 this chapter upon the foreign limited liability company had it
3875 duly applied for and received authority to transact business in
3876 this state as required by this chapter. In addition to the
3877 payments thus prescribed, the foreign limited liability company
3878 is liable for a civil penalty of at least $500 but not more than
3879 $1,000 for each year or part thereof during which it transacts
3880 business in this state without a certificate of authority. The
3881 department may collect all penalties due under this subsection.
3882 608.910 Reinstatement after revocation of certificate of
3883 authority.—
3884 (1) A foreign limited liability company whose certificate
3885 of authority has been revoked may apply to the department for
3886 reinstatement at any time after the effective date of the

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3887 revocation. The foreign limited liability company applying for
3888 reinstatement must provide information in a form prescribed and
3889 furnished by the department, and pay all fees then owed by the
3890 foreign limited liability company at a rate provided by law at
3891 the time the company applies for reinstatement.
3892 (2) If the department determines that an application for
3893 reinstatement contains the information required by subsection
3894 (1) and that the information is correct, and upon payment of all
3895 required fees, the department shall reinstate the foreign
3896 limited liability company's certificate of authority.
3897 (3) When a reinstatement becomes effective, it relates back
3898 to and takes effect as of the effective date of the revocation
3899 of authority and the foreign limited liability company may
3900 resume its activities in this state as if the revocation of
3901 authority had not occurred.
3902 (4) The name of the foreign limited liability company whose
3903 certificate of authority has been revoked is not available for
3904 assumption or use by another business entity until 1 year after
3905 the effective date of revocation of authority unless the limited
3906 liability company provides the department with a record executed
3907 as required by s. 608.7823 permitting the immediate assumption
3908 or use of its name by another limited liability company.
3909 (5) If the name of the foreign limited liability company
3910 applying for reinstatement has been lawfully assumed in this
3911 state by another business entity, the department shall require
3912 the foreign limited liability company to comply with s. 608.7812
3913 before accepting its application for reinstatement.
3914 608.911 Action by Department of Legal Affairs.—The
3915 Department of Legal Affairs may maintain an action to enjoin a

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3916 foreign limited liability company from transacting business in
3917 this state in violation of this chapter.
3918 608.916 Relationship of ss. 608.961-608.972 to other laws.—
3919 (1) Sections 608.961-608.972 do not authorize an act
3920 prohibited by, and do not affect the application or requirements
3921 of, law other than ss. 608.961-608.972.
3922 (2) A transaction effected under ss. 608.961-608.972 may
3923 not create or impair a right or obligation on the part of a
3924 person under a provision of the law of this state, other than
3925 ss. 608.922-608.972 relating to a change in control, takeover,
3926 business combination, control-share acquisition, or similar
3927 transaction involving a merging, acquiring, or converting, a
3928 domestic business corporation unless:
3929 (a) If the corporation does not survive the transaction,
3930 the transaction satisfies the requirements of the provision; or
3931 (b) If the corporation survives the transaction, the
3932 approval of the plan is by a vote of the shareholders or
3933 directors which would be sufficient to create or impair the
3934 right or obligation directly under the provision.
3935 608.917 Charitable and donative provisions.—
3936 (1) Property held for a charitable purpose under the law of
3937 this state by a domestic or foreign entity immediately before a
3938 transaction under this chapter becomes effective may not, as a
3939 result of the transaction, be diverted from the objects for
3940 which it was donated, granted, devised, or otherwise transferred
3941 unless, to the extent required by or pursuant to the law of this
3942 state concerning cy pres or other law dealing with nondiversion
3943 of charitable assets, the entity obtains an appropriate order of
3944 the appropriate court specifying the disposition of the

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3945 property.
3946 (2) A bequest, devise, gift, grant, or promise contained in
3947 a will or other instrument of donation, subscription, or
3948 conveyance that is made to a merging entity that is not the
3949 surviving entity and that takes effect or remains payable after
3950 the merger inures to the surviving entity. A trust obligation
3951 that would govern property if transferred to the nonsurviving
3952 entity applies to property that is transferred to the surviving
3953 entity under this section.
3954 608.918 Status of filings.—A filing under ss. 608.961-
3955 608.972 signed by a domestic entity becomes part of the public
3956 organic record of the entity if the entity's organic law
3957 provides that similar filings under that law become part of the
3958 public organic record of the entity.
3959 608.919 Nonexclusivity.—The fact that a transaction under
3960 ss. 608.961-608.972 produces a certain result does not preclude
3961 the same result from being accomplished in another manner
3962 permitted by a law other than ss. 608.961-608.972.
3963 608.92 Reference to external facts.—A plan may refer to
3964 facts ascertainable outside the plan if the manner in which the
3965 facts will operate upon the plan is specified in the plan. The
3966 facts may include the occurrence of an event or a determination
3967 or action by a person, whether or not the event, determination,
3968 or action is within the control of a party to the transaction.
3969 608.922 Appraisal rights.—
3970 (1) A member of a limited liability company is entitled to
3971 appraisal rights and to obtain payment of the fair value of that
3972 member's membership interest in the following events:
3973 (a) Consummation of a merger of a limited liability company

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3974 pursuant to this chapter where the member possessed the right to
3975 vote upon the merger.
3976 (b) Consummation of a conversion of such limited liability
3977 company pursuant to this chapter where the member possessed the
3978 right to vote upon the conversion.
3979 (c) Consummation of an interest exchange pursuant to this
3980 chapter where the member possessed the right to vote upon the
3981 interest exchange, except that appraisal rights are not
3982 available to an interestholder of the limited liability company
3983 whose interest in the limited liability company is not subject
3984 to exchange in the interest exchange.
3985 (d) Consummation of a sale of substantially all of the
3986 assets of a limited liability company where the member possessed
3987 the right to vote upon the sale, unless the sale is pursuant to
3988 court order or the sale is for cash pursuant to a plan under
3989 which all or substantially all of the net proceeds of the sale
3990 will be distributed to the interestholders within 1 year after
3991 the date of sale.
3992 (e) An amendment to the organic rules of the entity which
3993 reduces the interest of the holder to a fraction of an interest
3994 if the limited liability company will be obligated to or will
3995 have the right to repurchase the fractional interest so created.
3996 (f) An amendment to the organic rules of an entity, the
3997 effect of which is to alter or abolish voting or other rights
3998 with respect to the interest in a manner that is adverse to the
3999 interest of the member, except as the right may be affected by
4000 the voting or other rights of new interests then being
4001 authorized of a new class or series of interests.
4002 (g) An amendment to the organic rules of an entity the

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4003 effect of which is to adversely affect the interest of the
4004 member by altering or abolishing appraisal rights under this
4005 section.
4006 (h) To the extent otherwise expressly authorized by the
4007 organic rules of the limited liability company.
4008 (2) A limited liability company may modify, restrict, or
4009 eliminate the appraisal rights provided in this section in its
4010 organic rules so long as the provision modifying, restricting,
4011 or eliminating the appraisal rights is authorized by each member
4012 whose appraisal rights are being modified, restricted, or
4013 eliminated. Organic rules containing an express waiver of
4014 appraisal rights that are approved by a member constitute a
4015 waiver of appraisal rights with respect to the member to the
4016 extent provided in the organic rules.
4017 (3) To the extent that appraisal rights are available, ss.
4018 608.961-608.972 govern the procedures with respect to such
4019 appraisal rights as between the limited liability company and
4020 its members.
4021 (4) Notwithstanding subsection (1), the availability of
4022 appraisal rights is limited in accordance with the following
4023 provisions:
4024 (a) Appraisal rights are not available for holders of
4025 membership interests that are:
4026 1. A covered security under section 18(b)(1)(A) or (B) of
4027 the Securities Act of 1933, as amended;
4028 2. Traded in an organized market and part of a class or
4029 series that has at least 2,000 members or other holders and a
4030 market value of at least $20 million, exclusive of the value of
4031 the class or series of membership interests held by the limited

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4032 liability company's subsidiaries, senior executives, managers,
4033 and beneficial members owning more than 10 percent of the class
4034 or series of membership interests; or
4035 3. Issued by an open end management investment company
4036 registered with the Securities and Exchange Commission under the
4037 Investment Company Act of 1940 and subject to being redeemed at
4038 the option of the holder at net asset value.
4039 (b) The applicability of paragraph (a) shall be determined
4040 as of the date fixed to determine the members entitled to
4041 receive notice of, and to vote upon, the appraisal event, or the
4042 day before the effective date of the appraisal event if there is
4043 no meeting of the members to vote upon the appraisal event.
4044 (c) This subsection does not apply to, and appraisal rights
4045 shall be available pursuant to subsection (1) for, members who
4046 are required by the appraisal event to accept for their
4047 membership interests anything other than cash or a proprietary
4048 interest in an entity that satisfies the standards provided in
4049 paragraph (a) at the time the appraisal event becomes effective.
4050 (d) This subsection does not apply to, and appraisal rights
4051 shall be available pursuant to subsection (1) for, the holder of
4052 a membership interest if:
4053 1. The member or members' interests in the limited
4054 liability company or the limited liability company's assets are
4055 being acquired or converted, whether by merger, conversion, or
4056 otherwise, pursuant to the appraisal event by a person, or by an
4057 affiliate of a person, who:
4058 a. Is, or at any time in the 1-year period immediately
4059 before approval of the appraisal event was, the beneficial owner
4060 of 20 percent or more of those interests in the limited

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4061 liability company entitled to vote on the appraisal event,
4062 excluding interests acquired pursuant to an offer for all
4063 interests having voting rights if the offer was made within 1
4064 year before the appraisal event for consideration of the same
4065 kind and of a value equal to or less than that paid in
4066 connection with the appraisal event; or
4067 b. Directly or indirectly has, or at any time in the 1-year
4068 period immediately before approval of the appraisal event had,
4069 the power, contractually or otherwise, to cause the appointment
4070 or election of any senior executives or managers of the limited
4071 liability company.
4072 2. Any of the members' interests in the limited liability
4073 company or the limited liability company's assets are being
4074 acquired or converted, whether by merger, conversion, or
4075 otherwise, pursuant to the appraisal event by a person, or by an
4076 affiliate of a person, who is, or at any time in the 1-year
4077 period immediately before approval of the appraisal event was, a
4078 senior executive of the limited liability company or a senior
4079 executive of an affiliate of the limited liability company, and
4080 that senior executive will receive, as a result of the limited
4081 liability company action, a financial benefit not generally
4082 available to members, other than:
4083 a. Employment, consulting, retirement, or similar benefits
4084 established separately and not as part of or in contemplation of
4085 the appraisal event;
4086 b. Employment, consulting, retirement, or similar benefits
4087 established in contemplation of, or as part of, the appraisal
4088 event that are not more favorable than those existing before the
4089 appraisal event or, if more favorable, that have been approved

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4090 by the limited liability company; or
4091 c. In the case of a manager of the limited liability
4092 company who will, during or as the result of the appraisal
4093 event, become a manager, general partner, or director of the
4094 surviving or converted entity or one of its affiliates, those
4095 rights and benefits as a manager, general partner, or director
4096 that are provided on the same basis as those afforded by the
4097 surviving or converted entity generally to other managers,
4098 general partners, or directors of the surviving or converted
4099 entity or its affiliate.
4100 (e) For the purposes of sub-subparagraph (d)1.a. of this
4101 subsection only, the term "beneficial owner" means a person who,
4102 directly or indirectly, through a contract, arrangement, or
4103 understanding, other than a revocable proxy, has or shares the
4104 right to vote, or to direct the voting of, an interest in a
4105 limited liability company with respect to approval of the
4106 appraisal event, if a member of a national securities exchange
4107 is not deemed to be a beneficial owner of an interest in a
4108 limited liability company held directly or indirectly by it on
4109 behalf of another person solely because the member is the
4110 recordholder of interests in the limited liability company if
4111 the member is precluded by the rules of the exchange from voting
4112 without instruction on contested matters or matters that may
4113 affect substantially the rights or privileges of the holders of
4114 the interests in the limited liability company to be voted. When
4115 two or more persons agree to act together for the purpose of
4116 voting such interests, each member of the group formed thereby
4117 is deemed to have acquired beneficial ownership, as of the date
4118 of the agreement, of all voting interests in the limited

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4119 liability company beneficially owned by a member or members of
4120 the group.
4121 608.925 Merger authorized.—
4122 (1) By complying with ss. 608.925-608.930:
4123 (a) One or more domestic limited liability companies may
4124 merge with one or more domestic or foreign entities into a
4125 domestic or foreign surviving entity.
4126 (b) Two or more foreign entities may merge into a domestic
4127 limited liability company.
4128 (2) By complying with the provisions of ss. 608.925-608.930
4129 which are applicable to foreign entities, a foreign entity may
4130 be a party to a merger under those provisions or may be the
4131 surviving entity in the merger if the merger is authorized by
4132 the law of the foreign entity's jurisdiction of formation.
4133 (3) In the case of a merger involving a limited liability
4134 company that is a not-for-profit company, the surviving limited
4135 liability company or other business entity must also be a not-
4136 for-profit entity.
4137 608.926 Plan of merger.—
4138 (1) A domestic limited liability company may become a party
4139 to a merger under ss. 608.926-608.930 by approving a plan of
4140 merger. The plan must be in a record and contain:
4141 (a) As to each merging entity, its name, jurisdiction of
4142 formation, and type of entity.
4143 (b) The surviving entity in the merger.
4144 (c) The manner and basis of converting the interests and
4145 the rights to acquire interests in each party to the merger into
4146 interests, securities, obligations, money, other property,
4147 rights to acquire interests or securities, or any combination

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4148 thereof.
4149 (d) If the surviving entity exists before the merger, any
4150 proposed amendments to or restatements of its public organic
4151 record, or any proposed amendments to or restatements of its
4152 private organic rules, that are, or are proposed to be, in a
4153 record, and all such amendments or restatements are effective
4154 upon the effective date of the merger.
4155 (e) If the surviving entity is to be created in the merger,
4156 its proposed public organic record, and the full text of its
4157 private organic rules that are proposed to be in a record, if
4158 any.
4159 (f) The other terms and conditions of the merger.
4160 (g) Another provision required by the law of a merging
4161 entity's jurisdiction of formation or the organic rules of a
4162 merging entity.
4163 (2) In addition to the requirements of subsection (1), a
4164 plan of merger may contain another provision not prohibited by
4165 law.
4166 608.927 Approval of merger.—
4167 (1) A plan of merger is not effective unless it has been
4168 approved:
4169 (a) With respect to a domestic merging limited liability
4170 company, by a majority-in-interest of the members.
4171 (b) In a record, by each member of a merging limited
4172 liability company that will have interestholder liability for
4173 debts, obligations, and other liabilities that arise after the
4174 merger becomes effective, unless:
4175 1. The organic rules of the company in a record provide for
4176 the approval of a merger in which some or all of its members

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4177 become subject to interestholder liability by the vote or
4178 consent of fewer than all of the members.
4179 2. The member consented in a record to or voted for that
4180 provision of the organic rules or became a member after the
4181 adoption of that provision.
4182 (2) A merger involving a domestic merging entity that is
4183 not a limited liability company is not effective unless the
4184 merger is approved by that entity in accordance with its organic
4185 law.
4186 (3) A merger involving a foreign merging entity is not
4187 effective unless the merger is approved by the foreign entity in
4188 accordance with the law of the foreign entity's jurisdiction of
4189 formation.
4190 (4) All members of each domestic limited liability company
4191 that is a party to the merger who have a right to vote upon the
4192 merger must be given written notice of a meeting regarding the
4193 approval of a plan of merger as provided in subsection (1), at
4194 least 10 days but not more than 60 days before the date of the
4195 meeting at which the plan of merger is submitted for approval by
4196 the members of the limited liability company. The notification
4197 required by this subsection may be waived in writing by the
4198 person or persons entitled to the notification.
4199 (5) The notification required by subsection (4) must be in
4200 writing and include:
4201 (a) The date, time, and place of the meeting where the plan
4202 of merger is to be submitted for approval by the members of the
4203 limited liability company.
4204 (b) A copy of the plan of merger.
4205 (c) The statement or statements required by ss. 608.926,

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4206 608.961, and 608.962 regarding the availability of appraisal
4207 rights, if any, to members of the limited liability company.
4208 (d) The date on which the notification was mailed or
4209 delivered to the members.
4210 (e) Other information concerning the plan of merger.
4211 (6) The notification required by subsection (4) is deemed
4212 to be given at the earliest date of:
4213 (a) The date the notification is received;
4214 (b) Five days after the date the notification is deposited
4215 in the United States mail addressed to the member at the
4216 member's address as it appears in the books and records of the
4217 limited liability company, with prepaid postage affixed;
4218 (c) The date shown on the return receipt, if sent by
4219 registered or certified mail, return receipt requested, and the
4220 receipt is signed by or on behalf of the addressee; or
4221 (d) The date the notification is given in accordance with
4222 the organic rules of the limited liability company.
4223 608.928 Amendment or abandonment of plan of merger.—
4224 (1) A plan of merger may be amended only with the consent
4225 of each party to the plan, except as otherwise provided in the
4226 plan or in the organic rules of the entity.
4227 (2) A merging limited liability company may approve an
4228 amendment of a plan of merger:
4229 (a) In the same manner that the plan was approved, if the
4230 plan does not provide for the manner in which it may be amended;
4231 or
4232 (b) By the managers or members in the manner provided in
4233 the plan, but a member who was entitled to vote on or consent to
4234 approval of the merger is entitled to vote on or consent to an

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4235 amendment of the plan that will change:
4236 1. The amount or kind of interests, securities,
4237 obligations, money, other property, rights to acquire interests
4238 or securities, or any combination of the foregoing, to be
4239 received by the interestholders of a party to the plan;
4240 2. The public organic record, if any, or private organic
4241 rules of the surviving entity which will be in effect
4242 immediately after the merger becomes effective, except for
4243 changes that do not require approval of the interestholders of
4244 the surviving entity under its organic law or organic rules; or
4245 3. Other terms or conditions of the plan, if the change
4246 would adversely affect the member in a material respect.
4247 (3) After a plan of merger has been approved and before the
4248 articles of merger become effective, the plan may be abandoned
4249 as provided in the plan. Unless prohibited by the plan, a
4250 domestic merging limited liability company may abandon the plan
4251 in the same manner that the plan was approved.
4252 (4) If a plan of merger is abandoned after articles of
4253 merger have been delivered to the department for filing and
4254 before the articles of merger have become effective, a statement
4255 of abandonment, signed by a party to the plan, must be delivered
4256 to the department for filing before the articles of merger
4257 become effective. The statement of abandonment takes effect on
4258 filing and the merger is abandoned and does not become
4259 effective. The statement of abandonment must contain:
4260 (a) The name of each party to the plan of merger;
4261 (b) The date on which the articles of merger were delivered
4262 to the department for filing; and
4263 (c) A statement that the merger has been abandoned in

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4264 accordance with this section.
4265 608.929 Articles of merger.—
4266 (1) After a plan of merger is approved, articles of merger
4267 must be signed by each merging entity and delivered to the
4268 department for filing.
4269 (2) The articles of merger must contain:
4270 (a) The name, jurisdiction of formation, and type of entity
4271 of each merging entity that is not the surviving entity.
4272 (b) The name, jurisdiction of formation, and type of entity
4273 of the surviving entity.
4274 (c) A statement that the merger was approved by each
4275 domestic merging entity that is a limited liability company, if
4276 any, in accordance with ss. 608.925-608.930, by each other
4277 merging entity, if any, in accordance with the law of its
4278 jurisdiction of formation, and by each member of such limited
4279 liability company who, as a result of the merger, will have
4280 interestholder liability under s. 608.927(1)(b) and whose
4281 approval is required.
4282 (d) If the surviving entity exists before the merger and is
4283 a domestic filing entity, an amendment to its public organic
4284 record approved as part of the plan of merger.
4285 (e) If the surviving entity is created by the merger and is
4286 a domestic filing entity, its public organic record, as an
4287 attachment.
4288 (f) If the surviving entity is created by the merger and is
4289 a domestic limited liability partnership, its statement of
4290 qualification, as an attachment.
4291 (g) If the surviving entity is a foreign entity that does
4292 not have a certificate of authority to transact business in this

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4293 state, a mailing address to which the department may send any
4294 process served on the department pursuant to s. 608.7817 and
4295 chapter 48.
4296 (h) A statement that the surviving entity has agreed to pay
4297 to members of a limited liability company with appraisal rights
4298 the amount to which such members are entitled under s. 608.922
4299 and ss. 608.961-608.972.
4300 (i) The effective date of the merger, if the effective date
4301 of the merger is not the same as the date of filing of the
4302 articles of merger, subject to the limitations contained in s.
4303 608.7827.
4304 (3) In addition to the requirements of subsection (2),
4305 articles of merger may contain another provision not prohibited
4306 by law.
4307 (4) A merger becomes effective when the articles of merger
4308 become effective, unless the articles of merger specify an
4309 effective time or a delayed effective date that complies with s.
4310 608.7827.
4311 (5) A copy of the articles of merger, certified by the
4312 department, may be filed in the official records of a county in
4313 this state in which a party to the merger holds an interest in
4314 real property.
4315 (6) A limited liability company is not required to deliver
4316 articles of merger for filing pursuant to subsection (1) if the
4317 limited liability company is named as a merging entity or
4318 surviving entity in articles of merger or a certificate of
4319 merger filed for the same merger in accordance with s.
4320 607.1109(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and
4321 (2), and if the articles of merger substantially comply with the

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4322 requirements of this section. In that case, the other articles
4323 of merger or certificate of merger may also be used for purposes
4324 of subsection (2).
4325 608.930 Effect of merger.
4326 (1) When a merger becomes effective:
4327 (a) The surviving entity continues in existence.
4328 (b) Each merging entity that is not the surviving entity
4329 ceases to exist.
4330 (c) All property of each merging entity vests in the
4331 surviving entity without transfer, reversion, or impairment.
4332 (d) All debts, obligations, and other liabilities of each
4333 merging entity are debts, obligations, and other liabilities of
4334 the surviving entity.
4335 (e) Except as otherwise provided by law or the plan of
4336 merger, all the rights, privileges, immunities, powers, and
4337 purposes of each merging entity vest in the surviving entity.
4338 (f) If the surviving entity exists before the merger:
4339 1. All its property continues to be vested in it without
4340 transfer, reversion, or impairment.
4341 2. It remains subject to all of its debts, obligations, and
4342 other liabilities.
4343 3. All of its rights, privileges, immunities, powers, and
4344 purposes continue to be vested in it.
4345 (g) The name of the surviving entity may be substituted for
4346 the name of a merging entity that is a party to a pending action
4347 or proceeding;
4348 (h) If the surviving entity exists before the merger:
4349 1. Its public organic record, if any, is amended as
4350 provided in the articles of merger.

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4351 2. Its private organic rules that are to be in a record, if
4352 any, are amended to the extent provided in the plan of merger.
4353 (i) If the surviving entity is created by the merger:
4354 1. Its public organic record, if any, is effective.
4355 2. Its private organic rules are effective.
4356 (j) The interests or rights to acquire interests in each
4357 merging entity which are to be converted in the merger are
4358 converted, and the interestholders of those interests are
4359 entitled only to the rights provided to them under the plan of
4360 merger and to appraisal rights they have under s. 608.922 and
4361 ss. 608.961-608.972 and the merging entity's organic law.
4362 (2) Except as otherwise provided in the organic law or
4363 organic rules of a merging entity:
4364 (a) The merger does not give rise to any rights that an
4365 interestholder, governor, or third party would have upon a
4366 dissolution, liquidation, or winding up of the merging entity.
4367 (b) The merging entity is not required to wind up its
4368 affairs, pay its liabilities, and distribute its assets under
4369 ss. 608.7911-608.7927, and the merger does not constitute a
4370 dissolution of the merging entity.
4371 (3) When a merger becomes effective, a person who did not
4372 have interestholder liability with respect to any of the merging
4373 entities and who becomes subject to interestholder liability
4374 with respect to a domestic entity as a result of the merger will
4375 have interestholder liability only to the extent provided by the
4376 organic law of that entity and only for those debts,
4377 obligations, and other liabilities that arise after the merger
4378 becomes effective.
4379 (4) When a merger becomes effective, the interestholder

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4380 liability of a person who ceases to hold an interest in a
4381 domestic merging entity with respect to which the person had
4382 interestholder liability is as follows:
4383 (a) The merger does not discharge an interestholder
4384 liability under the organic law of the domestic merging entity
4385 to the extent the interestholder liability arose before the
4386 merger became effective.
4387 (b) The person does not have interestholder liability under
4388 the organic law of the domestic merging entity for a debt,
4389 obligation, or other liability that arises after the merger
4390 becomes effective.
4391 (c) The organic law of the domestic merging entity and
4392 rights of contribution provided under that law, or the organic
4393 rules of the domestic merging entity, continue to apply to the
4394 release, collection, or discharge of an interestholder liability
4395 preserved under paragraph (a) as if the merger had not occurred
4396 and the surviving entity were the domestic merging entity.
4397 (5) When a merger becomes effective, a foreign entity that
4398 is the surviving entity may be served with process in this state
4399 for the collection and enforcement of any debts, obligations, or
4400 other liabilities of a domestic merging entity as provided in s.
4401 608.7817 and chapter 48.
4402 (6) When a merger becomes effective, the certificate of
4403 authority to transact business in this state of a foreign
4404 merging entity that is not the surviving entity is canceled.
4405 608.935 Interest exchange authorized.—
4406 (1) By complying with ss. 608.936-608.940:
4407 (a) A domestic limited liability company may acquire all of
4408 one or more classes or series of interests of another domestic

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4409 or foreign entity, or the rights to acquire one or more classes
4410 or series of those interests, in exchange for interests,
4411 securities, obligations, money, other property, rights to
4412 acquire interests or securities, or a combination of the
4413 foregoing.
4414 (b) All of one or more classes or series of interests of a
4415 domestic limited liability company or rights to acquire one or
4416 more classes or series of such interests may be acquired by
4417 another domestic or foreign entity in exchange for interests,
4418 securities, obligations, money, other property, rights to
4419 acquire interests or securities, or any combination of the
4420 foregoing.
4421 (2) By complying with ss. 608.935-608.940 that are
4422 applicable to foreign entities, a foreign entity may be the
4423 acquiring or acquired entity in an interest exchange completed
4424 under ss. 608.935-608.940 if the interest exchange is authorized
4425 by the organic law in the foreign entity's jurisdiction of
4426 formation.
4427 (3) If a protected agreement contains a provision that
4428 applies to a merger of a domestic limited liability company but
4429 does not refer to an interest exchange, the provision applies to
4430 an interest exchange in which the domestic limited liability
4431 company is the acquired entity as if the interest exchange were
4432 a merger until the provision is amended after January 1, 2014.
4433 608.936 Plan of interest exchange.—
4434 (1) A domestic limited liability company may be the
4435 acquired entity in an interest exchange under ss. 608.935-
4436 608.940 by approving a plan of interest exchange. The plan must
4437 be in a record and contain:

4438 (a) The name of the acquired entity.
4439 (b) The name, jurisdiction of formation, and type of entity
4440 of the acquiring entity.
4441 (c) The manner and basis of converting the interests and
4442 the rights to acquire interests of the members of each limited
4443 liability company that is to be an acquired entity into
4444 interests, securities, obligations, money, other property,
4445 rights to acquire interests or securities, or any combination of
4446 the foregoing.
4447 (d) If the acquired entity is a domestic limited liability
4448 company, any proposed amendments to or restatements of its
4449 public organic record, or any amendments to or restatements of
4450 its private organic rules that are, or are proposed to be, in a
4451 record, and all such amendments or restatements are effective
4452 upon the effective date of the interest exchange.
4453 (e) The other terms and conditions of the interest
4454 exchange.
4455 (f) Another provision required by the law of an acquired
4456 entity's jurisdiction of formation, the organic rules of the
4457 acquired entity, the organic rules of an acquiring entity or the
4458 law of the jurisdiction of formation of the acquiring entity.
4459 (2) In addition to the requirements of subsection (1), a
4460 plan of interest exchange may contain any other provision not
4461 prohibited by law.
4462 608.937 Approval of interest exchange.—
4463 (1) A plan of interest exchange is not effective unless it
4464 has been approved:
4465 (a) With respect to a domestic limited liability company
4466 that is the acquired entity in the interest exchange, by a

4467 majority-in-interest of the members of the company.
4468 (b) In a record, by each member of the domestic acquired
4469 limited liability company that will have interestholder
4470 liability for debts, obligations, and other liabilities that
4471 arise after the interest exchange becomes effective, unless:
4472 1. The organic rules of the company in a record provide for
4473 the approval of an interest exchange or a merger in which some
4474 or all of its members become subject to interestholder liability
4475 by the vote or consent of fewer than all the members.
4476 2. The member consented in a record to, or voted for, that
4477 provision of the organic rules or became a member after the
4478 adoption of that provision.
4479 (2) An interest exchange involving a domestic acquired
4480 entity that is not a limited liability company is not effective
4481 unless it is approved by the domestic entity in accordance with
4482 its organic law.
4483 (3) An interest exchange involving a foreign acquired
4484 entity is not effective unless it is approved by the foreign
4485 entity in accordance with the law of the foreign entity's
4486 jurisdiction of formation.
4487 (4) Except as otherwise provided in its organic law or
4488 organic rules, the interestholders of the acquiring entity are
4489 not required to approve the interest exchange.
4490 (5) All members of each domestic limited liability company
4491 that is a party to the interest exchange and have a right to
4492 vote upon the interest exchange must be given written notice of
4493 a meeting with respect to the approval of a plan of interest
4494 exchange as provided in subsection (1), at least 10 days but not
4495 more than 60 days before the date of the meeting at which the

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4496 plan of interest exchange is submitted for approval by the
4497 members of such limited liability company. The notification
4498 required by this subsection may be waived in writing by the
4499 person or persons entitled to such notification.
4500 (6) The notification required by subsection (5) must be in
4501 writing and include:
4502 (a) The date, time, and place of the meeting at which the
4503 plan of interest exchange is to be submitted for approval by the
4504 members of the limited liability company.
4505 (b) A copy of the plan of interest exchange.
4506 (c) The statement or statements required by this chapter
4507 regarding the availability of appraisal rights, if any, to
4508 members of the limited liability company.
4509 (d) The date on which such notification was mailed or
4510 delivered to the members.
4511 (e) Other information concerning the plan of interest
4512 exchange.
4513 (7) The notification required by subsection (5) is deemed
4514 to be given at the earliest date of:
4515 (a) The date the notification is received.
4516 (b) Five days after the date the notification is deposited
4517 in the United States mail addressed to the member at the
4518 member's address as it appears in the books and records of the
4519 limited liability company, with prepaid postage affixed.
4520 (c) The date shown on the return receipt, if sent by
4521 registered or certified mail, return receipt requested, and the
4522 receipt is signed by or on behalf of the addressee.
4523 (d) The date the notification is given in accordance with
4524 the organic rules of the limited liability company.

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4525 608.938 Amendment or abandonment of plan of interest
4526 exchange.—
4527 (1) A plan of interest exchange may be amended only with
4528 the consent of each party to the plan, except as otherwise
4529 provided in the plan or in the organic rules of each entity.
4530 (2) A domestic acquired limited liability company may
4531 approve an amendment of a plan of interest exchange:
4532 (a) In the same manner as the plan was approved, if the
4533 plan does not provide for the manner in which it may be amended;
4534 or
4535 (b) By the managers or members in the manner provided in
4536 the plan, but a member that was entitled to vote on or consent
4537 to approval of the interest exchange is entitled to vote on or
4538 consent to an amendment of the plan that will change:
4539 1. The amount or kind of interests, securities,
4540 obligations, money, other property, rights to acquire interests
4541 or securities, or any combination of the foregoing, to be
4542 received by the interestholders of a party to the plan;
4543 2. The public organic record, if any, or private organic
4544 rules of the acquired entity that will be in effect immediately
4545 after the interest exchange becomes effective, except for
4546 changes that do not require approval of the interestholders of
4547 the acquired entity under its organic law or organic rules; or
4548 3. Other terms or conditions of the plan, if the change
4549 would adversely affect the member in a material respect.
4550 (3) After a plan of interest exchange has been approved and
4551 before the articles of interest exchange become effective, the
4552 plan may be abandoned as provided in the plan. Unless prohibited
4553 by the plan, a domestic limited liability company may abandon

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4554 the plan in the same manner that the plan was approved.
4555 (4) If a plan of interest exchange is abandoned after
4556 articles of interest exchange have been delivered to the
4557 department for filing and before the articles of interest
4558 exchange have become effective, a statement of abandonment,
4559 signed by a party to the plan, must be delivered to the
4560 department for filing before the articles of interest exchange
4561 become effective. The statement of abandonment takes effect on
4562 filing, and the interest exchange is abandoned and does not
4563 become effective. The statement of abandonment must contain:
4564 (a) The name of each party to the plan of interest
4565 exchange.
4566 (b) The date on which the articles of interest exchange
4567 were delivered to the department for filing.
4568 (c) A statement that the interest exchange has been
4569 abandoned in accordance with this section.
4570 608.939 Articles of interest exchange.—
4571 (1) After a plan of interest exchange has been approved,
4572 articles of interest exchange must be signed by each party to
4573 the interest exchange and delivered to the department for
4574 filing.
4575 (2) The articles of interest exchange must contain:
4576 (a) The name of the acquired limited liability company.
4577 (b) The name, jurisdiction of formation, and type of entity
4578 of the acquiring entity.
4579 (c) A statement that the plan of interest exchange was
4580 approved by the acquired limited liability entity in accordance
4581 with ss. 608.935-608.940 and by each member of such limited
4582 liability company who, as a result of the interest exchange,

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4583 will have interestholder liability under s. 608.937(1)(b) and
4584 whose approval is required.
4585 (d) Any amendments to the acquired limited liability
4586 company's public organic record approved as part of the plan of
4587 interest exchange.
4588 (e) A statement that the plan of interest exchange was
4589 approved by each acquiring entity that is a party to the
4590 interest exchange in accordance with the organic laws in its
4591 jurisdiction of formation, or if such approval was not required,
4592 a statement to that effect.
4593 (f) A statement that the acquiring entity has agreed to pay
4594 to any members of the acquired entity with appraisal rights the
4595 amount to which such members are entitled under s. 608.922 and
4596 ss. 608.961-608.972.
4597 (g) The effective date of the interest exchange, if the
4598 effective date of the interest exchange is not the same as the
4599 date of filing of the articles of interest exchange, subject to
4600 the limitations contained in s. 608.7827.
4601 (3) In addition to the requirements of subsection (2),
4602 articles of interest exchange may contain any other provision
4603 not prohibited by law.
4604 (4) An interest exchange becomes effective when the
4605 articles of interest exchange become effective, unless the
4606 articles of interest exchange specify an effective time or a
4607 delayed effective date that complies with s. 608.7827.
4608 (5) A limited liability company is not required to deliver
4609 articles of interest exchange for filing pursuant to subsection
4610 (1) if the domestic limited liability company is named as an
4611 acquired entity or as an acquiring entity in the articles of

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4612 interest exchange filed for the same interest exchange in
4613 accordance with s. 608.929(1), and if such articles of interest
4614 exchange substantially comply with the requirements of this
4615 section. In such a case, the other articles of interest exchange
4616 may also be used for purposes of subsection (2).
4617 608.940 Effect of interest exchange.—
4618 (1) When an interest exchange in which the acquired entity
4619 is a domestic limited liability company becomes effective:
4620 (a) The interests in a domestic company that are the
4621 subject of the interest exchange cease to exist or are converted
4622 or exchanged, and the members holding those interests are
4623 entitled only to the rights provided to them under the plan of
4624 interest exchange and to any appraisal rights they have under s.
4625 608.922 and ss. 608.961-608.972.
4626 (b) The acquiring entity becomes the interestholder of the
4627 interests in the acquired entity stated in the plan of interest
4628 exchange to be acquired by the acquiring entity.
4629 (c) The public organic record of the acquired entity is
4630 amended as provided in the articles of interest exchange.
4631 (d) The private organic rules of the acquired entity that
4632 are to be in a record, if any, are amended to the extent
4633 provided in the plan of interest exchange.
4634 (2) Except as otherwise provided in the organic rules of
4635 the acquired limited liability company, the interest exchange
4636 does not give rise to any rights that a member, manager, or
4637 third party would have upon a dissolution, liquidation, or
4638 winding up of the acquired entity.
4639 (3) When an interest exchange becomes effective, a person
4640 who did not have interestholder liability with respect to a

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4641 domestic acquired limited liability company and who becomes
4642 subject to interestholder liability with respect to a domestic
4643 entity as a result of the interest exchange will have
4644 interestholder liability only to the extent provided by the
4645 organic law of the entity and only for those debts, obligations,
4646 and other liabilities that arise after the interest exchange
4647 becomes effective.
4648 (4) When an interest exchange becomes effective, the
4649 interestholder liability of a person who ceases to hold an
4650 interest in a domestic acquired limited liability company with
4651 respect to which the person had interestholder liability is as
4652 follows:
4653 (a) The interest exchange does not discharge an
4654 interestholder liability to the extent the interestholder
4655 liability arose before the interest exchange became effective.
4656 (b) The person does not have interestholder liability for
4657 any debt, obligation, or other liability that arises after the
4658 interest exchange becomes effective.
4659 (c) The organic law of the acquired entity's jurisdiction
4660 of formation and any rights of contribution provided by that
4661 law, or under the organic rules of the acquired entity,
4662 continues to apply to the release, collection, or discharge of
4663 any interestholder liability preserved under paragraph (a) as if
4664 the interest exchange had not occurred.
4665 608.941 Conversion authorized.—
4666 (1) By complying with ss. 608.941-608.950, a domestic
4667 limited liability company may become:
4668 (a) A domestic entity that is a different type of entity;
4669 or

4670 (b) A foreign entity that is a limited liability company or
4671 a different type of entity, if the conversion is authorized by
4672 the law of the foreign entity's jurisdiction of formation.
4673 (2) By complying with ss. 608.941-608.950 that are
4674 applicable to domestic entities that are not a domestic limited
4675 liability company, a domestic entity that is not a domestic
4676 limited liability company may become a domestic limited
4677 liability company if the conversion is authorized by the law
4678 governing the domestic entity that is not a domestic limited
4679 liability company.
4680 (3) By complying with ss. 608.901-608.910 that are
4681 applicable to a foreign entity, a foreign entity may become a
4682 domestic limited liability company if the conversion is
4683 authorized by the law of the foreign entity's jurisdiction of
4684 formation.
4685 (4) If a protected agreement contains a provision that
4686 applies to a merger of a domestic limited liability company but
4687 does not refer to a conversion, the provision applies to a
4688 conversion of the entity as if the conversion were a merger
4689 until the provision is amended after January 1, 2014.
4690 608.946 Plan of conversion.—
4691 (1) A domestic limited liability company may convert into a
4692 different type of domestic entity or into a foreign entity that
4693 is a foreign limited liability company or a different type of
4694 foreign entity by approving a plan of conversion. The plan must
4695 be in a record and contain:
4696 (a) The name of the converting limited liability company.
4697 (b) The name, jurisdiction of formation, and type of entity
4698 of the converted entity.

4699 (c) The manner and basis of converting the interests and
4700 rights to acquire interests in the converting limited liability
4701 company into interests, securities, obligations, money, other
4702 property, rights to acquire interests or securities, or any
4703 combination of the foregoing.
4704 (d) The proposed public organic record of the converted
4705 entity if it will be a filing entity.
4706 (e) The full text of the private organic rules of the
4707 converted entity that are proposed to be in a record, if any.
4708 (f) Another provision required by the law of this state or
4709 the organic rules of the converted limited liability company, if
4710 the entity is to be other than a domestic limited liability
4711 company.
4712 (g) All other statements required to be set forth in a plan
4713 of conversion by the law of the jurisdiction of formation of the
4714 converted entity following the conversion.
4715 (2) In addition to the requirements of subsection (1), a
4716 plan of conversion may contain any other provision not
4717 prohibited by law.
4718 608.947 Approval of conversion.—
4719 (1) A plan of conversion is not effective unless it has
4720 been approved:
4721 (a) If the converting entity is a domestic limited
4722 liability company, by a majority-in-interest of the members of
4723 the company who have a right to vote upon the conversion.
4724 (b) In a record, by each member of a converting limited
4725 liability company that will have interestholder liability for
4726 debts, obligations, and other liabilities that arise after the
4727 conversion becomes effective, unless:

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4728 1. The organic rules of the company in a record provide for
4729 the approval of a conversion in which some or all of its members
4730 become subject to interestholder liability by the vote or
4731 consent of less than all of the members.
4732 2. The member consented in a record to or voted for that
4733 provision of the organic rules or became a member after the
4734 adoption of that provision.
4735 (2) A conversion involving a domestic converting entity
4736 that is not a limited liability company is not effective unless
4737 it is approved by the domestic converting entity in accordance
4738 with its organic law.
4739 (3) A conversion of a foreign converting entity is not
4740 effective unless it is approved by the foreign entity in
4741 accordance with the law of the foreign entity's jurisdiction of
4742 formation.
4743 (4) If the converting entity is a domestic limited
4744 liability company, all members of the company who have the right
4745 to vote upon the conversion must be given written notice of a
4746 meeting with respect to the approval of a plan of conversion as
4747 provided in subsection (1), at least 10 days but not more than
4748 60 days before the date of the meeting at which the plan of
4749 conversion is submitted for approval by the members of the
4750 limited liability company. The notification required by
4751 subsection (5) may be waived in writing by the person or persons
4752 entitled to such notification.
4753 (5) The notification required by subsection (4) must be in
4754 writing and include:
4755 (a) The date, time, and place of the meeting at which the
4756 plan of conversion is to be submitted for approval by the

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4757 members of the limited liability company.
4758 (b) A copy of the plan of conversion.
4759 (c) The statement or statements required by s. 608.922 and
4760 ss. 608.961-608.972 regarding the availability of appraisal
4761 rights, if any, to members of the limited liability company.
4762 (d) The date on which such notification was mailed or
4763 delivered to the members.
4764 (e) Any other information concerning the plan of
4765 conversion.
4766 (6) The notification required by subsection (4) is deemed
4767 to be given at the earliest date of:
4768 (a) The date the notification is received;
4769 (b) Five days after the date the notification is deposited
4770 in the United States mail addressed to the member at the
4771 member's address as it appears in the books and records of the
4772 limited liability company, with prepaid postage affixed;
4773 (c) The date shown on the return receipt, if sent by
4774 registered or certified mail, return receipt requested, and the
4775 receipt is signed by or on behalf of the addressee; or
4776 (d) The date the notification is given in accordance with
4777 the organic rules of the limited liability company.
4778 608.948 Amendment or abandonment of plan of conversion.—
4779 (1) A plan of conversion of a domestic converting limited
4780 liability company may be amended:
4781 (a) In the same manner as the plan was approved, if the
4782 plan does not provide for the manner in which it may be amended;
4783 or
4784 (b) By the managers or members of the entity in the manner
4785 provided in the plan, but a member who was entitled to vote on

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4786 or consent to approval of the conversion is entitled to vote on
4787 or consent to an amendment of the plan that will change:
4788 1. The amount or kind of interests, securities,
4789 obligations, money, other property, rights to acquire interests
4790 or securities, or any combination of the foregoing, to be
4791 received by the interestholders of the converting entity under
4792 the plan;
4793 2. The public organic record, if any, or private organic
4794 rules of the converted entity that will be in effect immediately
4795 after the conversion becomes effective, except for changes that
4796 do not require approval of the interestholders of the converting
4797 entity under its organic law or organic rules; or
4798 3. Other terms or conditions of the plan, if the change
4799 would adversely affect the member in a material respect.
4800 (2) After a plan of conversion has been approved and before
4801 the articles of conversion become effective, the plan may be
4802 abandoned as provided in the plan. Unless prohibited by the
4803 plan, a domestic converting limited liability company may
4804 abandon the plan in the same manner that the plan was approved.
4805 (3) If a plan of conversion is abandoned after articles of
4806 conversion have been delivered to the department for filing and
4807 before the articles of conversion have become effective, a
4808 statement of abandonment, signed by the converting entity, must
4809 be delivered to the department for filing before the articles of
4810 conversion become effective. The statement of abandonment takes
4811 effect on filing, and the conversion is abandoned and does not
4812 become effective. The statement of abandonment must contain:
4813 (a) The name of the converting limited liability company.
4814 (b) The date on which the articles of conversion were

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4815 delivered to the department for filing.
4816 (c) A statement that the conversion has been abandoned in
4817 accordance with this section.
4818 608.949 Articles of conversion.—
4819 (1) After a plan of conversion is approved, articles of
4820 conversion signed by the converting entity must be delivered to
4821 the department for filing.
4822 (2) The articles of conversion must contain:
4823 (a) The name, jurisdiction of formation, and type of entity
4824 of the converting entity.
4825 (b) The name, jurisdiction of formation, and type of entity
4826 of the converted entity.
4827 (c) If the converting entity is a domestic limited
4828 liability company, a statement that the plan of conversion has
4829 been approved in accordance with ss. 608.941-608.950, or if the
4830 converted entity is a foreign entity, a statement that the
4831 conversion was approved by the foreign converting entity in
4832 accordance with the law of its jurisdiction of formation and by
4833 each member of the converting entity, who, as a result of the
4834 conversion, will have interestholder liability under s.
4835 608.947(1)(b), and whose approval is required.
4836 (d) If the converted entity is a domestic filing entity,
4837 the text of its public organic record, as an attachment.
4838 (e) If the converted entity is a domestic limited liability
4839 partnership, the text of its statement of qualification, as an
4840 attachment.
4841 (f) If the converted entity is a foreign entity that does
4842 not have a certificate of authority to transact business in this
4843 state, a mailing address to which the department may send any

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4844 process served on the department pursuant to s. 608.7817 and
4845 chapter 48.
4846 (g) A statement that the converted entity has agreed to pay
4847 to the members of a limited liability company with appraisal
4848 rights the amount to which such members are entitled under s.
4849 608.922 and ss. 608.961-608.972.
4850 (h) The effective date of the conversion, if the effective
4851 date of the conversion is not the same as the date of filing of
4852 the articles of conversion, subject to the limitations contained
4853 in s. 608.7827.
4854 (3) In addition to the requirements of subsection (1),
4855 articles of conversion may contain another provision not
4856 prohibited by law.
4857 (4) A conversion becomes effective when the articles of
4858 conversion become effective, unless the articles of conversion
4859 specify an effective time or a delayed effective date that
4860 complies with s. 608.7827.
4861 (5) A copy of the articles of conversion, certified by the
4862 department, may be filed in the official records of any county
4863 in this state in which the converted entity holds an interest in
4864 real property.
4865 608.950 Effect of conversion.—
4866 (1) When a conversion in which the converted entity is a
4867 domestic limited liability company becomes effective:
4868 (a) The converted entity is:
4869 1. Organized under and subject to this chapter.
4870 2. The same entity without interruption as the converting
4871 entity.
4872 (b) All property of the converting entity continues to be

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4873 vested in the converted entity without transfer, reversion, or
4874 impairment.
4875 (c) All debts, obligations, and other liabilities of the
4876 converting entity continue as debts, obligations, and other
4877 liabilities of the converted entity.
4878 (d) Except as otherwise provided by law or the plan of
4879 conversion, all the rights, privileges, immunities, powers, and
4880 purposes of the converting entity remain in the converted
4881 entity.
4882 (e) The name of the converted entity may be substituted for
4883 the name of the converting entity in a pending action or
4884 proceeding.
4885 (f) The organic rules of the converted entity that are to
4886 be in a record, if any, approved as part of the plan of
4887 conversion are effective.
4888 (g) The interests or rights to acquire interests in the
4889 converting entity are converted, and the interestholders of the
4890 converting entity are entitled only to the rights provided to
4891 them under the plan of conversion and to any appraisal rights
4892 they have under s. 608.922 and ss. 608.961-608.972 and the
4893 converting entity's organic law.
4894 (2) Except as otherwise provided in the private organic
4895 rules of a domestic converting limited liability company, the
4896 conversion does not give rise to any rights that a member,
4897 manager, or third party would otherwise have upon a dissolution,
4898 liquidation, or winding up of the converting entity.
4899 (3) When a conversion becomes effective, a person who did
4900 not have interestholder liability with respect to the converting
4901 entity and becomes subject to interestholder liability with

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4902 respect to a domestic entity as a result of the conversion has
4903 interestholder liability only to the extent provided by the
4904 organic law of the entity and only for those debts, obligations,
4905 and other liabilities that arise after the conversion becomes
4906 effective.
4907 (4) When a conversion becomes effective, the interestholder
4908 liability of a person who ceases to hold an interest in a
4909 domestic limited liability company with respect to which the
4910 person had interestholder liability is as follows:
4911 (a) The conversion does not discharge any interestholder
4912 liability to the extent the interestholder liability arose
4913 before the conversion became effective.
4914 (b) The person does not have interestholder liability for
4915 any debt, obligation, or other liability that arises after the
4916 conversion becomes effective.
4917 (c) The organic law of the jurisdiction of formation of the
4918 converting limited liability company and the rights of
4919 contribution provided under that law, or the organic rules of
4920 the converting limited liability company, continue to apply to
4921 the release, collection or discharge of an interestholder
4922 liability preserved under paragraph (a) as if the conversion had
4923 not occurred.
4924 (5) When a conversion becomes effective, a foreign entity
4925 that is the converted entity may be served with process in this
4926 state for the collection and enforcement of its debts,
4927 obligations, and liabilities as provided in s. 608.7817 and
4928 chapter 48.
4929 (6) If the converting entity is a registered foreign
4930 entity, the certificate of authority to conduct business in this

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4931 state of the converting entity is canceled when the conversion
4932 becomes effective.
4933 (7) A conversion does not require the entity to wind up its
4934 affairs and does not constitute or cause the dissolution of the
4935 entity.
4936 608.955 Domestication authorized.—By complying with ss.
4937 608.955-608.960, a non-United States entity may become a
4938 domestic limited liability company if the domestication is
4939 authorized by the organic law of the non-United States entity's
4940 jurisdiction of formation.
4941 608.956 Plan of domestication.—
4942 (1) A non-United States entity may become a domestic
4943 limited liability company by approving a plan of domestication.
4944 The plan of domestication must be in a record and contain:
4945 (a) The name and jurisdiction of formation of the
4946 domesticating entity.
4947 (b) If applicable, the manner and basis of converting the
4948 interests and rights to acquire interests in the domesticating
4949 entity into interests, securities, obligations, money, other
4950 property, rights to acquire interests or securities, or any
4951 combination thereof.
4952 (c) The proposed public organic record of the domesticating
4953 entity in this state.
4954 (d) The full text of the proposed private organic rules of
4955 the domesticated entity that are to be in a record, if any.
4956 (e) Any other provision required by the law of the
4957 jurisdiction of formation of the domesticating entity or the
4958 organic rules of the domesticating entity.
4959 (2) In addition to the requirements of subsection (1), a

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4960 plan of domestication may contain any other provision not
4961 prohibited by law.
4962 608.957 Approval of domestication.—A plan of domestication
4963 of a domesticating entity shall be approved:
4964 (1) In accordance with the organic law of the domesticating
4965 entity's jurisdiction of formation.
4966 (2) In a record, by each of the domesticating entity's
4967 owners who will have interestholder liability for debts,
4968 obligations, and other liabilities that arise after the
4969 domestication becomes effective, unless:
4970 (a) The organic rules of the domesticating entity in a
4971 record provide for the approval of a domestication in which some
4972 or all of the persons who are its owners become subject to
4973 interestholder liability by the vote or consent of fewer than
4974 all of the persons that are its owners.
4975 (b) The person who will be a member of the domesticated
4976 limited liability company consented in a record to or voted for
4977 that provision of the organic rules of the domesticating entity
4978 or became an owner of the domesticating entity after the
4979 adoption of that provision.
4980 608.958 Amendment or abandonment of plan of domestication.—
4981 (1) A plan of domestication of a domesticating entity may
4982 be amended:
4983 (a) In the same manner that the plan was approved if the
4984 plan does not provide for the manner in which it may be amended;
4985 or
4986 (b) By the interestholders of the domesticating entity in
4987 the manner provided in the plan, but an owner who was entitled
4988 to vote on or consent to approval of the domestication is

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4989 entitled to vote on or consent to an amendment of the plan that
4990 will change:
4991 1. If applicable, the amount or kind of interests,
4992 securities, obligations, money, other property, rights to
4993 acquire interests or securities, or any combination of the
4994 foregoing, to be received by the interestholders of the
4995 domesticating entity under the plan;
4996 2. The public organic record, if any, or private organic
4997 rules of the domesticated limited liability company that will be
4998 in effect immediately after the domestication becomes effective,
4999 except for changes that do not require approval of the
5000 interestholders of the domesticating entity under its organic
5001 law or organic rules; or
5002 3. Any other terms or conditions of the plan, if the change
5003 would adversely affect the member in a material respect.
5004 (2) After a plan of domestication has been approved and
5005 before the articles of domestication become effective, the plan
5006 may be abandoned as provided in the plan. Unless prohibited by
5007 the plan, the domesticating entity may abandon the plan in the
5008 same manner that the plan was approved.
5009 (3) If a plan of domestication is abandoned after articles
5010 of domestication have been delivered to the department for
5011 filing and before the articles of domestication have become
5012 effective, a statement of abandonment, signed by the
5013 domesticating entity, must be delivered to the department for
5014 filing before the articles of domestication become effective.
5015 The statement of abandonment takes effect on filing, and the
5016 domestication is abandoned and does not become effective. The
5017 statement of abandonment must contain:

5018 (a) The name of the domesticating entity.
5019 (b) The date on which the articles of domestication were
5020 delivered to the department for filing.
5021 (c) A statement that the domestication has been abandoned
5022 in accordance with this section.
5023 608.959 Articles of domestication.—
5024 (1) The articles of domestication must be filed with the
5025 department. The articles of domestication shall state:
5026 (a) The date on which the domesticating entity was first
5027 formed, incorporated, created, or otherwise came into being.
5028 (b) The name of the domesticating entity immediately before
5029 the filing of the articles of domestication.
5030 (c) The name of the domesticated limited liability company
5031 as set forth in the articles of organization filed in accordance
5032 with this subsection.
5033 (d) The future effective date of the domestication as a
5034 limited liability company if it is not to be effective upon the
5035 filing of the articles of domestication subject to the
5036 limitations contained in s. 608.7827.
5037 (e) The jurisdiction that constituted the seat, siege
5038 social, or principal place of business or central administration
5039 of the domesticating entity, or any other equivalent under
5040 applicable law, immediately before the filing of the articles of
5041 domestication.
5042 (f) That the domestication has been approved in accordance
5043 with the laws of the jurisdiction of formation of the
5044 domesticating entity.
5045 (2) In addition to the requirements of subsection (1),
5046 articles of domestication may contain any other provision not

5047 prohibited by law.
5048 (3) The articles of domestication that are filed with the
5049 department must be accompanied by a certificate of status or
5050 equivalent document, if any, from the domesticating entity's
5051 jurisdiction of formation.
5052 (4) The articles of domestication and the public organic
5053 record of a domesticated limited liability company must satisfy
5054 the requirements of the law of this state, but be executed by an
5055 authorized representative and registered agent in accordance
5056 with this chapter.
5057 608.960 Effect of domestication.—
5058 (1) When a domestication becomes effective:
5059 (a) The domesticated limited liability company is:
5060 1. Organized under and subject to the organic law of this
5061 state.
5062 2. The same entity, without interruption, as the
5063 domesticating entity.
5064 (b) All property of the domesticating entity continues to
5065 be vested in the domesticated limited liability company without
5066 transfer, reversion, or impairment.
5067 (c) All debts, obligations, and other liabilities of the
5068 domesticating entity continue as debts, obligations, and other
5069 liabilities of the domesticated limited liability company.
5070 (d) Except as otherwise provided by law or the plan of
5071 domestication, all the rights, privileges, immunities, powers,
5072 and purposes of the domesticating entity remain in the
5073 domesticated limited liability company.
5074 (e) The name of the domesticated limited liability company
5075 may be substituted for the name of the domesticating entity in a

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5076 pending action or proceeding.
5077 (f) The public organic rules of the domesticated limited
5078 liability company are effective.
5079 (g) The private organic rules of the domesticated limited
5080 liability company that are to be in a record, if any, approved
5081 as part of the plan of domestication are effective.
5082 (h) The interests in the domesticating entity are converted
5083 to the extent and as approved in connection with the
5084 domestication, and the interestholders of the domesticating
5085 entity are entitled only to the rights provided to them under
5086 the plan of domestication.
5087 (2) Except as otherwise provided in the organic law or
5088 organic rules of the domesticating entity, the domestication
5089 does not give rise to any rights that an interestholder or third
5090 party would otherwise have upon a dissolution, liquidation, or
5091 winding up of the domesticating entity.
5092 (3) When a domestication becomes effective, a person who
5093 did not have interestholder liability with respect to the
5094 domesticating entity and becomes subject to interestholder
5095 liability with respect to the domesticated limited liability
5096 company as a result of the domestication has interestholder
5097 liability only to the extent provided by the organic law of the
5098 domesticating entity and only for those debts, obligations, and
5099 other liabilities that arise after the domestication becomes
5100 effective.
5101 (4) When a domestication becomes effective:
5102 (a) The domestication does not discharge any interestholder
5103 liability under this chapter to the extent the interestholder
5104 liability arose before the domestication became effective.

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5105 (b) A person does not have interestholder liability under
5106 this chapter for any debt, obligation, or other liability that
5107 arises after the domestication becomes effective.
5108 (c) The organic law of the jurisdiction of formation of the
5109 domesticating entity and any rights of contribution provided
5110 under that law, or the organic rules of the domesticating
5111 entity, continue to apply to the release, collection, or
5112 discharge of any interestholder liability preserved under
5113 subparagraph (a) as if the domestication had not occurred.
5114 (5) When a domestication becomes effective, a domesticating
5115 entity that has become the domesticated limited liability
5116 company may be served with process in this state for the
5117 collection and enforcement of its debts, obligations, and
5118 liabilities as provided in s. 608.7817 and chapter 48.
5119 (6) If the domesticating entity is qualified to transact
5120 business in this state, the certificate of authority of the
5121 domesticating entity is canceled when the domestication becomes
5122 effective.
5123 (7) A domestication does not require the domesticating
5124 entity to wind up its affairs and does not constitute or cause
5125 the dissolution of the domesticating entity.
5126 608.961 Appraisal rights; definitions.— The following
5127 definitions apply to s. 608.922 and to ss. 608.961-608.972:
5128 (1) "Accrued interest" means interest from the effective
5129 date of the appraisal event to which the member objects until
5130 the date of payment, at the rate of interest determined for
5131 judgments in accordance with s. 55.03, determined as of the
5132 effective date of the appraisal event.
5133 (2) "Affiliate" means a person who directly or indirectly,

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5134 through one or more intermediaries, controls, is controlled by,
5135 or is under common control with another person or is a senior
5136 executive thereof. For purposes of s. 608.922(2), a person is
5137 deemed to be an affiliate of its senior executives.
5138 (3) "Appraisal event" means an event described in s.
5139 608.922(1).
5140 (4) "Beneficial member" means a person who is the
5141 beneficial owner of a membership interest held in a voting trust
5142 or by a nominee on the beneficial owner's behalf.
5143 (5) "Fair value" means the value of the member's membership
5144 interests determined:
5145 (a) Immediately before the effectuation of the appraisal
5146 event to which the member objects.
5147 (b) Using customary and current valuation concepts and
5148 techniques generally employed for similar businesses in the
5149 context of the transaction requiring appraisal, excluding any
5150 appreciation or depreciation in anticipation of the transaction
5151 to which the member objects unless exclusion would be
5152 inequitable to the limited liability company and its remaining
5153 members.
5154 (c) Without discounting for lack of marketability or
5155 minority status.
5156 (6) "Limited liability company" means the limited liability
5157 company that issued the membership interest held by a member
5158 demanding appraisal and, for matters covered in ss. 608.961-
5159 608.972, including the converted entity in a conversion or the
5160 surviving entity in a merger.
5161 (7) "Member" means a record member or a beneficial member.
5162 (8) "Membership interest" means a member's transferable

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5163 interest and all other rights as a member of the limited
5164 liability company that issued the membership interest, including
5165 voting rights, management rights, or other rights under this
5166 chapter or the organic rules of the limited liability company
5167 except, if the appraisal rights of a member under s. 608.922
5168 pertain to only a certain class or series of a membership
5169 interest, the term "membership interest" means only the
5170 membership interest pertaining to such class or series.
5171 (9) "Record member" means each person who is identified as
5172 a member in the current list of members maintained for purposes
5173 of s. 608.922 by the limited liability company, or to the extent
5174 the limited liability company has failed to maintain a current
5175 list, each person that is the rightful owner of a membership
5176 interest in the limited liability company. A transferee of a
5177 membership interest who has not been admitted as member is not a
5178 record member.
5179 (10) "Senior executive" means a manager in a manager-
5180 managed limited liability company, a member in a member-managed
5181 limited liability company, or the chief executive officer, chief
5182 operating officer, chief financial officer, or anyone in charge
5183 of a principal business unit or function of a limited liability
5184 company, or of a manager in a manager-managed limited liability
5185 company, or a member in a member-managed limited liability
5186 company.
5187 608.962 Assertion of rights by nominees and beneficial
5188 owners.—
5189 (1) A record member may assert appraisal rights as to fewer
5190 than all the membership interests registered in the record
5191 member's name which are owned by a beneficial member only if the

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5192 record member objects with respect to all membership interests
5193 of the class or series owned by that beneficial member and
5194 notifies the limited liability company in writing of the name
5195 and address of each beneficial member on whose behalf appraisal
5196 rights are being asserted. The rights of a record member who
5197 asserts appraisal rights for only part of the membership
5198 interests of the class or series held of record in the record
5199 member's name under this subsection shall be determined as if
5200 the membership interests to which the record member objects and
5201 the record member's other membership interests were registered
5202 in the names of different record members.
5203 (2) A beneficial member may assert appraisal rights as to a
5204 membership interest held on behalf of the member only if the
5205 beneficial member:
5206 (a) Submits to the limited liability company the record
5207 member's written consent to the assertion of such rights by the
5208 date provided in s. 608.963(3)(b).
5209 (b) Does so with respect to all membership interests of the
5210 class or series that are beneficially owned by the beneficial
5211 member.
5212 608.963 Notice of appraisal rights.—
5213 (1) If a proposed appraisal event is to be submitted to a
5214 vote at a members' meeting, the meeting notice must state that
5215 the limited liability company has concluded that the members
5216 are, are not, or may be entitled to assert appraisal rights
5217 under this chapter.
5218 (2) If the limited liability company concludes that
5219 appraisal rights are or may be available, a copy of s. 608.922
5220 and ss. 608.961-608.972 must accompany the meeting notice sent

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5221 to those record members who are or may be entitled to exercise
5222 appraisal rights.
5223 (3) If the appraisal event is to be approved other than by
5224 a members' meeting:
5225 (a) Written notice that appraisal rights are, are not, or
5226 may be available must be sent to each member from whom a consent
5227 is solicited at the time consent of the member is first
5228 solicited, and if the limited liability company has concluded
5229 that appraisal rights are or may be available, a copy of s.
5230 608.922 and ss. 608.961-608.972 must accompany such written
5231 notice.
5232 (b) Written notice that appraisal rights are, are not, or
5233 may be available must be delivered, at least 10 days before the
5234 appraisal event becomes effective, to all nonconsenting and
5235 nonvoting members, and, if the limited liability company has
5236 concluded that appraisal rights are or may be available, a copy
5237 of s. 608.922 and ss. 608.961-608.972 must accompany such
5238 written notice.
5239 (4) If a particular appraisal event is proposed and the
5240 limited liability company concludes that appraisal rights are or
5241 may be available, the notice referred to in subsection (1) or
5242 paragraph (3)(a) or paragraph (3)(b) must be accompanied by:
5243 (a) Financial statements of the limited liability company
5244 that issued the membership interests that may or are subject to
5245 appraisal rights, consisting of a balance sheet as of the end of
5246 the fiscal year ending not more than 16 months before the date
5247 of the notice, an income statement for that fiscal year and a
5248 cash flow statement for that fiscal year; if the financial
5249 statements are not reasonably available, the limited liability

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5250 company must provide reasonably equivalent financial
5251 information.
5252 (b) The latest available interim financial statements,
5253 including year to date through the end of the interim period, of
5254 the limited liability company, if any.
5255 (5) The right to receive the information described in
5256 subsection (4) may be waived in writing by a member before or
5257 after the appraisal event.
5258 608.964 Notice of intent to demand payment.—
5259 (1) If a proposed appraisal event is submitted to a vote at
5260 a members' meeting, a member who is entitled to, and who wishes,
5261 to assert appraisal rights with respect to a class or series of
5262 membership interests:
5263 (a) Must deliver to any other member of a member managed
5264 limited liability company, to a manager of a manager-managed
5265 limited liability company, or, if the limited liability company
5266 has appointed officers, to an officer, before the vote is taken,
5267 written notice of the person's intent to demand payment if the
5268 proposed appraisal event is effectuated.
5269 (b) Must not vote, or cause or permit to be voted, any
5270 membership interests of the class or series in favor of the
5271 appraisal event.
5272 (2) If a proposed appraisal event is to be approved by less
5273 than unanimous written consent of the members, a member who is
5274 entitled to and who wishes to assert appraisal rights with
5275 respect to a class or series of membership interests must not
5276 sign a consent in favor of the proposed appraisal event with
5277 respect to that class or series of membership interests.
5278 (3) A person who may otherwise be entitled to appraisal

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5279 rights, but who does not satisfy the requirements of subsection
5280 (1) or subsection (2), is not entitled to payment under s.
5281 608.922 and ss. 608.961-608.972.
5282 608.965 Appraisal notice and form.—
5283 (1) If the proposed appraisal event becomes effective, the
5284 limited liability company must send a written appraisal notice
5285 and form required by paragraph (2)(a) to all members who satisfy
5286 the requirements of s. 608.964(1) or (2).
5287 (2) The appraisal notice must be sent no earlier than the
5288 date the appraisal event became effective and within 10 days
5289 after the date and must:
5290 (a) Supply a form that specifies the date that the
5291 appraisal event became effective and that provides for the
5292 member to state:
5293 1. The member's name and address.
5294 2. The number, classes, and series of membership interests
5295 as to which the member asserts appraisal rights.
5296 3. That the member did not vote for or execute a written
5297 consent with respect to the transaction.
5298 4. Whether the member accepts the limited liability
5299 company's offer as stated in subparagraph (b)4.
5300 5. If the offer is not accepted, the member's estimated
5301 fair value of the membership interests and a demand for payment
5302 of the member's estimated value plus accrued interest.
5303 (b) State:
5304 1. Where the form described in paragraph (a) must be sent.
5305 2. A date by which the limited liability company must
5306 receive the form, which is at least 40 days but not more than 60
5307 days after the date the appraisal notice and form described in

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5308 this section are sent, and that the member is considered to have
5309 waived the right to demand appraisal with respect to the
5310 membership interests unless the form is received by the limited
5311 liability company by the specified date.
5312 3. In the case of membership interests represented by a
5313 certificate, the location at which certificates for the
5314 certificated membership interests must be deposited, if that
5315 action is required by the limited liability company, and the
5316 date by which those certificates must be deposited, which may
5317 not be earlier than the date for receiving the required form
5318 under subparagraph 2.
5319 4. The limited liability company's estimate of the fair
5320 value of the membership interests.
5321 5. An offer to each member who is entitled to appraisal
5322 rights to pay the limited liability company's estimate of fair
5323 value provided in subparagraph 4.
5324 6. That, if requested in writing, the limited liability
5325 company will provide to the member so requesting, within 10 days
5326 after the date specified in subparagraph 2. the number of
5327 members who return the forms by the specified date and the total
5328 number of membership interests owned by them.
5329 7. The date by which the notice to withdraw under s.
5330 608.966 must be received, which must be within 20 days after the
5331 date specified in subparagraph 2.
5332 8. If not previously provided, accompanied by a copy of s.
5333 608.922 and ss. 608.961-608.972.
5334 608.966 Perfection of rights; right to withdraw.—
5335 (1) A member who receives notice pursuant to s. 608.965 and
5336 wishes to exercise appraisal rights must sign and return the

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5337 form received pursuant to s. 608.965(1) and, in the case of
5338 certificated membership interests and if the limited liability
5339 company so requires, deposit the member's certificates in
5340 accordance with the terms of the notice by the date referred to
5341 in the notice pursuant to s. 608.965(2)(b)2. Once a member
5342 deposits that member's certificates or, in the case of
5343 uncertificated membership interests, returns the signed form
5344 described in s. 608.965(2), the member loses all rights as a
5345 member, unless the member withdraws pursuant to subsection (2).
5346 Upon receiving a demand for payment from a member who holds an
5347 uncertificated membership interest, the limited liability
5348 company shall make an appropriate notation of the demand for
5349 payment in its records and shall restrict the transfer of the
5350 membership interest, or the applicable class or series, from the
5351 date the member delivers the items required by this section.
5352 (2) A member who has complied with subsection (1) may
5353 nevertheless decline to exercise appraisal rights and withdraw
5354 from the appraisal process by so notifying the limited liability
5355 company in writing by the date provided in the appraisal notice
5356 pursuant to s. 608.965(2)(b)7. A member who fails to so withdraw
5357 from the appraisal process may not later withdraw without the
5358 limited liability company's written consent.
5359 (3) A member who does not sign and return the form and, in
5360 the case of certificated membership interests, deposit that
5361 member's certificates, if so required by the limited liability
5362 company, each by the date provided in the notice, is not
5363 entitled to payment under s. 608.922 and ss. 608.961-608.972.
5364 (4) If the member's right to receive fair value is
5365 terminated other than by the purchase of the membership interest

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5366 by the limited liability company, all rights of the member, with
5367 respect to the membership interest, shall be reinstated
5368 effective as of the date the member delivered the items required
5369 in subsection (1), including the right to receive an intervening
5370 payment or other distribution with respect to such membership
5371 interest, or, if any rights have expired or a distribution other
5372 than a cash payment has been completed, in lieu thereof at the
5373 election of the limited liability company, the fair value in
5374 cash as determined by the limited liability company as of the
5375 time of such expiration or completion, but without prejudice
5376 otherwise to any action or proceeding of the limited liability
5377 company that may have been taken by the limited liability
5378 company on or after the date the member delivered the items
5379 required by subsection (1).
5380 608.967 Member's acceptance of limited liability company's
5381 offer.
5382 (1) If the member states on the form provided in s.
5383 608.965(1) that the member accepts the offer of the limited
5384 liability company to pay the limited liability company's
5385 estimated fair value for the membership interest, the limited
5386 liability company shall make the payment to the member within 90
5387 days after the limited liability company's receipt of the items
5388 required by s. 608.966(1).
5389 (2) Upon payment of the agreed value, the member ceases to
5390 have an interest in the membership interest.
5391 608.968 Procedure if member is dissatisfied with offer.—
5392 (1) A member who is dissatisfied with the limited liability
5393 company's offer as provided pursuant to s. 608.965(2)(b)4. must
5394 notify the limited liability company on the form provided

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5395 pursuant to s. 608.965(1) of the member's estimate of the fair
5396 value of the membership interest and demand payment of that
5397 estimate plus accrued interest.
5398 (2) A member who fails to notify the limited liability
5399 company in writing of the member's demand to be paid the
5400 member's estimate of the fair value plus interest under
5401 subsection (1) within the timeframe provided in s.
5402 608.965(2)(b)2. waives the right to demand payment under this
5403 section and is entitled only to the payment offered by the
5404 limited liability company pursuant to s. 608.965(2)(b)4.
5405 608.969 Court action.—
5406 (1) If a member makes demand for payment under s. 608.968,
5407 which remains unsettled, the limited liability company shall
5408 commence a proceeding within 60 days after receiving the payment
5409 demand and petition the court to determine the fair value of the
5410 membership interest plus accrued interest from the date of the
5411 appraisal event. If the limited liability company does not
5412 commence the proceeding within the 60-day period, a member who
5413 has made a demand pursuant to s. 608.968 may commence the
5414 proceeding in the name of the limited liability company.
5415 (2) The proceeding shall be commenced in the appropriate
5416 court of the county in which the limited liability company's
5417 principal office in this state is located or, if none, the
5418 county in which its registered agent is located. If by virtue of
5419 the appraisal event becoming effective the limited liability
5420 company has become a foreign limited liability company without a
5421 registered agent in this state, the proceeding shall be
5422 commenced in the county in this state in which the principal
5423 office or registered agent of the limited liability company was

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5424 located immediately before the time the appraisal event became
5425 effective.
5426 (3) All members, whether residents of this state, whose
5427 demands remain unsettled shall be made parties to the proceeding
5428 as in an action against their membership interests. The limited
5429 liability company shall serve a copy of the initial pleading in
5430 the proceeding upon each member party who is a resident of this
5431 state in the manner provided by law for the service of a summons
5432 and complaint and upon each nonresident member party by
5433 registered or certified mail or by publication as provided by
5434 law.
5435 (4) The jurisdiction of the court in which the proceeding
5436 is commenced is plenary and exclusive. If it so elects, the
5437 court may appoint one or more persons as appraisers to receive
5438 evidence and recommend a decision on the question of fair value.
5439 The appraisers shall have the powers described in the order
5440 appointing them or in an amendment to the order. The members
5441 demanding appraisal rights are entitled to the same discovery
5442 rights as parties in other civil proceedings. There is no right
5443 to a jury trial.
5444 (5) Each member who is made a party to the proceeding is
5445 entitled to judgment for the amount of the fair value of the
5446 member's membership interests, plus interest, as found by the
5447 court.
5448 (6) The limited liability company shall pay each member the
5449 amount found to be due within 10 days after final determination
5450 of the proceedings. Upon payment of the judgment, the member
5451 ceases to have any interest in the membership interests.
5452 608.97 Court costs and attorney fees.—

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5453 (1) The court in an appraisal proceeding shall determine
5454 all costs of the proceeding, including the reasonable
5455 compensation and expenses of appraisers appointed by the court.
5456 The court shall assess the costs against the limited liability
5457 company, except that the court may assess costs against all or
5458 some of the members demanding appraisal, in amounts the court
5459 finds equitable, to the extent the court finds the members acted
5460 arbitrarily, vexatiously, or not in good faith with respect to
5461 the rights provided by this chapter.
5462 (2) The court in an appraisal proceeding may also assess
5463 the expenses incurred by the respective parties, in amounts the
5464 court finds equitable:
5465 (a) Against the limited liability company and in favor of
5466 any or all members demanding appraisal if the court finds the
5467 limited liability company did not substantially comply with the
5468 requirements of ss. 608.961-608.972; or
5469 (b) Against either the limited liability company or a
5470 member demanding appraisal, in favor of another party, if the
5471 court finds that the party against whom the expenses are
5472 assessed acted arbitrarily, vexatiously, or not in good faith
5473 with respect to the rights provided by this chapter.
5474 (3) If the court, in an appraisal proceeding, finds that
5475 the expenses incurred by any member were of substantial benefit
5476 to other members similarly situated, and that the expenses
5477 should not be assessed against the limited liability company,
5478 the court may direct that the expenses be paid out of the
5479 amounts awarded the members who were benefited.
5480 (4) To the extent the limited liability company fails to
5481 make a required payment pursuant to s. 608.967 or s. 608.969,

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5482 the member may sue directly for the amount owed and, to the
5483 extent successful, is entitled to recover from the limited
5484 liability company all costs and expenses of the suit, including
5485 attorney fees.
5486 608.971 Limitation on limited liability company payment.—
5487 (1) No payment may be made to a member seeking appraisal
5488 rights if, at the time of payment, the limited liability company
5489 is unable to meet the distribution standards of s. 608.7844. In
5490 such event, the member shall, at the member's option:
5491 (a) Withdraw the notice of intent to assert appraisal
5492 rights, which is deemed withdrawn with the consent of the
5493 limited liability company; or
5494 (b) Retain the status as a claimant against the limited
5495 liability company and, if the limited liability company is
5496 liquidated, be subordinated to the rights of creditors of the
5497 limited liability company but have rights superior to the
5498 members not asserting appraisal rights and, if it is not
5499 liquidated, retain the right to be paid for the membership
5500 interest, which right the limited liability company is obliged
5501 to satisfy when the restrictions of this section do not apply.
5502 (2) The member shall exercise the option under paragraph
5503 (1)(a) or paragraph (1)(b) by written notice filed with the
5504 limited liability company within 30 days after the limited
5505 liability company has given written notice that the payment for
5506 the membership interests cannot be made because of the
5507 restrictions of this section. If the member fails to exercise
5508 the option, the member is deemed to have withdrawn the notice of
5509 intent to assert appraisal rights.
5510 608.972 Other remedies limited.—

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

5511 (1) The legality of a proposed or completed appraisal event
5512 may not be contested, and the appraisal event may not be
5513 enjoined, set aside, or rescinded, in a legal or equitable
5514 proceeding by a member after the members have approved the
5515 appraisal event.
5516 (2) Subsection (1) does not apply to an appraisal event
5517 that:
5518 (a) Was not authorized and approved in accordance with the
5519 applicable provisions of this chapter, the organic rules of the
5520 limited liability company, or the resolutions of the members
5521 authorizing the appraisal event; or
5522 (b) Was procured as a result of fraud, a material
5523 misrepresentation, or an omission of a material fact necessary
5524 to make statements made, in light of the circumstances in which
5525 they were made, not misleading.
5526 (3) Is an interested transaction, unless it has been
5527 approved in the same manner as is provided in s. 608.7852.
5528 608.975 Uniformity of application and construction.—In
5529 applying and construing this chapter, consideration must be
5530 given to the need to promote uniformity of the law with respect
5531 to the uniform act upon which it is based.
5532 608.976 Relation to Electronic Signatures in Global and
5533 National Commerce Act.—This chapter modifies, limits, and
5534 supersedes the Electronic Signatures in Global and National
5535 Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify,
5536 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
5537 or authorize electronic delivery of the notices described in s.
5538 103(b) of that act, 15 U.S.C. s. 7003(b). Notwithstanding the
5539 foregoing, this section and this chapter do not modify, limit,

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5540 or supersede ss. 15.16, 116.34, or 668.50.
5541 608.977 Tax exemption on income of certain limited
5542 liability companies.—
5543 (1) A limited liability company classified as a partnership
5544 for federal income tax purposes, or a single-member limited
5545 liability that is disregarded as an entity separate from its
5546 owner for federal income tax purposes, and organized pursuant to
5547 this chapter or qualified to do business in this state as a
5548 foreign limited liability company is not an artificial entity
5549 within the purview of s. 220.02 and is not subject to the tax
5550 imposed under chapter 220. If a single-member limited liability
5551 company is disregarded as an entity separate from its owner for
5552 federal income tax purposes, its activities are, for purposes of
5553 taxation under chapter 220, treated in the same manner as a sole
5554 proprietorship, branch, or division of the owner.
5555 (2) For purposes of taxation under chapter 220, a limited
5556 liability company formed in this state or a foreign limited
5557 liability company authorized to transact business in this state
5558 shall be classified as a partnership, or a limited liability
5559 company that has only one member shall be disregarded as an
5560 entity separate from its owner for federal income tax purposes,
5561 unless classified otherwise for federal income tax purposes, in
5562 which case the limited liability company shall be classified
5563 identically to its classification for federal income tax
5564 purposes. For purposes of taxation under chapter 220, a member
5565 or a transferee of a member of a limited liability company
5566 formed in this state or a foreign limited liability company
5567 qualified to do business in this state shall be treated as a
5568 resident or nonresident partner unless classified otherwise for

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5569 federal income tax purposes, in which case the member or
5570 transferee of a member has the same status as the member or
5571 transferee of a member has for federal income tax purposes.
5572 (3) Single-member limited liability companies and other
5573 entities that are disregarded for federal income tax purposes
5574 must be treated as separate legal entities for all non-income
5575 tax purposes. The Department of Revenue shall adopt rules to
5576 take into account that single-member disregarded entities such
5577 as limited liability companies and qualified subchapter S
5578 corporations may be disregarded as separate entities for federal
5579 tax purposes and therefore may report and account for income,
5580 employment, and other taxes under the taxpayer identification
5581 number of the owner of the single-member entity.
5582 608.978 Interrogatories by department; other powers of
5583 department.—
5584 (1) The department may direct to a limited liability
5585 company or foreign limited liability company subject to this
5586 chapter, and to a member or manager of a limited liability
5587 company or foreign limited liability company subject to this
5588 chapter, any interrogatories reasonably necessary and proper to
5589 enable the department to ascertain whether the limited liability
5590 company or foreign limited liability company has complied with
5591 all of the provisions of this chapter applicable to the limited
5592 liability company or foreign limited liability company. The
5593 interrogatories must be answered within 30 days after the date
5594 of mailing, or within such additional time as fixed by the
5595 department. The answers to the interrogatories must be full and
5596 complete and must be made in writing and under oath. If the
5597 interrogatories are directed to an individual, they must be

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5598 answered by the individual, and if directed to a limited
5599 liability company or foreign limited liability company, they
5600 must be answered by a manager of a manager-managed company, a
5601 member of a member-managed company, or a fiduciary if the
5602 company is in the hands of a receiver, trustee, or other court-
5603 appointed fiduciary.
5604 (2) The department need not file a record in a court of
5605 competent jurisdiction to which the interrogatories relate until
5606 the interrogatories are answered as provided in this chapter,
5607 and not then if the answers thereto disclose that the record is
5608 not in conformity with the requirements of this chapter or if
5609 the department has determined that the parties to such document
5610 have not paid all fees, taxes, and penalties due and owing this
5611 state. The department shall certify to the Department of Legal
5612 Affairs, for such action as the Department of Legal Affairs may
5613 deem appropriate, all interrogatories and answers that disclose
5614 a violation of this chapter.
5615 (3) The department may, based upon its findings hereunder
5616 or as provided in s. 213.053(15), bring an action in circuit
5617 court to collect any penalties, fees, or taxes determined to be
5618 due and owing the state and to compel any filing, qualification,
5619 or registration required by law. In connection with such
5620 proceeding, the department may, without previous approval by the
5621 court, file a lis pendens against any property owned by the
5622 limited liability company and may further certify any findings
5623 to the Department of Legal Affairs for the initiation of an
5624 action permitted pursuant to this chapter which the Department
5625 of Legal Affairs may deem appropriate.
5626 (4) The department has the power and authority reasonably

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5627 necessary to administer this chapter efficiently, to perform the
5628 duties herein imposed upon it, and to adopt reasonable rules
5629 necessary to carry out its duties and functions under this
5630 chapter.
5631 608.979 Reservation of power to amend or repeal.—The
5632 Legislature has the power to amend or repeal all or part of this
5633 chapter at any time, and all domestic and foreign limited
5634 liability companies subject to this chapter shall be governed by
5635 the amendment or repeal.
5636 608.980 Savings clause.—
5637 (1) Except as provided in subsection (2), the repeal of a
5638 statute by this chapter does not affect:
5639 (a) The operation of the statute or an action taken under
5640 it before its repeal, including, without limiting the generality
5641 of the foregoing, the continuing validity of any provision of
5642 the articles of organization, regulations, or operating
5643 agreements of a limited liability company authorized by the
5644 statute at the time of its adoption.
5645 (b) A ratification, right, remedy, privilege, obligation,
5646 or liability acquired, accrued, or incurred under the statute
5647 before its repeal.
5648 (c) A violation of the statute or a penalty, forfeiture, or
5649 punishment incurred because of the violation, before its repeal.
5650 (d) A proceeding, merger, sale of assets, reorganization,
5651 or dissolution commenced under the statute before its repeal,
5652 and the proceeding, merger, sale of assets, reorganization, or
5653 dissolution may be completed in accordance with the statute as
5654 if it had not been repealed.
5655 (2) If a penalty or punishment imposed for violation of a

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5656 statute is reduced by this chapter, the penalty or punishment if
5657 not already imposed shall be imposed in accordance with this
5658 chapter.
5659 (3) This chapter does not affect an action commenced,
5660 proceeding brought, or right accrued before this chapter takes
5661 effect.
5662 608.981 Application to limited liability company formed
5663 under the Florida Limited Liability Company Act.—For purposes of
5664 applying this chapter to a limited liability company formed
5665 before January 1, 2014, under the Florida Limited Liability
5666 Company Act, ss. 608.401-608.706:
5667 (1) The company's articles of organization are deemed to be
5668 the company's articles of organization under this chapter.
5669 (2) For the purposes of applying s. 608.7802(12) and
5670 subject to s. 608.7812(4), language in the company's articles of
5671 organization designating the company's management structure
5672 operates as if that language were in the operating agreement.
5673 (3) Effective January 1, 2014, all documents, instruments,
5674 and other records submitted to the department must comply with
5675 the filing requirements stipulated by this chapter.
5676 608.982 References to chapter.—Any reference to "this
5677 chapter" contained within this part shall be construed as a
5678 reference to this part only. This section is repealed January 1,
5679 2015.
5680 Section 6. Effective January 1, 2015, section 608.981,
5681 Florida Statutes, as created by this act, is amended to read:
5682 608.981 Application to limited liability company formed
5683 under former ~~the~~ Florida Limited Liability Company Act.—For
5684 purposes of applying this chapter to a limited liability company

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

5685 formed before January 1, 2014, under the Florida Limited
5686 Liability Company Act, former ss. 608.401-608.706, Florida
5687 Statutes 2014:
5688 (1) The company's articles of organization are deemed to be
5689 the company's articles of organization under this chapter.
5690 (2) For the purposes of applying s. 608.7802(12) and
5691 subject to s. 608.7812(4), language in the company's articles of
5692 organization designating the company's management structure
5693 operates as if that language were in the operating agreement.
5694 (3) ~~Effective January 1, 2014,~~ All documents, instruments,
5695 and other records submitted to the department must comply with
5696 the filing requirements stipulated by this chapter.
5697 Section 7. Effective January 1, 2015, the Florida Limited
5698 Liability Company Act, part I of chapter 608, Florida Statutes,
5699 consisting of ss. 608.401-608.706, is repealed.
5700 Section 8. If a provision of this chapter or its
5701 application to any person or circumstance is held invalid, the
5702 invalidity does not affect other provisions or applications of
5703 this chapter which can be given effect without the invalid
5704 provision or application, and to this end the provisions of this
5705 chapter are severable.
5706 Section 9. This act shall take effect January 1, 2014.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1384

INTRODUCER: Judiciary Committee and Senator Galvano

SUBJECT: Nursing Home Litigation

DATE: April 3, 2013 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1384 amends statutory provisions relating to civil causes of action against nursing homes. The bill:

- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.
- Prohibits the use of a state or federal survey report of nursing facilities to establish an entitlement to punitive damages.

This bill substantially amends section 400.0237, Florida Statutes.

II. Present Situation:

"Nursing Homes and Related Health Care Facilities" is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes, and part III of ch. 400, F.S., provides for the regulation of home health agencies.

The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes. Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights or for negligence.[1] Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.[2]

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.[3] A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.[4]

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence, and if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.[5]

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

The Florida Supreme Court has set forth the elements of a negligence action:

> 1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.

[1] Sections 400.023 and 400.0237, F.S.
[2] *Id.*
[3] Section 400.0237(1), F.S.
[4] Section 400.0237(2), F.S.
[5] Section 400.0237(3), F.S.

> 2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty....
>
> 3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
> 4. Actual loss or damage....[6]

Current law provides in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses[7] have the duty to exercise care "consistent with the prevailing professional standard of care."[8]

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."[9] Punitive damages are generally limited to three times the amount of compensatory damages or $1 million, whichever is greater.[10] Damages can exceed $1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.[11] If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.[12]

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

> In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

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[6] *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).
[7] "The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses." s. 400.023(4), F.S.
[8] *See* s. 400.023(3) and (4), F.S.
[9] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).
[10] *See* s. 400.0238(1)(a), F.S.
[11] *See* s. 400.0238(1)(b), F.S.
[12] *See* s. 400.0238(1)(c), F.S.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

> [A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.[13, 14]

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. The trial judge considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

> A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct[15] or gross negligence.[16]

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0273(3), F.S., provides:

> In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2)[17] and:
> (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

[13] *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).
[14] The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.
[15] "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. *See* s. 400.0237(2)(a), F.S.
[16] "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. *See* s. 400.0237(2)(b), F.S.
[17] Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where both sides present evidence. The judge must find that a reasonable basis exists to believe that the claimant will be able to demonstrate, by clear and convincing evidence, that the recovery of punitive damages is warranted. These requirements limit a judge to considering only admissible evidence.

Current law does not require a showing of admissibility at this stage of the proceedings or authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.[18] Under the bill, the claimant may not proceed with discovery on the defendant's net worth until after the trial judge approves the pleading on punitive damages.

Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The bill removes that provision from statute. Discovery in civil cases is governed by the Florida Rules of Civil Procedure. Because the rules govern discovery, the effect of removing the provision, if any, is not clear.

Individual Liability for Punitive Damages

The bill provides that a defendant, including the licensee or management company against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The current standard jury instructions provide for punitive damages if the defendant was "personally guilty of intentional misconduct."[19] The bill requires that the defendant "actively and knowingly participated in intentional misconduct."

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[18] *See Estate of Despain*, *supra*, note 16.

[19] Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited Mar. 9, 2013).

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and
- Officers, directors, or managers of the actual employer corporation or legal entity condoned, ratified, or consented to the specific conduct alleged.

The bill provides that a state or federal survey report of nursing facilities may not be used to establish an entitlement to punitive damages.

Effective Date

The bill takes effect upon becoming a law.

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 April 1, 2013:
The committee substitute removes section 1 from the underlying bill, which would have amended s. 400.0023, F.S., to:

- Limit the class of persons who may be sued for a violation of a nursing home resident's rights to only the nursing home licensee, a management company employed by a nursing home licensee, or a direct caregiver employee.
- Make certain provisions of law the exclusive remedy against a nursing home licensee management company for a cause of action for the recovery damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Require the court to hold an evidentiary hearing to determine if sufficient evidence or a reasonable basis exists to find that a person or entity other than the nursing home licensee, the management company for the nursing home, or a direct caregiver owed a specific legal duty to the resident, breached that duty, and the breach of that duty is the legal cause of actual loss, injury, damage, or death to the resident.

B. Amendments:

None.

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

144494

LEGISLATIVE ACTION

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 40 - 151.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 2 - 14
8 and insert:
9 An act relating to nursing home litigation; amending
10 s. 400.0237, F.S.;

457328

LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 220 and 221
4 insert:
5 Section 3. Paragraph (q) of subsection (1) of section
6 400.141, Florida Statutes, is amended to read:
7 400.141 Administration and management of nursing home
8 facilities.—
9 (1) Every licensed facility shall comply with all
10 applicable standards and rules of the agency and shall:
11 (q) Maintain general and professional liability insurance
12 coverage that is in force at all times in an amount not less
13 than $1 million per claim, with a minimum annual aggregate of

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14 not less than $3 million. In lieu of such coverage, a state-
15 designated teaching nursing home and its affiliated assisted
16 living facilities created under s. 430.80 may demonstrate proof
17 of financial responsibility as provided in s. 430.80(3)(g).
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 Delete line 36
22 and insert:
23
24 damages; amending s. 400.141, F.S.; requiring each
25 licensed nursing home facility to maintain certain
26 specified general and professional liability
27 insurance; providing an effective date.

874972

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/03/2013	.	
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The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 220 and 221
4 insert:
5 Section 3. Paragraph (q) of subsection (1) of section
6 400.141, Florida Statutes, is amended to read:
7 400.141 Administration and management of nursing home
8 facilities.—
9 (1) Every licensed facility shall comply with all
10 applicable standards and rules of the agency and shall:
11 (q) Maintain general and professional liability insurance
12 coverage that is in force at all times. Any general and
13 professional liability insurance that provides for the payment

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14 of litigation costs or attorney fees for the defense of any
15 claim against a nursing home pursuant to common law, s. 400.023,
16 or s. 400.0233 as a deduction from the liability limits of the
17 policy or that in any way reduces the liability coverage limits
18 available under the policy for a settlement or judgment by any
19 amount attributable to legal costs or attorney fees incurred
20 during the course of the defense of the insured does not fulfill
21 the insurance requirement of this section. In lieu of such
22 coverage, a state-designated teaching nursing home and its
23 affiliated assisted living facilities created under s. 430.80
24 may demonstrate proof of financial responsibility as provided in
25 s. 430.80(3)(g).
26
27 ========== T I T L E A M E N D M E N T ==========
28 And the title is amended as follows:
29 Delete line 36
30 and insert:
31
32 damages; amending s. 400.141, F.S.; providing that
33 general and professional liability insurance policies
34 containing certain provisions are insufficient to
35 fulfill certain requirements specified by state law:
36 providing for applicability; providing an effective
37 date.

By Senator Galvano

26-01020A-13 20131384__

A bill to be entitled

An act relating to nursing home litigation; amending s. 400.023, F.S.; providing that a nursing home resident who alleges negligence or a violation of residents' rights has a cause of action against the nursing home licensee or its management company and the licensee's direct caregiver employees; declaring that ss. 400.023-400.0238, F.S., provide the exclusive remedy against a nursing home licensee or its management company for a cause of action for recovery of damages arising out of negligence or a violation of residents' rights; providing that a cause of action may not be asserted against certain specified persons; providing exceptions; amending s. 400.0237, F.S.; providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence proffered by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied; requiring the court to conduct a hearing to determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant will be able to demonstrate by clear and convincing evidence that the recovery of punitive damages is appropriate; requiring the trier of fact to find by clear and convincing evidence that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and

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contributed to the loss, damages, or injury suffered by the claimant before punitive damages may be awarded; requiring an officer, director, or manager of the employer, corporation, or legal entity to condone, ratify, or consent to certain specified conduct before holding the licensee vicariously liable for punitive damages; providing an effective date.

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

Section 1. Section 400.023, Florida Statutes, is amended to read:

400.023 Civil enforcement.—

(1) Any resident who alleges negligence or a violation of ~~whose~~ rights as specified in this part has ~~are violated shall have~~ a cause of action against the licensee or its management company, as specifically identified in the application for nursing home licensure, and the licensee's direct caregiver employees.

(a) Sections 400.023-400.0238 provide the exclusive remedy against a licensee or its management company for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of residents' rights specified in s. 400.022. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death.

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(b) If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall ~~be required to~~ elect ~~either~~ survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident.

(c) The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any violation of the rights of a resident or for negligence.

(d) Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy is entitled to recover the costs of the action, and a reasonable attorney ~~attorney's~~ fee assessed against the defendant not to exceed $25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022.~~

(e) This section does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to a resident or to the agency. The provisions of chapter 766 do not apply to any cause of action brought under ss. 400.023-400.0238.

(2) A cause of action may not be asserted against a person or entity other than those identified in subsection (1) unless, following an evidentiary hearing at which the person or entity other than those identified in subsection (1) has been given sufficient notice and an opportunity to defend, the court determines there is sufficient evidence in the record or proffered by the claimant to establish a reasonable basis for a finding that:

(a) The person or entity owed a specific legal duty to the resident, and the person or entity breached that duty; and

(b) The breach of that duty is the legal cause of actual loss, injury, damage, or death to the resident.

(3) ~~(2)~~ In a ~~any~~ claim brought pursuant to this part alleging a violation of resident's rights or negligence causing injury to or the death of a resident, the claimant has ~~shall have~~ the burden of proving, by a preponderance of the evidence, that:

(a) The defendant owed a duty to the resident;

(b) The defendant breached the duty to the resident;

(c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and

(d) The resident sustained loss, injury, death, or damage as a result of the breach.

~~Nothing in~~ This part does not ~~shall be interpreted to~~ create strict liability. A violation of the rights set forth in s. 400.022, ~~or~~ in any other standard or guidelines specified in this part, or in any applicable administrative standard or guidelines of this state or a federal regulatory agency is ~~shall~~

117 ~~be~~ evidence of negligence but is ~~shall~~ not ~~be~~ considered
118 negligence per se.
119 (4) ~~(3)~~ In a ~~any~~ claim brought pursuant to this section, a
120 licensee, person, or entity has ~~shall have~~ a duty to exercise
121 reasonable care. Reasonable care is that degree of care which a
122 reasonably careful licensee, person, or entity would use under
123 like circumstances.
124 (5) ~~(4)~~ In a ~~any~~ claim for resident's rights violation or
125 negligence by a nurse licensed under part I of chapter 464, such
126 nurse has ~~shall have~~ the duty to exercise care consistent with
127 the prevailing professional standard of care for a nurse. The
128 prevailing professional standard of care for a nurse is ~~shall be~~
129 that level of care, skill, and treatment which, in light of all
130 relevant surrounding circumstances, is recognized as acceptable
131 and appropriate by reasonably prudent similar nurses.
132 (6) ~~(5)~~ A licensee is ~~shall~~ not ~~be~~ liable for the medical
133 negligence of any physician rendering care or treatment to the
134 resident except for the administrative services of a medical
135 director as required in this part. ~~Nothing in~~ This subsection
136 does not ~~shall be construed to~~ protect a licensee, person, or
137 entity from liability for failure to provide a resident with
138 appropriate observation, assessment, nursing diagnosis,
139 planning, intervention, and evaluation of care by nursing staff.
140 (7) ~~(6)~~ The resident or the resident's legal representative
141 shall serve a copy of any complaint alleging in whole or in part
142 a violation of any rights specified in this part to the Agency
143 for Health Care Administration at the time of filing the initial
144 complaint with the clerk of the court for the county in which
145 the action is pursued. The requirement of providing a copy of

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146 the complaint to the agency does not impair the resident's legal
147 rights or ability to seek relief for his or her claim.
148 (8) ~~(7)~~ An action under this part for a violation of rights
149 or negligence recognized herein is not a claim for medical
150 malpractice, and the provisions of s. 768.21(8) do not apply to
151 a claim alleging death of the resident.
152 Section 2. Section 400.0237, Florida Statutes, is amended
153 to read:
154 400.0237 Punitive damages; pleading; burden of proof.—
155 (1)(a) In any action ~~for damages~~ brought under this part, a
156 ~~no~~ claim for punitive damages may not be brought ~~shall be~~
157 ~~permitted~~ unless there is a ~~reasonable~~ showing of admissible ~~by~~
158 evidence that has been submitted ~~in the record or proffered~~ by
159 the parties and provides ~~claimant which would provide~~ a
160 reasonable basis for recovery of such damages when the criteria
161 in this section are applied. The claimant may move to amend her
162 or his complaint to assert a claim for punitive damages as
163 allowed by the rules of civil procedure in accordance with
164 evidentiary requirements set forth in this section.
165 (b) The court shall conduct a hearing to determine whether
166 there is sufficient admissible evidence submitted by the parties
167 to ensure that there is a reasonable basis to believe that the
168 claimant, at trial, will be able to demonstrate by clear and
169 convincing evidence that the recovery of such damages is
170 warranted. A ~~The rules of civil procedure shall be liberally~~
171 ~~construed so as to allow the claimant discovery of evidence~~
172 ~~which appears reasonably calculated to lead to admissible~~
173 ~~evidence on the issue of punitive damages. No~~ discovery of
174 financial worth may not ~~shall~~ proceed until ~~after~~ the pleading

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175 on ~~concerning~~ punitive damages is approved by the court
176 ~~permitted~~.
177 (2) A defendant may be held liable for punitive damages
178 only if the trier of fact, by ~~based on~~ clear and convincing
179 evidence, finds that a specific person or corporate defendant
180 actively and knowingly participated in intentional misconduct or
181 engaged in conduct that constitutes gross negligence and
182 contributed to the loss, damages, or injury suffered by the
183 claimant ~~the defendant was personally guilty of intentional~~
184 ~~misconduct or gross negligence~~. As used in this section, the
185 term:
186 (a) "Intentional misconduct" means that the defendant
187 against whom punitive damages are sought had actual knowledge of
188 the wrongfulness of the conduct and the high probability that
189 injury or damage to the claimant would result and, despite that
190 knowledge, intentionally pursued that course of conduct,
191 resulting in injury or damage.
192 (b) "Gross negligence" means that the defendant's conduct
193 was so reckless or wanting in care that it constituted a
194 conscious disregard or indifference to the life, safety, or
195 rights of persons exposed to such conduct.
196 (3) In the case of vicarious liability of an employer,
197 principal, corporation, or other legal entity, punitive damages
198 may not be imposed for the conduct of an employee or agent
199 unless ~~only if~~ the conduct of a specifically identified ~~the~~
200 employee or agent meets the criteria specified in subsection (2)
201 and an officer, director, or manager of the actual employer,
202 corporation, or legal entity condoned, ratified, or consented to
203 the specific conduct as alleged in subsection (2). A state or

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

204 federal survey report of nursing facilities may not be used to
205 establish an entitlement to punitive damages under this section~~:~~
206 ~~(a) The employer, principal, corporation, or other legal~~
207 ~~entity actively and knowingly participated in such conduct;~~
208 ~~(b) The officers, directors, or managers of the employer,~~
209 ~~principal, corporation, or other legal entity condoned,~~
210 ~~ratified, or consented to such conduct; or~~
211 ~~(c) The employer, principal, corporation, or other legal~~
212 ~~entity engaged in conduct that constituted gross negligence and~~
213 ~~that contributed to the loss, damages, or injury suffered by the~~
214 ~~claimant~~.
215 (4) The plaintiff shall ~~must~~ establish at trial, by clear
216 and convincing evidence, its entitlement to an award of punitive
217 damages. The "greater weight of the evidence" burden of proof
218 applies to a determination of the amount of damages.
219 (5) This section is remedial in nature and takes ~~shall take~~
220 effect upon becoming a law.
221 Section 3. This act shall take effect upon becoming a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1398

INTRODUCER: Senator Hukill

SUBJECT: Appraisers

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Eichin	Cibula	JU	
3.				
4.				
5.				
6.				

I. Summary:

SB 1398 alters the education requirement for an appraiser's license issued by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation. The bill requires that appraiser license applicants complete academic education courses in a classroom or through online distance education. Current law does not permit an applicant to meet required classroom hours through online distance education.

The board may determine that an online distance education course has met the same requirements as a classroom course if the International Distance Education Certification Center approves the course for its course design and delivery method. The federal Appraiser Qualifications Board also must approve the course through its Course Approval Program.

This bill substantially amends section 475.617, Florida Statutes.

II. Present Situation:

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation (department), which administers and enforces the provisions of part II of chapter 475, F.S. The board is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and

- Establish standards for and regulate supervisory appraisers.[1]

The board's headquarters is located in Orlando, Florida.

Section 475.611(1)(a), F.S., defines the term "appraisal" or "appraisal services" to mean:

> the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:
> 1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
> 2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
> 3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

Appraiser License Classifications

Section 475.611(1)(k), F.S., defines a "certified general appraiser" to mean a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

Section 475.611(1)(l), F.S., defines a "certified residential appraiser" to mean:

> a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

Section 475.611(1)(u), F.S., defines the term "supervisory appraiser" to mean:

> a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers.

Section 475.611(1)(q), F.S., defines the term "licensed appraiser" to mean "a person who is licensed by the department as qualified to issue appraisal reports for residential real property of

[1] Section 475.613(2), Florida Statutes.

one to four residential units or on such real estate or real property as may be authorized by federal regulation.

Section 475.611(1)(q), F.S., also prohibits, as of July 1, 2003, the department from issuing licenses for the category of licensed appraiser.

According to the department, there are remaining licensed appraisers, but the number continues to decline.

Section 475.611(1)(r), F.S., defines the term "registered trainee appraiser" to mean:

> a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

Qualifications – Appraisers

Section 475.615, F.S., provides the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria of the Appraiser Qualifications Board (AQB).[2]

In December 2011, the AQB adopted the latest version of the Real Property Appraiser Qualification Criteria with an effective date of January 1, 2015.[3] An appraiser applicant must be competent to handle appraisals with safety to those with whom they may undertake a relationship of trust and confidence. If an applicant has been denied a prior registration or certification application, or has had a license, registration, or certification revoked or suspended in any jurisdiction, the applicant is deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

Section 475.617(1), F.S., requires an applicant for registration as a trainee appraiser to present evidence to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, including Uniform Standards of Professional Appraisal Practice (USPAP) or its equivalent. The academic courses must be taken at a college, university, or other educational institution authorized under s 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(2), F.S., requires an applicant for certification as a residential appraiser to present satisfactory evidence to the board that she or he has met the minimum education and

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[2] The Appraiser Qualifications Board establishes the minimum education, experience, and examination qualifications for appraisers. It is a board of The Appraisal Foundation (TAF) of the Federal Financial Institutions Examination Council, which is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.

[3] A copy of the AQB's *Real Property Appraiser Qualification Criteria* is available at: https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=RPCriteria (Last visited March 12, 2013).

experience requirements prescribed by rule of the board.[4] The applicant must have at least 2,500 hours of experience obtained over a 24-month period. The applicant must also complete 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, including USPAP or its equivalent from an educational institution authorized under s. 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(3), F.S., requires an applicant for certification as a general appraiser to present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board.[5] The applicant must have at least 3,000 hours of experience obtained over a 30-month period in real property appraisal and have successfully completed at least 300 classroom hours of academic courses from an educational institution authorized under s. 475.451, F.S.

Current law does not permit an applicant to meet the required classroom hours through online distance education.

III. Effect of Proposed Changes:

The bill amends section 475.617, F.S., to require that all academic education courses be completed in a classroom or through online distance education.

The board may determine that an online distance education course has met the same requirements as a classroom course if the International Distance Education Certification Center approves the course for its course design and delivery method. The Appraiser Qualifications Board (AQB) also must approve the course through its Course Approval Program.

The bill also amends section 475.617, F.S., to change the term “classroom hour” to “qualifying classroom hour.” The term “qualifying classroom hour” is consistent with terms used throughout part II, chapter 475, F.S, and, according to the Department of Business and Professional Regulation, the terms used within the AQB criteria.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[4] See rule 61JI-10.003, F.A.C.
[5] See rule 61JI-10.004, F.A.C.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The International Distance Education Certification Center (IDECC) charges the following fees for distance learning providers seeking to certify distance learning courses:

Primary Providers
$825 for the first course
$625 for every other course taught via the same delivery method
$470 Recertification (every 3 years)
$75 Association of Real Estate License Law Officials (ARELLO) Certification add-on

Secondary Providers
$275 for the first course
$225 for every other course taught via the same delivery method
$195 Recertification (every 3 years)
$75 ARELLO Certification add-on

In addition, instructors associated with a certified distance learning course must have a Certified Distance Education Instructor (CDEI™) designation.[6] This designation requires two courses offered by the IDECC, at a cost of $200 each, and must be renewed via a refresher course every 3 years. The renewal fee is $195.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[6] *See:* https://www.idecc.org/content.cfm?page=CDEI) (Last visited March 27, 2013).

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.

158474

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its

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14 equivalent, as established by rule of the board, from a
15 nationally recognized or state-recognized appraisal
16 organization, career center, accredited community college,
17 college, or university, state or federal agency or commission,
18 or proprietary real estate school that holds a permit pursuant
19 to s. 475.451. The board may increase the required number of
20 hours to not more than 125 hours. All qualifying education
21 courses may be completed through in-person classroom instruction
22 or Internet-based instruction. A classroom hour is defined as 50
23 minutes out of each 60-minute segment. Past courses may be
24 approved on an hour-for-hour basis.
25 (2) To be certified as a residential appraiser, an
26 applicant must present satisfactory evidence to the board that
27 she or he has met the minimum education and experience
28 requirements prescribed by rule of the board. The board shall
29 prescribe by rule education and experience requirements that
30 meet or exceed the following real property appraiser
31 qualification criteria adopted on December 9, 2011 ~~February 20,~~
32 ~~2004~~, by the Appraisal Qualifications Board of the Appraisal
33 Foundation:
34 (a) Has at least 2,500 hours of experience obtained over a
35 24-month period in real property appraisal as defined by rule.
36 (b) Has successfully completed at least 200 classroom
37 hours, inclusive of examination, of approved qualifying
38 education ~~academic~~ courses in subjects related to real estate
39 appraisal, which must include a 15-hour National Uniform
40 Standards of Professional Appraisal Practice course, or its
41 equivalent, as established by rule of the board, from a
42 nationally recognized or state-recognized appraisal

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43 organization, career center, accredited community college,
44 college, or university, state or federal agency or commission,
45 or proprietary real estate school that holds a permit pursuant
46 to s. 475.451. All qualifying education courses may be completed
47 through in-person classroom instruction or Internet-based
48 instruction. A classroom hour is defined as 50 minutes out of
49 each 60-minute segment. Past courses may be approved by the
50 board and substituted on an hour-for-hour basis.
51 (3) To be certified as a general appraiser, an applicant
52 must present evidence satisfactory to the board that she or he
53 has met the minimum education and experience requirements
54 prescribed by rule of the board. The board shall prescribe
55 education and experience requirements that meet or exceed the
56 following real property appraiser qualification criteria adopted
57 on December 9, 2011 ~~February 20, 2004~~, by the Appraisal
58 Qualifications Board of the Appraisal Foundation:
59 (a) Has at least 3,000 hours of experience obtained over a
60 30-month period in real property appraisal as defined by rule.
61 (b) Has successfully completed at least 300 classroom
62 hours, inclusive of examination, of approved qualifying
63 education ~~academic~~ courses in subjects related to real estate
64 appraisal, which must include a 15-hour National Uniform
65 Standards of Professional Appraisal Practice course, or its
66 equivalent, as established by rule of the board, from a
67 nationally recognized or state-recognized appraisal
68 organization, career center, accredited community college,
69 college, or university, state or federal agency or commission,
70 or proprietary real estate school that holds a permit pursuant
71 to s. 475.451. All qualifying education courses may be completed

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72 through in-person classroom instruction or Internet-based
73 instruction. A classroom hour is defined as 50 minutes out of
74 each 60-minute segment. Past courses may be approved by the
75 board and substituted on an hour-for-hour basis.
76 (4) A distance learning course may be approved by the board
77 as an option to classroom hours for satisfactory completion of
78 the academic courses required under this section. The schools
79 authorized by this section have the option of providing
80 classroom courses, distance learning courses, or both.
81 (a) A distance learning course must use a delivery method
82 that is certified or approved by a board-authorized independent
83 certifying organization.
84 (b) A distance learning course intended for use as academic
85 education must include a written, closed-book final examination
86 proctored by an appropriate individual who represents the public
87 interest and is free from any conflicts of interest. As used in
88 this paragraph, the term "written" refers to an exam that might
89 be written on paper or administered electronically on a computer
90 workstation or other device. Oral exams are not acceptable.
91 (5) ~~(4)~~ Each applicant must furnish, under oath, a detailed
92 statement of the experience for each year of experience she or
93 he claims. Upon request, the applicant shall furnish to the
94 board, for its examination, copies of appraisal reports or file
95 memoranda to support the claim for experience. Any appraisal
96 report or file memoranda used to support a claim for experience
97 must be maintained by the applicant for no less than 5 years
98 after the date of certification.
99 (6) ~~(5)~~ The board may implement the provisions of this
100 section by rule.

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101 Section 2. This act shall take effect July 1, 2013.
102
103 ========== T I T L E A M E N D M E N T ==========
104 And the title is amended as follows:
105 Delete everything before the enacting clause
106 and insert:
107 A bill to be entitled
108 An act relating to real estate appraisers; amending s.
109 475.617, F.S.; revising terminology applicable to
110 education requirements for registered trainee
111 appraisers, certified residential appraisers, and
112 certified general appraisers; authorizing qualifying
113 education courses completed by applicants for
114 registration as a trainee or certification as a
115 residential appraiser or general appraiser to be
116 completed through Internet-based instruction; revising
117 the education and experience requirements for
118 certified residential appraisers and certified general
119 appraisers according to certain real property
120 appraiser qualification criteria adopted by the
121 Appraiser Qualifications Board of the Appraisal
122 Foundation on a specified date; authorizing the use of
123 a distance learning course; providing requirements for
124 a distance learning course and a final examination;
125 providing an effective date.

649216

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its

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equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. All qualifying education courses may be completed through in-person classroom instruction or distance learning. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on December 9, 2011 ~~February 20, 2004~~, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved qualifying education ~~academic~~ courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal

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43 organization, career center, accredited community college,
44 college, or university, state or federal agency or commission,
45 or proprietary real estate school that holds a permit pursuant
46 to s. 475.451. All qualifying education courses may be completed
47 through in-person classroom instruction or distance learning. A
48 classroom hour is defined as 50 minutes out of each 60-minute
49 segment. Past courses may be approved by the board and
50 substituted on an hour-for-hour basis.
51 (3) To be certified as a general appraiser, an applicant
52 must present evidence satisfactory to the board that she or he
53 has met the minimum education and experience requirements
54 prescribed by rule of the board. The board shall prescribe
55 education and experience requirements that meet or exceed the
56 following real property appraiser qualification criteria adopted
57 on December 9, 2011 ~~February 20, 2004~~, by the Appraisal
58 Qualifications Board of the Appraisal Foundation:
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60 30-month period in real property appraisal as defined by rule.
61 (b) Has successfully completed at least 300 classroom
62 hours, inclusive of examination, of approved qualifying
63 education ~~academic~~ courses in subjects related to real estate
64 appraisal, which must include a 15-hour National Uniform
65 Standards of Professional Appraisal Practice course, or its
66 equivalent, as established by rule of the board, from a
67 nationally recognized or state-recognized appraisal
68 organization, career center, accredited community college,
69 college, or university, state or federal agency or commission,
70 or proprietary real estate school that holds a permit pursuant
71 to s. 475.451. All qualifying education courses may be completed

649216

72 through in-person classroom instruction or distance learning. A
73 classroom hour is defined as 50 minutes out of each 60-minute
74 segment. Past courses may be approved by the board and
75 substituted on an hour-for-hour basis.
76 (4) A distance learning course may be approved by the board
77 as an option to classroom hours for satisfactory completion of
78 the academic courses required under this section. The schools
79 authorized by this section have the option of providing
80 classroom courses, distance learning courses, or both.
81 (a) A distance learning course must use a delivery method
82 that is certified or approved by a board-authorized independent
83 certifying organization.
84 (b) A distance learning course intended for use as academic
85 education must include a written, closed-book final examination
86 proctored by an appropriate individual who represents the public
87 interest and is free from any conflicts of interest. As used in
88 this paragraph, the term "written" refers to an exam that might
89 be written on paper or administered electronically on a computer
90 workstation or other device. Oral exams are not acceptable.
91 (5) ~~(4)~~ Each applicant must furnish, under oath, a detailed
92 statement of the experience for each year of experience she or
93 he claims. Upon request, the applicant shall furnish to the
94 board, for its examination, copies of appraisal reports or file
95 memoranda to support the claim for experience. Any appraisal
96 report or file memoranda used to support a claim for experience
97 must be maintained by the applicant for no less than 5 years
98 after the date of certification.
99 (6) ~~(5)~~ The board may implement the provisions of this
100 section by rule.

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101 Section 2. This act shall take effect July 1, 2013.
102
103 ========== T I T L E A M E N D M E N T ==========
104 And the title is amended as follows:
105 Delete everything before the enacting clause
106 and insert:
107 A bill to be entitled
108 An act relating to real estate appraisers; amending s.
109 475.617, F.S.; revising terminology applicable to
110 education requirements for registered trainee
111 appraisers, certified residential appraisers, and
112 certified general appraisers; authorizing qualifying
113 education courses completed by applicants for
114 registration as a trainee or certification as a
115 residential appraiser or general appraiser to be
116 completed through distance learning; revising the
117 education and experience requirements for certified
118 residential appraisers and certified general
119 appraisers according to certain real property
120 appraiser qualification criteria adopted by the
121 Appraiser Qualifications Board of the Appraisal
122 Foundation on a specified date; authorizing the use of
123 a distance learning course; providing requirements for
124 a distance learning course and a final examination;
125 providing an effective date.

By Senator Hukill

A bill to be entitled

An act relating to appraisers; amending s. 475.617, F.S.; defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals; providing an effective date.

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

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A <u>qualifying</u> classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that

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she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A <u>qualifying</u> classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

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59 (a) Has at least 3,000 hours of experience obtained over a
60 30-month period in real property appraisal as defined by rule.
61 (b) Has successfully completed at least 300 classroom
62 hours, inclusive of examination, of approved academic courses in
63 subjects related to real estate appraisal, which must include a
64 15-hour National Uniform Standards of Professional Appraisal
65 Practice course, or its equivalent, as established by rule of
66 the board, from a nationally recognized or state-recognized
67 appraisal organization, career center, accredited community
68 college, college, or university, state or federal agency or
69 commission, or proprietary real estate school that holds a
70 permit pursuant to s. 475.451. A qualifying classroom hour is
71 defined as 50 minutes out of each 60-minute segment. Past
72 courses may be approved by the board and substituted on an hour-
73 for-hour basis.
74 (4) All academic education courses must be completed in a
75 classroom or through online distance education. The board may
76 find that an online distance education course meets the
77 classroom hour requirement if the course has received approval
78 from the International Distance Education Certification Center
79 for the course design and delivery method and the approval of
80 the Appraiser Qualifications Board through its Course Approval
81 Program.
82 (5) ~~(4)~~ Each applicant must furnish, under oath, a detailed
83 statement of the experience for each year of experience she or
84 he claims. Upon request, the applicant shall furnish to the
85 board, for its examination, copies of appraisal reports or file
86 memoranda to support the claim for experience. Any appraisal
87 report or file memoranda used to support a claim for experience

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88 must be maintained by the applicant for no less than 5 years
89 after the date of certification.
90 (6) ~~(5)~~ The board may implement the provisions of this
91 section by rule.
92 Section 2. This act shall take effect July 1, 2013.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 1740

INTRODUCER: Senator Negron

SUBJECT: Postconviction Death Penalty Proceedings

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.			AP	
3.			RC	
4.				
5.				
6.				

I. Summary:

SJR 1740 proposes an amendment to the Florida Constitution to create an exception to the Supreme Court's jurisdiction over practice and procedure in the courts. Under the exception, the Legislature, through general law, will have exclusive authority to govern the postconviction or collateral review of capital cases that result in a sentence of death.

This resolution amends section 2, Article III of the Florida Constitution.

This resolution creates section 34, Article XII of the Florida Constitution.

II. Present Situation:

Florida State Constitution

The Florida Constitution grants the Supreme Court jurisdiction over all aspects of practice and procedure in state courts. This authority includes jurisdiction over the administration of capital cases.

Section 2, Article V of the Florida Constitution provides, in part:

> Administration; practice and procedure.—
> (a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no

> cause shall be dismissed because an improper remedy has been sought. ... Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

Rules of Procedure

The Florida Supreme Court adopts rules of procedure in the areas of appellate, civil, criminal, family, judicial administration, juvenile, probate, small claims, and traffic court practice.[1] The Criminal Procedure Rules Committee of the Florida Bar is responsible for proposing new rules and amendments to the existing Rules of Criminal Procedure to the Florida Supreme Court.[2] Various rules pertain specifically to postconviction and collateral review of capital cases. These are:

- Rule 3.851, Fla. R. Crim. P.: Collateral Relief after Death Sentence has been Imposed and Affirmed on Direct Appeal
- Rule 3.852, Fla. R. Crim. P.: Capital Postconviction Public Records Production

Rule 3.851, Fla. R. Crim. P., addresses the appointment of postconviction counsel, preliminary procedures, time limits, motions, evidentiary hearings, case management conferences, competency of the defendant, post-death warrant procedure, and dismissal of postconviction proceedings. Rule 3.852, Fla. R. Crim. P., addresses the production of records, including the production of exempt and confidential public records.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution to create an exception to the Supreme Court's jurisdiction over practice and procedure in the courts. Under the exception, the Legislature, through general law, will have exclusive authority to govern the postconviction or collateral review of capital cases that result in a sentence of death.

This amendment requires implementing legislation, which is provided by SB 1750.

If approved by the electors, the constitutional amendment will take effect July 1, 2015, and apply to capital cases in which the conviction and death sentence have been affirmed on direct appeal on or after July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[1]The Florida Rules of Court Procedure are available: http://www.floridabar.org/tfb/TFBLegalRes.nsf/basic+view/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument#FLORIDA%20RULES%20OF%20PROCEDURE%3A .

[2]*See, e.g., In re Amendments to Florida Rules of Criminal Procedure*, 104 So. 3d 304 (Fla.2012).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Article XI of the Florida Constitution provides various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[3] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law, enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[4]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Ballot-related Costs

A proposed constitutional amendment must be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[5] The Department of State (DOS) is responsible for having proposed amendments published in newspapers. The cost of publishing amendments depends on their length. The DOS estimates the costs of publishing amendments to be $67.68 per word.[6] At 628 words, the estimated cost to publish the amendment is $42,503.[7] These funds must be spent regardless of whether the amendment passes. Should the amendment

[3] Fla. Const., art. XI, s. 1.
[4] Fla. Const., art. XI, s. 5(a).
[5] Fla. Const., art. XI, s. 5(d).
[6] Fiscal Note on SJR 1740, Florida Department of State, March 22, 2013.
[7] *Id.*

be legally challenged, the DOS is typically the defendant in these suits.[8] Estimates for legal defense range anywhere from $10,000 to $150,000.[9]

Impact on the Courts

According to the Office of State Courts Administrator, this constitutional amendment will reduce the workload of the Florida Supreme Court and its committees regarding review, proposal, and adoption of procedural rules governing post-conviction and collateral review in death penalty cases. The fiscal impact, however, is unknown.

VI. Technical Deficiencies:

The ballot summary's description of the approval or veto of a general law by the Governor is not complete. The description does not explain that a bill can become a law if the Governor does not sign or veto the bill. Rather than describe how a bill becomes a law, the Legislature may wish to state: A general law is a law of statewide application that is enacted by the Legislature.

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.

[8] *Id.*
[9] *Id.*

By Senator Negron

32-01273A-13 20131740__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article V and the creation of a new section to Article XII of the State Constitution to prohibit a court from requiring or authorizing collateral or postconviction judicial review of a capital case except as provided for by general law and providing an effective date.

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

That the following amendment to Section 2 of Article V and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 2. Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the

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32-01273A-13 20131740__

federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) Notwithstanding subsection (a), postconviction or collateral review of capital cases resulting in a sentence of death shall be governed exclusively by, and to the extent provided by, general law.

(c) ~~(b)~~ The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(d) ~~(c)~~ A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(e) ~~(d)~~ A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

ARTICLE XII

SCHEDULE

SECTION 34. Postconviction or collateral review of capital cases resulting in a sentence of death.—The amendment to Section

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59 2 of Article V requiring postconviction or collateral review of
60 capital cases resulting in a sentence of death to be governed
61 exclusively by, and to the extent provided by, general law shall
62 take effect July 1, 2015, and shall only apply to capital cases
63 in which the conviction and sentence of death have been affirmed
64 on direct appeal on or after July 1, 2015.
65
66 BE IT FURTHER RESOLVED that the following statement be
67 placed on the ballot:
68 CONSTITUTIONAL AMENDMENT
69 ARTICLE V, SECTION 2
70 POSTCONVICTION DEATH PENALTY PROCEEDINGS.—Proposing an
71 amendment to the State Constitution requiring postconviction or
72 collateral review of capital cases resulting in a death sentence
73 to be governed exclusively by, and to the extent provided by,
74 general law.
75
76 Under the current constitution, only the Supreme Court can
77 adopt rules relating to the practice and procedure in courts.
78 This includes rules relating to the postconviction or collateral
79 review of capital cases resulting in a death sentence. As such,
80 the timeframes for filing motions in such cases are governed by
81 Supreme Court rule.
82
83 By this amendment, postconviction or collateral review of
84 capital cases resulting in a death sentence will be governed
85 exclusively by, and to the extent provided by, general law.
86
87 A general law in Florida is enacted if passed by a majority

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88 of members voting in each of the two legislative chambers and
89 then either signed by the Governor or, if vetoed by the
90 Governor, passed by a two-thirds vote of the members voting in
91 each of the two legislative chambers.
92
93 The proposed amendment takes effect July 1, 2015, and
94 applies to capital cases in which the conviction and sentence of
95 death have been affirmed on direct appeal on or after July 1,
96 2015.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1750

INTRODUCER: Senator Negron

SUBJECT: Postconviction Capital Case Proceedings

DATE: March 29, 2013 REVISED: 4/1/13

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

I. Summary:

SB 1750 is the implementing legislation for SJR 1740. That joint resolution authorizes the Legislature, by general law, to govern the postconviction or collateral review of capital cases resulting in a death sentence.

Accordingly, this bill provides procedures to replace court rules governing postconviction or collateral review of capital cases. The purpose of the new procedures is to streamline and further expediency for the postconviction or collateral review of capital cases. The bill also:

- Deletes the requirement for the court to appoint counsel to represent defendants in clemency proceedings occurring after July 1, 2013.
- Recreates the Capital Collateral Regional Counsel for the Northern Region of Florida, and eliminates the registry attorney pilot program.

If SJR 1740 passes both houses of the Legislature and is approved by the voters at the 2014 General Election, the provisions in this bill relating to policies and procedures in capital cases will take effect July 1, 2015. All other provisions take effect July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 27.40, 27.51, 27.511, 27.5303, 27.5304, 27.702, 27.703, 27.708, 27.7081, 27.7091, 27.711, 922.095, 924.055, 924.056, 924.057, 924.058, and 924.059.

This bill creates the following sections of the Florida Statutes: 924.0581, 924.0585, 924.0591, 924.0592, 924.0593, and 924.0594.

This bill repeals section 27.701(2), Florida Statutes.

This bill reenacts section 922.108, Florida Statutes.

II. Present Situation:

Florida State Constitution

The State Constitution grants the Supreme Court jurisdiction over all aspects of practice and procedure in state courts. The constitutional authority includes jurisdiction over the administration of capital cases.

Section 2, Article V of the State Constitution provides, in part:

Administration; practice and procedure.—
(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. ... . Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

Current Death Row Statistics

Florida is one of 33 states that impose the death penalty.[1] As of March 25, 2013, 405 people were on death row in Florida, more than any other state except California.[2] On average, Florida death row inmates spend 13.22 years on death row before execution.[3] Of the 404 inmates on death row, 155 have been in custody for more than 20 years, and ten have been on death row for more than 35 years.[4] Between 1976-2012, Florida executed 74 inmates.[5] During the same period, Texas executed 492 inmates, Virginia executed 109 inmates, and Oklahoma executed 102 inmates.[6] Florida executed 2 death row inmates in 2011 and 3 in 2012.[7]

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[1] The other states are Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf .
[2] California has 724 inmates on death row. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center. *Available at:* www.deathpenaltyinfo.org/FactSheet.pdf. *See also:* http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 25, 2013).
[3] Florida Department of Corrections, *Death Row Fact Sheet*. Available *at*: http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on March 25, 2013).
[4] Florida Department of Corrections, *Death Row Fact Sheet. Available at:* http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 25, 2013).
[5] Florida Department of Corrections, *Death Row Fact Sheet. Available at* : http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on March 25, 2013).
[6] Death Penalty Information Center, *Facts About the Death Penalty* (December 28, 2012), *Available at:* www.deathpenaltyinfo.org/FactSheet.pdf (last visited on March 25, 2013).

Capital Cases – Direct Appeal

A defendant who is convicted of a crime and sentenced to death automatically receives a direct appeal of his or her conviction and sentence to the Florida Supreme Court.[8] During the direct appeal, the defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial and other matters objected to during the course of trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court.

The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.[9] If the Florida Supreme Court affirms the appellant's conviction and sentence, the appellant has 90 days after the decision is entered to file a petition for a writ of certiorari with the United States Supreme Court seeking discretionary review of the Florida Supreme Court's decision.[10] If the United States Supreme Court denies the case, the direct appeal has concluded, and the defendant may begin state postconviction proceedings.

Rules of Procedure Governing State Postconviction Proceedings

The court rules committees of The Florida Bar, separated by subject area, submit proposals to the Florida Supreme Court on new rules of procedure and amendments to existing rules.[11] The Florida Supreme Court then adopts or rejects the proposals submitted by each Court Rules Committee. Rules of procedure apply to the areas of appellate, civil, criminal, family, judicial administration, juvenile, probate, small claims, and traffic court practice.[12]

Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure govern all state postconviction proceedings initiated by death row inmates challenging a conviction or death sentence. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, state postconviction proceedings are designed to address claims that are "collateral" to what transpired in the trial court (e.g., claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence). Because the consideration of these claims often require new fact finding, postconviction motions are filed in the trial court that sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are filed with the Florida Supreme Court. A detailed review of state postconviction proceedings follows.

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[7] Florida Department of Corrections, *Death Row Fact Sheet. Available at:* http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited March 25, 2013).
[8] Section 921.141(4), F.S.; Art. 5, Sec. 3, FLA. CONST.; and Fla. R. App. Proc. 9.030(a)(1)(A)(i).
[9] Section 921.141(4), F.S.
[10] 28 U.S.C. s. 1257; and Sup. Ct. R. 13.
[11] *See, i.e.*, the Florida Bar website page on the Appellate Court Rules Committee, at: http://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/2021e58ed0c7505585256e45004b060d/15e0fcc0829efd6585256c5b00554844!OpenDocument (last visited March 22, 2013).
[12] Online at: http://www.floridabar.org/tfb/TFBLegalRes.nsf/basic+view/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument#FLORIDA%20RULES%20OF%20PROCEDURE%3A (last visited March 22, 2013).

Appointment of Counsel, Judge, and other Preliminary Matters

When the Florida Supreme Court affirms a judgment and sentence of death on direct appeal, the court must simultaneously appoint the appropriate office of the Capital Collateral Regional Counsel (CCRC)[13] to represent the inmate during postconviction proceedings.[14] If the regional counsel has a conflict of interest and the postconviction judge accepts his or her motion to withdraw, or the inmate was convicted and sentenced to death in the Northern Region of Florida (which no longer has a CCRC office), the chief judge of the circuit court must appoint an attorney from the statewide registry[15] to represent the inmate in postconviction proceedings.[16]

Within 45 days after appointment, the inmate's trial counsel must provide postconviction counsel with all information pertaining to the inmate's capital case and postconviction counsel must maintain the confidentiality of all confidential information received.

Within 30 days after the judgment of conviction and sentence of death being affirmed on direct appeal, the chief judge must assign the case to a judge qualified to conduct capital proceedings. Within 90 days after the assignment, the judge must hold a status hearing and thereafter hold status conferences at least every 90 days until:

- An evidentiary hearing, if ordered, is completed; or
- Any pending motion has been ruled on without a hearing.[17]

At the status hearing and conferences, the judge will entertain pending motions, disputes involving public records, or any other matters ordered by the court.[18]

Public Records

Rule 3.852 of the Florida Rules of Criminal Procedure establishes the timeframes and procedures that apply to the production of capital postconviction public records. The rule requires the Attorney General (AG), within 15 days after receiving notification of the Florida Supreme Court's mandate affirming the sentence of death, to file a written notice of the mandate with the trial court and serve a copy of it on:

- The state attorney who prosecuted the case;
- The Department of Corrections (DOC); and
- The defendant's trial counsel.[19], [20]

[13] The CCRC represents persons convicted and sentenced to death for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. Each regional office is administered by a regional counsel. Section 27.701(1), F.S.
[14] Fla. R. Crim. Proc. 3.851(b)(1).
[15] Section 27.701(2), F.S., requires the responsibilities of the northern region CCRC office to be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710, F.S.
[16] Fla. R. Crim. Proc. 3.851(b)(1); ss. 27.701(2), 27.703(1), and 27.710(5), F.S.
[17] Fla. R. Crim. Proc. 3.851(c)(2).
[18] *Id.*
[19] Fla. R. Crim. Proc. 3.852(d)(1).

The notice to the state attorney and to DOC must direct them to submit public records to the records repository within 90 days after receipt of the notice.[21] The notice to the state attorney must also direct the state attorney to notify each law enforcement agency involved in the investigation of the capital case to submit public records to the records repository[22] within 90 days after receiving the notice.[23]

Within 90 days after receiving the AG's notice of the mandate, the state attorney and the defendant's trial counsel must provide the AG with the name and address of any person or agency that has public records or information pertinent to the case which has not previously been provided to defendant's postconviction counsel.[24] Within 15 days after receiving this information, the AG must notify the additional persons or agencies that they are required to copy, index, and deliver to the records repository all public records pertaining to the case that are in their possession.[25] The additional entities have 90 days from the receipt of the AG's notice to produce the records.[26, 27]

Records delivered to the repository that are confidential or exempt pursuant to s. 119.07(1), F.S., or Article I, Section 24(a) of the Florida Constitution must be separately contained, without being redacted, and sealed.[28] The outside of the container must clearly identify:

- That the public record is confidential or exempt;
- That the seal may not be broken without an order from the trial court; and
- The nature of the public records and the legal basis for the exemption.[29]

Upon court order, sealed containers must be shipped to the clerk of the court and may only be opened by the trial court in camera.[30]

Within 240 days after postconviction counsel is appointed, retained, or appears pro bono, counsel must send a written demand for additional public records to each entity described above.[31]

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[20] The original of all notices, requests, or objections filed under Rule 3.852 must be filed with the clerk of the trial court. Copies must be served on the trial court, the AG, the state attorney, postconviction counsel, and any affected person or agency, unless otherwise required by this section. Service must be made pursuant to Florida Rule of Criminal Procedure 3.030. In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt. Fla. R. Crim. Proc. 3.852(c)(3).
[21] Fla. R. Crim. Proc. 3.852(d)(2) and (3), and (e)(2) and (3).
[22] Section 27.7081, F.S., requires the Secretary of State to establish and maintain a records repository for the purpose of archiving capital postconviction public records.
[23] Fla. R. Crim. Proc. 3.852(e)(1) and (4).
[24] Fla. R. Crim. Proc. 3.852(d)(2) and (3).
[25] Fla. R. Crim. Proc. 3.852(d)(4).
[26] Fla. R. Crim. Proc. 3.852(e)(5).
[27] Persons and agencies required to produce records pursuant to Rule 3.852 must bear the costs of doing so, must provide written notification of compliance to the AG, and certify that to the best of their knowledge, all public records in their possession have been copied, indexed, and delivered to the records repository. Fla. R. Crim. Proc. 3.852(e).
[28] Fla. R. Crim. Proc. 3.852(f)(1).
[29] *Id*.
[30] The moving party bears the costs associated with the transportation and inspection of the records by the trial court. Fla. R. Crim. Proc. 3.852(f)(2).

Within 90 days after an entity receives such demand, the entity must deliver to the records repository any additional public records in the entity's possession that pertain to the case, and certify that all such records have been provided (or that records previously provided were complete).[32] The entity may object to the demand for additional public records within 60 days after receiving the demand.[33] In such instances, the trial court must hold a hearing and rule within 30 days after the filing of the objection.[34] The court must order an entity to produce additional public records if the court determines each of the following exists:

- Postconviction counsel has made a timely and diligent search;
- Postconviction counsel's written demand identifies, with specificity, those additional public records that are not at the records repository;
- The additional public records sought are relevant to the subject matter of a postconviction proceeding under Rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and
- The additional public records request is not overly broad or unduly burdensome.[35]

Postconviction counsel who seeks to obtain public records in addition to those described above must file an affidavit in the trial court which:

- Attests that postconviction counsel has made a timely and diligent search of the records repository;
- Identifies with specificity those public records not at the records repository;
- Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
- Must be served on the AG, state attorney, and any affected person or agency.[36]

Within 30 days after the filing of the affidavit, the trial court must order a person or agency to produce additional public records, but only if the court finds:

- Postconviction counsel has made a timely and diligent search of the records repository;
- Postconviction counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
- The additional public records sought are either relevant to the subject matter of a capital postconviction proceeding or appear reasonably calculated to lead to the discovery of admissible evidence; and
- The additional records request is not overly broad or unduly burdensome.[37]

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[31] If counsel was appointed before October 1, 2001, counsel must submit the demand within 90 days after appointment. Fla. R. Crim. Proc. 3.852(g)(1).
[32] Fla. R. Crim. Proc. 3.852(g)(2).
[33] Fla. R. Crim. Proc. 3.852(g)(3).
[34] *Id*.
[35] *Id*.
[36] Fla. R. Crim. Proc. 3.852(i)(1).
[37] Fla. R. Crim. Proc. 3.852(i)(2).

In any capital postconviction public records proceeding, the trial court may:

- Compel or deny disclosure of records;
- Conduct an in-camera inspection;
- Extend established timeframes upon a showing of good cause;
- Impose sanctions upon any party, person, or agency affected by this section including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and
- Resolve any dispute unless jurisdiction is in an appellate court.[38]

Any objections or motions to compel production of public records must be filed within 30 days after the end of the production time period provided.[39] Counsel for the party objecting or moving to compel must file a copy of the objection or motion directly with the trial court, which must hold a hearing on the objection or motion on an expedited basis.[40] The trial court may order mediation for any controversy as to public records production in accordance with Florida Rules of Civil Procedure 1.700, 1.710, 1.720, 1.730, or the trial court may refer any such controversy to a magistrate in accordance with Florida Rule of Civil Procedure 1.490.[41]

Time Limits for Filing an Initial Postconviction Motion

Any person sentenced to death whose judgment of conviction and sentence have been affirmed on direct appeal may file an initial Rule 3.851 motion, under oath, seeking postconviction relief.[42] This motion must be filed within 1 year after the inmate's judgment and sentence become final. A judgment and sentence become final:

- On the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court's decision affirming the inmate's judgment and sentence of death (90 days after the opinion becomes final); or
- On the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.[43]

The Florida Supreme Court may grant an extension of time for the filing of a postconviction motion if the inmate's counsel can demonstrate good cause as to why counsel could not file the motion within the 1-year time limit.[44]

A motion filed after the 1-year time limit will not be entertained unless the movant alleges that:

- The facts on which the claim is predicated were not known to the movant or his/her attorney and could not have been ascertained within the 1-year time limit by the exercise of due diligence;[45]

[38] Fla. R. Crim. Proc. 3.852(k).
[39] Fla. R. Crim. Proc. 3.852(l)(2).
[40] *Id*.
[41] Fla. R. Crim. Proc. 3.852(l)(3).
[42] Fla. R. Crim. Proc. 3.851(a).
[43] Fla. R. Crim. P. 3.851(d)(1)(A) and (B).
[44] Fla. R. Crim. Proc. 3.851(d)(5).

- The fundamental constitutional right asserted was not established within the 1-year time limit and has been held to apply retroactively; or
- His/her postconviction counsel, through neglect, failed to file the motion.[46]

In addition to the aforementioned exceptions, Florida law allows a litigant to overcome a valid procedural bar by claiming that the alleged error constitutes "fundamental error." In order for an error to be fundamental and justify consideration—despite being otherwise barred—"the error must reach down into the validity of the trial itself to the extent that a verdict of guilty [or sentence of death] could not have been obtained without the assistance of the alleged error."[47] For instance, improper comments made in the closing arguments of the penalty phase only constitute fundamental error if they are so prejudicial as to taint the jury's sentencing recommendation.[48] Fundamental error can be raised at any time,[49] including to collaterally attack a conviction or sentence in postconviction proceedings.[50]

Timely filed motions may be amended or supplemented outside of the one-year time limit.[51] To accomplish this, the movant must file a motion to amend no later than 30 days before the evidentiary hearing, including in the motion the reasons additional claims were not raised upon the initial filing and attaching to the motion the claims sought to be added.[52] If the motion is allowed, the state has 20 days after the amended motion is filed to file an amended answer.[53]

Contents of an Initial Postconviction Motion

An initial postconviction motion must include:

- A statement specifying the judgment and sentence under attack and the name of the court that rendered the judgment and sentence;
- A statement of each issue raised on appeal and the disposition of each issue;
- The nature of the relief sought;
- A detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and
- A detailed allegation as to the basis for any purely legal or constitutional claims for which an evidentiary hearing is not required and the reason that these claims could not have been or were not raised on direct appeal.[54]

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[45] In order for evidence to be "newly discovered," the movant must demonstrate that: (1) the asserted facts must have been unknown by the trial court, the party, or counsel at the time of trial, and it must appear that the movant or his/her counsel could not have known them by being diligent; and (2) the newly discovered evidence must be of such nature that it would probably result in an acquittal on retrial. *See Scott v. Dugger*, 604 So. 2d 465, 468 (Fla. 1992); *see also Miller v. State*, 926 So. 2d 1243, 1258 (Fla. 2006), quoting *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991).
[46] Fla. R. Crim. Proc. 3.851(d)(2).
[47] *Miller*, 926 So. 2d at 1261, quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960).
[48] *Id.* Fundamental error can never be found harmless. *Johnson v. State*, 460 So. 2d 954, 958 (Fla. 5th DCA 1984).
[49] *Moore v. State*, 924 So. 2d 840, 841 (Fla. 4th DCA 2006).
[50] *Johnson*, 460 So. 2d at 958.
[51] Fla. R. Crim. Proc. 3.851(d)(4) and (5) and (f)(4).
[52] Fla. R. Crim. Proc. 3.851(f)(4).
[53] *Id*.
[54] Fla. R. Crim. P. 3.851(e)(1).

The movant must also attach to the motion a memorandum of law setting forth the relevant case law supporting relief on each asserted claim.[55] The memorandum of law must also state why claims that should have or could have been raised on direct appeal are being raised for the first time in the postconviction motion.[56]

The state has 60 days from the filing of the initial postconviction motion to file its answer.[57]

Discovery and the Evidentiary Hearing

Within 90 days after the state files its answer to an initial postconviction motion, the court must hold a case management conference where both parties must "disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses."[58] At this conference, the court must also:

- Schedule an evidentiary hearing, to be held within 90 days, on claims asserted by the movant which require a factual determination;
- Hear argument on purely legal claims not based on disputed facts; and
- Resolve any discovery disputes.[59]

The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on the initial postconviction motion for up to 90 days.[60]

The court may dispose of an initial postconviction motion without holding an evidentiary hearing if:

- The motion, files, and records in the case conclusively show that the movant is not entitled to any relief; or
- The motion or a particular claim is legally insufficient.[61]

The movant must support the motion with specific factual allegations.[62] Conclusory allegations will not justify an evidentiary hearing.[63]

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.[64] Within 30 days after receiving the transcript, the court must render its order, including:

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[55] *Id*.
[56] *Id*.
[57] Fla. R. Crim. Proc. 3.851(f)(3)(A).
[58] The list of potential witnesses must include expert witnesses and the parties must attach reports of any potential expert witnesses to the list. Fla. R. Crim. Proc. 3.851(f)(5)(A).
[59] *Id*.
[60] Fla. R. Crim. Proc. 3.851(f)(5)(C).
[61] *Johnson v. State*, 904 So. 2d 400, 403 (Fla. 2005).
[62] *Id.* at 404 (citing *Thompson v. State*, 759 So. 2d 650, 659 (Fla. 2000)).
[63] *Id.* (citing *Kennedy v. State*, 547 So. 2d 912, 913 (Fla. 1989)).
[64] Fla. R. Crim. Proc. 3.851(f)(5)(D).

- A ruling on each claim considered at the evidentiary hearing and all other claims asserted in the motion;
- Detailed findings of fact and conclusions of law with respect to each claim; and
- Attached or referenced portions of the record as are necessary for meaningful appellate review.[65]

Either party may move for a rehearing within 15 days after the rendition of the court's order on the postconviction motion.[66] Responses to such motions must be made within 10 days, and the court must render an order disposing of the motion for rehearing within 15 days.[67]

The movant may appeal the court's decision to the Florida Supreme Court within 30 days after the date the court rendered its order on the postconviction motion.[68] If the Florida Supreme Court affirms the lower court's decision, the movant may file a petition for a writ of certiorari with the United States Supreme Court.[69] If the United States Supreme Court declines review or affirms the lower's court decision, the postconviction appeal is complete.

Successive Motions

If the state court previously ruled on a postconviction motion, a motion filed thereafter challenging the same judgment and sentence is considered a "successive motion."[70] In addition to the contents required for an initial motion, a successive motion must include:

- The disposition of all previous claims raised in postconviction proceedings and the reason(s) the claims in the present motion were not raised in the former motion(s); and
- The following, if the claims are based on newly discovered evidence:
  - The names, addresses, and telephone numbers of all witnesses supporting the claim;
  - A statement that the witness will be available to testify under oath to the facts alleged in the motion, should an evidentiary hearing be held on that issue;
  - If evidentiary support is in the form of documents, copies of relevant documents, and affidavits must be attached to the motion; and
  - As to any witness or document in the motion or attachment to the motion, an explanation as to why the witness or document was not previously available.[71]

The state has 20 days after the filing of a successive motion to file its answer.[72]

Within 30 days after the state files its answer to a successive postconviction motion, the court must hold a case management conference, at which the court must determine whether an evidentiary hearing should be held and hear arguments on any purely legal claims not based on

[65] *Id*.
[66] Fla. R. Crim. Proc. 3.851(f)(7).
[67] *Id*.
[68] Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).
[69] 28 U.S.C. s. 1257.
[70] Fla. R. Crim. Proc. 3.851(e)(2).
[71] *Id*.
[72] Fla. R. Crim. Proc. 3.851(f)(3)(B).

disputed facts.[73] As with initial postconviction motions, the court may dispose of any successive motion without holding an evidentiary hearing if the motion, files, and records in the case conclusively show that the movant is not entitled to any relief.[74] Additionally, the court may dismiss successive motions without an evidentiary hearing if:

- The movant does not provide a reason for failing to raise the successive claims in his/her previous Rule 3.851 motion; or[75]
- The motion raises claims that have already been asserted and adjudicated on the merits in a previous Rule 3.851 proceeding.[76]

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.[77] The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on a successive motion for up to 90 days.[78]

The deadlines for requesting transcripts and rendering orders after an evidentiary hearing on a successive postconviction motion are the same as those applicable to initial postconviction motions.[79] The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.[80]

Appeal to the Florida Supreme Court

Postconviction Motions

Any party to a Rule 3.851 motion may appeal a trial court's final order to the Florida Supreme Court (Court) by filing a notice of appeal with the trial clerk within 30 days after the rendition of the order.[81] When the notice of appeal is filed, the Court's chief justice directs the appropriate chief judge of the circuit court to monitor the preparation of the complete record[82] for timely filing in the Court.[83]

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[73] Fla. R. Crim. Proc. 3.851(f)(5)(B).
[74] *Id*.
[75] *See, e.g., Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006)(holding that the movant's successive claim alleging that he was mentally retarded and, therefore, could not be executed pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), was procedurally barred because the movant gave no reason why the claim could not have been raised in his 2003 Rule 3.851 motion, which was filed after the issuance of the *Atkins* decision).
[76] *See, e.g., Johnson v. State*, 904 So. 2d 400, 412 (Fla. 2005)(rejecting the movant's successive claim that lethal injection constitutes cruel and unusual punishment because it was raised and rejected in the movant's previous postconviction proceeding).
[77] Fla. R. Crim. Proc. 3.851(f)(5)(B).
[78] Fla. R. Crim. Proc. 3.851(f)(5)(C).
[79] Fla. R. Crim. Proc. 3.851(f)(5)(D).
[80] Fla. R. Crim. Proc. 3.851(f)(7) and (8).
[81] Fla. R. Crim. Proc. 3.851(f)(8).
[82] The complete record in a death penalty appeal includes all items required by Rule 9.200 of the Florida Rules of Appellate Procedure and by any order issued by the Court. In any appeal following the initial direct appeal, the record that is electronically transmitted must begin with the most recent mandate issued by the Court, or the most recent filing not already electronically transmitted in a prior record in the event the preceding appeal was disposed of without a mandate, and excludes any materials already transmitted to the Court as the record in any prior appeal. Fla. R. App. Proc. 9.142(a)(1)(B).
[83] Fla. R. App. Proc. 9.142(a)(1).

After the record is filed, the clerk establishes a briefing schedule that gives the defendant 30 days to serve an initial brief.[84] The answer brief must be served within 20 days after service of the initial brief, and the reply brief, if any, must be served within 20 days after service of the answer brief. If any brief is delinquent, an order to show cause may be issued,[85] and sanctions may be imposed.[86] Oral argument is scheduled after the filing of the defendant's reply brief.[87] The rules do not prescribe when the Court must rule on the appeal.

Petitions for Extraordinary Relief

Petitions for extraordinary relief are generally treated as original proceedings.[88] Such petitions must be in the form prescribed by Rule 9.100 of the Rules of Appellate Procedure, may include supporting documents, and must include in the statement of facts:

- The date and nature of the lower tribunal's order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The nature, disposition, and dates of all previous court proceedings;
- If a previous petition was filed, the reason the claim in the present petition was not raised previously; and
- The nature of the relief sought.[89]

Petitions seeking a belated appeal must include a detailed allegation of the specific acts, sworn to by the petitioner or petitioner's counsel, that constitute the basis for entitlement to belated appeal, including:

- Whether petitioner requested counsel to proceed with the appeal and the date of any such request;
- Whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal; or
- Whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and dates of the occurrences, that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.[90]

A petition for belated appeal may not be filed more than 1 year after the expiration of time for filing the notice of appeal from a final order denying Rule 3.851 relief, unless it alleges under oath with a specific factual basis that the petitioner:

- Was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the rights to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control; and

[84] Fla. R. App. Proc. 9.142(a)(2).
[85] Pursuant to Fla. R. Crim. Proc. 3.840.
[86] Fla. R. App. Proc. 9.142(a)(3).
[87] Fla. R. App. Proc. 9.142(a)(4).
[88] Fla. R. App. Proc. 9.142(b)(1).
[89] Fla. R. App. Proc. 9.142(b)(2).
[90] Fla. R. App. Proc. 9 142(b)(3)(A).

- Could not have ascertained such facts by the exercise of due diligence.[91]

A petition alleging ineffective assistance of direct appeal counsel must include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel and must be filed simultaneously with the initial brief in the appeal from the lower tribunal's order on the defendant's application for postconviction relief.[92]

Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings

Petitions seeking review of nonfinal orders in postconviction proceedings are generally treated as original proceedings. Such petitions must be filed within 30 days after rendition of the nonfinal order to be reviewed.[93] Either party to the proceeding may file a petition, but must serve it on the opposing party and the judge who issued the nonfinal order being reviewed.[94]

The petition must be in the form prescribed by Rule 9.100 of the Florida Rules of Appellate Procedure and must contain:

- The basis for invoking the jurisdiction of the court;
- The date and nature of the order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered;
- The facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix;
- Argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority; and
- The nature of the relief sought.[95]

The petition must be accompanied by an appendix[96] containing the portions of the record necessary for a determination of the issues presented.[97]

If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law that may cause material injury for which there is no adequate remedy by appeal, the Court may issue an order directing the respondent to show cause, within the time set by the Court, why relief should not be granted.[98] No response is permitted unless ordered by the Court.[99] Within 20 days after service of the response or such other time set by the Court, the

[91] Fla. R. App. Proc. 9.142(b)(3)(B).
[92] Fla. R. App. Proc. 9.142(b)(4).
[93] Fla. R. App. Proc. 9.142(c)(2) and (c)(3)(A).
[94] Fla. R. App. Proc. 9.142(c)(3).
[95] Fla. R. App. Proc. 9.142(c)(4).
[96] As prescribed by Fla. R. App. Proc. 9.220.
[97] Fla. R. App. Proc. 9.142(c)(5).
[98] Fla. R. App. Proc. 9.142(c)(6).
[99] Fla. R. App. Proc. 9.142(c)(7).

petitioner may serve a reply, which may not exceed 15 pages in length, and supplemental appendix.[100]

A stay of proceedings is not automatic - the party seeking a stay must petition the Court for a stay.[101] During the pendency of a review of a nonfinal order, unless a stay is granted by the Court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.[102]

Inmate's Motion to Dismiss Postconviction Proceedings and to Discharge Postconviction Counsel

An inmate may file a motion to dismiss pending postconviction proceedings and to discharge postconviction counsel pro se.[103] In such instances, the clerk must serve copies of the motion on counsel of record for both the inmate and the state, and counsel of record may file responses within 10 days.[104]

The trial judge must review the motion and the responses and schedule a hearing at which the inmate, collateral counsel, and the state must be present.[105] At the hearing, the judge must examine the inmate and hear the arguments of the inmate, postconviction counsel, and the state. If the judge concludes that there are reasonable grounds to believe the inmate is not mentally competent, no fewer than two or more than three qualified experts shall be appointed to examine the inmate.[106] The experts must file reports with the trial court setting forth their findings. The trial court must then conduct an evidentiary hearing and enter an order setting forth findings of competency or incompetency.[107]

If the inmate is found to be incompetent, the trial court must deny the motion without prejudice.[108] If the inmate is found to be competent, the trial court must conduct a complete inquiry to determine whether the inmate knowingly, freely, and voluntarily wants to dismiss pending postconviction proceedings and discharge postconviction counsel.[109]

If the trial court determines that the inmate has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court must enter an order dismissing all pending postconviction proceedings and discharging collateral counsel.[110] If the trial court determines that the opposite is true, it must enter an order denying the motion without prejudice.[111]

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[100] Fla. R. App. Proc. 9.142(c)(8).
[101] Fla. R. App. Proc. 9.142(c)(9).
[102] *Id*.
[103] Fla. R. Crim. Proc. 3.851(i)(2).
[104] *Id*.
[105] Fla. R. Crim. Proc. 3.851(i)(3).
[106] Fla. R. Crim. Proc. 3.851(i)(4).
[107] *Id*.
[108] Fla. R. Crim. Proc. 3.851(i)(5).
[109] Fla. R. Crim. Proc. 3.851(i)(6).
[110] Fla. R. Crim. Proc. 3.851(i)(7).
[111] *Id*.

If the trial court grants the motion:

- A copy of the motion, the order, and the transcript of the hearing or hearings conducted on the motion shall be electronically forwarded to the clerk of the Florida Supreme Court within 30 days; and
- Discharged counsel shall, within 10 days after issuance of the order, file with the clerk of the circuit court two copies of a notice seeking review in the Florida Supreme Court, and must, within 20 days after the filing of the transcript, serve an initial brief.[112]

If the trial court denies the motion, the inmate may seek review as prescribed by Florida Rule of Appellate Procedure 9.142(b).[113]

Special Procedures for Postconviction Motions Filed After a Death Warrant is Signed

In cases in which the Governor signs a death warrant prior to the 1-year filing deadline, the Florida Supreme Court is required, on the movant's request, to grant a stay of execution to allow postconviction motions to proceed in a timely and orderly manner.[114] In practice, however, this requirement is unnecessary because the Governor has agreed that, absent the circumstance where a competent death-sentenced individual voluntarily requests that a death warrant be signed, no death warrants will be issued during the initial round of federal and state review, provided that counsel for the death penalty movant is proceeding in a timely and diligent manner.[115]

Once the 1-year filing deadline has passed and after the initial round of state and federal collateral review is over, the Governor may sign a death warrant. At this point, any subsequently-filed postconviction motions, initial or successive, are subject to the following expedited procedures:

- The chief judge of the circuit court is required to assign the case to a judge as soon as the judge receives notification of the death warrant.
- Proceedings after a death warrant has been issued are required to take precedence over all other cases.
- The normal time limitations in Rule 3.851 do not apply after a death warrant has been signed; instead, all motions must be heard expeditiously considering the time limitations set by the execution date and the time required for appellate review.
- The assigned judge must schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed.
- At the conference, the court must set a deadline for the filing of a Rule 3.851 postconviction motion, schedule a hearing to determine whether an evidentiary hearing should be held, and hear arguments on any purely legal claims not based on disputed facts.[116]

[112] Both the inmate and the state may serve responsive briefs. Fla. R. Crim. Proc. 3.851(i)(8). *Also see*, Fla. R. App. Proc. 9.142(d)(2)(A).
[113] Fla. R. Crim. Proc. 3.851(i)(9).
[114] Fla. R. Crim. Proc. 3.851(d)(4).
[115] Fla. R. Crim. Proc. 3.851 (comment).
[116] Fla. R. Crim. Proc. 3.851(h).

All motions for postconviction relief filed after a death warrant is issued are considered successive motions and must comply with the content requirements for successive motions.[117] If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.[118] If, however, the trial court determines that an evidentiary hearing should be held, it must hold the evidentiary hearing as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.[119]

After the evidentiary hearing is completed, the court must immediately obtain a transcript of all proceedings and, as soon as possible after the hearing is concluded, render its order.[120] A copy of the final order must immediately be electronically transmitted to the Florida Supreme Court and to the attorneys of record.[121] The record must also be sent to the Florida Supreme Court, electronically, if possible.[122]

Federal Habeas Corpus

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. In habeas proceedings, the federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings.

Execution

An inmate's death sentence may not be carried out until the Governor issues a death warrant.[123] A death warrant may be issued after the inmate has pursued all possible collateral remedies in a timely manner or after the inmate has failed to pursue said remedies within specified time limits.[124] Upon issuance of a death warrant, the Governor must transmit the warrant and the record to the warden and direct the warden to execute the sentence at a time designated in the warrant.[125]

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.[126] The warden of the state prison designates the executioner.[127] The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.[128] A qualified physician must be present, and the inmate's counsel,

[117] Fla. R. Crim. Proc. 3.851(h)(5).
[118] Fla. R. Crim. Proc. 3.851(h)(6).
[119] *Id*.
[120] Fla. R. Crim. Proc. 3.851(h)(8).
[121] *Id.*
[122] Fla. R. Crim. Proc. 3.851(h)(9).
[123] Section 922.052(1), F.S.
[124] Section 922.095, F.S.
[125] Section 922.052(1), F.S.
[126] Section 922.105, F.S.
[127] Section 922.10, F.S. A person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. Section 922.105(6), F.S.
[128] Section 922.11(1) and (2), F.S.

ministers of religion, representatives of the media, and prison and correctional officers may be present.[129] Immediately before the inmate's execution, the death warrant must be read to the inmate.[130] The physician must announce when death has occurred.[131]

After the death sentence has been executed, the warden must send the warrant and a signed statement of the execution to the Secretary of State and file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.[132]

Sixty days after a capital sentence is carried out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the AG must provide written notification of this occurrence to the Secretary of State.[133] After the expiration of the 60 days, the Secretary of State may destroy the copies of the public records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If an objection is served, the records may not be destroyed until a final disposition of the objection.[134]

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposed.[135] Types of clemency include pardons, commutation of sentence, remission of fines or forfeitures, restoration of the authority to possess a firearm, and restoration of civil rights.[136]

The Governor and members of the Cabinet collectively are the Board of Executive Clemency. Pursuant to the Florida Constitution, the Governor has the power to grant clemency with the consent of at least two Cabinet members.[137] The Florida Parole Commission acts as the agent of the Board of Executive Clemency in determining whether offenders are eligible for clemency, investigating clemency applications, conducting hearings when required, and making recommendations to the Board.[138]

Currently, ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S., authorize the trial court to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings.

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[129] Section 922.11(2), F.S.
[130] Section 922.10, F.S.
[131] Section 922.11(2), F.S.
[132] Section 922.12, F.S.
[133] Fla. R. Crim. Proc. 3.852(m).
[134] *Id*.
[135] Rule 1, Rules of Executive Clemency. March 9, 2011.
[136] Section 940.01, F.S. *Also see* Rule 4 I., Rules of Executive Clemency. March 9, 2011.
[137] Article IV, Section 8(a), FLA. CONST.
[138] Annual Report 2009-2010. Florida Parole Commission, p. 23.

Death Penalty Reform Efforts

The capital postconviction process has often been cited as one of the areas that causes the most delays in capital cases.[139] There are several reasons for this. Delays can result from litigation over public records requests, or from sentencing courts which may not hear or rule on postconviction motions for several months, or sometimes years. Postconviction attorneys often amend their motions to introduce new claims, which, if allowed, require additional time to investigate and respond to. Sometimes these motions improperly attempt to revisit issues that were or could have been resolved at trial or during the first appeal.

In a 1998 Florida Supreme Court opinion reviewing the death penalty of an inmate convicted in 1974, Justice Wells strongly expressed his position that the process needs to be changed, stating that,

> I do again state my view that such an extended time period to finally adjudicate these cases is totally unacceptable and is this Court's and the State's prime responsibility to correct. (citation omitted). . . . The courts and the State must be able to do better, and any explanation of why we are unable to do so is insufficient.[140]

Numerous reforms have been made over the years in an effort to improve the capital postconviction process. In 1993, the Florida Supreme Court created Rule 3.851 of the Florida Rules of Criminal Procedure and adopted the recommendation of the "Florida Supreme Court Committee on Postconviction Relief" to require that postconviction motions be filed within 1-year after the date the direct appeal became final.[141] In March of 1999, Chief Justice Harding established by administrative order a Supreme Court Committee on Postconviction Relief in Capital Cases (the "Morris Committee"), to assist the Court in identifying inherent delays in the current postconviction process and recommend improvements.[142] While the Court was considering the Morris Committee's report, the Florida Legislature passed the Death Penalty Reform Act of 2000.

Death Penalty Reform Act of 2000

During a special session in January of 2000, the Legislature passed the Death Penalty Reform Act (DPRA).[143] DPRA made a number of significant statutory changes to the capital postconviction process. However, on April 14, 2000, the Florida Supreme Court struck down the majority of the provisions of DPRA based on a separation of powers claim.[144, 145] Specifically,

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[139] *See, In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So. 2d. 198, 199 (Fla. 1993)(stating that the Supreme Court Committee on Postconviction Relief in Capital Cases was created because of the substantial delays in the death penalty postconviction relief process).
[140] *Knight v. State*, 746 So. 2d 423, 439-440 (Fla. 1998). (Wells, J. concurring).
[141] *In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So. 2d. 198 (Fla. 1993).
[142] *Amendments to Florida Rules Criminal Procedure 3.851, 3.852, and 3.993*, 772 So. 2d 488 (Fla. 2000).
[143] Chapter 2000-3, L.O.F.
[144] Article II, Section 3 of the Florida Constitution provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Further, Article V, Section 2 authorizes the Florida Supreme

the Court held that that the "DPRA is an unconstitutional encroachment on the Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'"[146] The Court held that the provisions of the DPRA were "procedural" (rather than substantive) and ruled that because the Constitution gives the court the authority to adopt rules of practice and procedure, the Legislature was not permitted to act in this area.

The Court rejected the state's argument that the deadlines for filing postconviction motions in DPRA were statutes of limitations which are substantive. The Court stated that Florida Rule of Criminal Procedure 3.850 is a "procedural vehicle for the collateral remedy otherwise available by a writ of habeas corpus"[147] and further held that:

> Due to the constitutional and quasi-criminal nature of habeas proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions.[148]

2001 Florida Supreme Court Rule Revisions

Shortly after the DPRA was held unconstitutional, the Florida Supreme Court made a variety of revisions to the rules applicable to postconviction proceedings in capital cases. For example:

- Rule 3.851(b) was added to ensure appointment of postconviction counsel upon the Florida Supreme Court's issuance of mandate on direct appeal.
- Rule 3.851(c) was added to provide for, among other things, the assignment of a qualified judge within 30 days after mandate issues on direct appeal and status conferences every 90 days after the assignment until the evidentiary hearing has been completed or the motion has been ruled on without a hearing. These status conferences are intended to provide a forum for the timely resolution of public records issues and other preliminary matters.
- Rule 3.851(f) was added to set forth general procedures relating to evidentiary hearings. Most significantly, to require an evidentiary hearing on claims listed in an initial motion as requiring a factual determination. The Court has identified the failure to hold evidentiary hearings on initial motions as a major cause of delay in the capital postconviction process and has determined that, in most cases, requiring an evidentiary hearing on initial motions presenting factually based claims will avoid this cause of delay.[149]

Court to "adopt rules of practice and procedure in all courts." This same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.

[145] *Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000).

[146] *Id*. at 54.

[147] *Id*. at 61 (citations omitted).

[148] *Id*. at 62.

[149] *Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 and 3.993*, 772 So. 2d 488, 491 (Fla. 2000).

III. Effect of Proposed Changes:

Policies and Procedures in Postconviction Capital Collateral Cases

This bill is the implementing legislation for SJR 1740. That joint resolution authorizes the Legislature, by general law, to govern the postconviction or collateral review of capital cases resulting in a death sentence.

Accordingly, this bill provides procedures to replace court rules governing postconviction or collateral review of capital cases. The purpose of the new procedures is to streamline and further expediency for the postconviction or collateral review of capital cases.

Clemency

Currently, the court is authorized to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. Section 27.5304, F.S., requires appointed attorney to be compensated, up to $1,000, for attorney's fees and costs incurred in representing the defendant in clemency proceedings. Such compensation is paid out of the General Revenue Fund from funds budgeted to DOC.

The bill removes the court's authorization to appoint, or compensate, a public defender, private attorney, or a registry attorney to represent a person whose application for clemency relief is filed on or after July 1, 2013.

Capital Collateral Regional Counsel (CCRC)

The bill eliminates the registry attorney "pilot program," originally established in 1993, and reestablishes the CCRC in the northern region of the state. The Florida Legislature initiated the pilot program as a replacement to the northern region CCRC.

Postconviction and Collateral Review of Sentences in Capital Cases

The bill amends ss. 27.703, 924.056, and 924.058, F.S., to codify the majority of Rules 3.811, 3.812, 3.850, 3.851, and 3.852, of the Florida Rules of Criminal Procedure, and Rule 9.142, of the Florida Rules of Appellate Procedure, as they relate to collateral review in capital cases. Differences are indicated below.

Public Records

This bill revises s. 27.7081, F.S., by incorporating the substance of Rule 3.852 of the Florida Rules of Criminal Procedure, which addresses public records in capital postconviction proceedings. The bill retains the provision in s. 27.7081, F.S., which requires the Secretary of State to establish and maintain a public records repository to archive capital postconviction public records.

Appointment of Counsel, Judge, and other Preliminary Matters

The bill revises s. 924.056, F.S., to require the CCRC to file a notice of appearance in the trial court or a motion to withdraw based on an actual conflict of interest or other legal ground within 30 days after appointment by the Florida Supreme Court. This departs from Rule 3.851(b)(2) of the Florida Rules of Criminal Procedure, which requires the notice or motion to be filed within 30 days after the issuance of the mandate affirming a judgment and death sentence on direct appeal. The court may not hear motions to withdraw after the 30 days.

The bill specifies that if the defendant requests the court to remove or replace an attorney without good cause, the court must notify the defendant that no further state resources will be expended on representation unless the request is withdrawn.

This bill establishes a more active role for the court in conflict of interest situations. If the CCRC alleges the existence of a conflict of interest in a case, the court must hold a hearing to confirm an actual conflict. If the court confirms the conflict of interest, the court will designate another regional counsel. If regional counsel asserts a conflict of interest, the court will hold another conflict of interest hearing, and appoint a registry attorney if the court finds that an actual conflict exists which will adversely affect the replacement regional counsel's representation.

This bill requires the defendant's trial counsel to produce all information relating to the defendant's case within 45 days after appointment of postconviction counsel.

Form and Content of Postconviction Motions and Time Limits

The defendant must file all postconviction motions within 1 year of final judgment and sentence. Rule 3.851 of the Florida Rules of Criminal Procedure authorizes an extension of time past the 1 year limit upon a showing of good cause. The bill does not authorize extensions except in limited circumstances.

The bill requires concurrent filings of petitions for extraordinary relief before the Florida Supreme Court with the initial brief in the appeal of the trial court's order on the initial motion for postconviction relief. If the Governor signs a death warrant before the 1 year time limit expires for postconviction motions, the Florida Supreme Court will grant a stay of execution upon request to allow motions to be heard.

The bill requires all postconviction motions to be fully pled. Such motions may not exceed 75 pages in length, exclusive of attachments.

Rule 3.851 of the Florida Rules of Criminal Procedure permits a postconvction motion to be amended within 30 days after a scheduled evidentiary hearing upon a showing of good cause. This bill prohibits the defendant or defense counsel from:

- Raising a claim that trial counsel could have raised, or if properly preserved, counsel could have raised on direct appeal of the judgment and sentence. Rule 3.851 of the Florida Rules of Criminal Procedure permits claims that could have been raised at trial or on direct appeal.
- Raising a claim of ineffective assistance of collateral postconviction counsel.

- Amending a motion without court approval. The state must respond to an approved amended filing within 20 days. No amended filings can exceed the 1 year time limit.

Judicial Appointment and Status Conferences

Within 30 days after the issuance of mandate, the chief judge must assign the case to a judge qualified to conduct capital proceedings. The judge must hold a status conference within 90 days after being assigned to the case and at least by the end of every 90 days until the evidentiary hearing is completed. Attorneys may appear electronically, and the defendant's presence is not required.

Evidentiary Hearings

This bill shortens the timeline for filings, responses, and issuance of court orders.

Section 924.055(1), F.S., requires postconviction actions to be resolved within 5 years of sentence. This bill instead requires resolution as quickly as possible.

The clerk must immediately deliver to the chief judge or other assigned judge all motions filed in a postconviction proceeding.

The state must file its answer within 60 days after the filing of an initial postconviction motion. The trial court must hold a case management conference within 30 days after the filing of the state. At the conference, the court must schedule an evidentiary hearing on claims raised by the defendant that require a factual determination, to be held within 90 days. If the court determines that an evidentiary hearing is unnecessary, the court shall within 30 days after the case management conference, deny the motion and provide a written rationale. The trial court must immediately order a hearing transcript after an evidentiary hearing, and the transcript must be filed within 30 days. Within 30 days after receipt of the transcript, the court must issue an order, which is considered the final order for purposes of appeal.

Motions for rehearing must be made within 15 days after the trial court order, and a response must be filed within 10 days. The trial court must issue an order on the motion for rehearing within 15 days after the response. A petitioner may file a notice of appeal with the Florida Supreme Court within 15 days after the final order. This bill prohibits interlocutory appeals.

Successive Motions

The bill creates s. 924.058, F.S., to address procedures relating to successive postconviction motions.

- Rule 3.851 of the Florida Rules of Criminal Procedure does not contain any time limitations on the filing of successive postconviction motions. The bill bars successive postconviction motions unless fully pled and filed within 90 days:
  - After the facts giving rise to the claim were discovered or should have been discovered with the exercise of due diligence; or

  - After the fundamental constitutional right asserted was established and held to apply retroactively.
- The bill prohibits successive postconviction motions from being filed or considered if filed beyond the timelines described above unless it alleges that postconviction counsel, through neglect, failed to file the motion.
- The bill bars successive postconviction motion claims that could have or should have been raised at trial, on direct appeal, or in the initial postconviction motion.
- The bill prohibits a successive postconviction motion from including a claim of ineffective assistance of postconviction counsel.
- Rule 3.851 of the Florida Rules of Criminal Procedure permits a successive postconviction motion to be amended within 30 days after a scheduled evidentiary hearing upon motion and good cause shown. The bill prohibits a successive postconviction motion from being amended beyond the time period established for the filing of the successive motion and requires court approval.
- Rule 3.851 of the Florida Rules of Criminal Procedure requires the court to hold a case management conference within 90 days after the filing of the state's answer to a successive postconviction motion. The bill amends s. 924.056, F.S., to change the timeframe to within 30 days after the filling of the state's answer.
- The bill adds a provision to s. 924.056, F.S., specifying that if the court determines that an evidentiary hearing is not necessary and that the defendant's successive postconviction motion is legally insufficient or that the motion, files, and records show that the defendant is not entitled to relief, the court must, within 30 days after the conclusion of the case management conference, deny the successive postconviction motion. The court must include a detailed rationale therefore and attach or reference the portions of the record that will allow for meaningful appellate review of the order denying relief.
- Rule 3.851 of the Florida Rules of Criminal Procedure provides that an appeal of a court's ruling on a successive postconviction motion may be filed within 30 days after the entry of the order. The bill changes this timeframe to within 15 days after the entry of the order, and prohibits interlocutory appeals.

Appeal to the Florida Supreme Court

The bill creates s. 924.0581, F.S., which establishes the procedures that must be followed when an initial or successive postconviction motion is appealed to the Florida Supreme Court. The majority of the provisions of s. 924.0581, F.S., mirror those found in Rule 9.142 of the Florida Rules of Appellate Procedure.

- The bill includes a provision in s. 924.0581, F.S., which requires the Court, in instances where the lower court denied the initial or successive motion without an evidentiary hearing, to review the case to determine whether the lower court correctly resolved the case without a hearing. If the Court determines that a hearing should have been held, the Court may remand the case for such hearing. The lower court must schedule such hearing within 30 days after the Court's order and conclude the hearing within 90 days after scheduling. The Florida Rules of Appellate Procedure does not contain a similar provision.
- Rule 9.142 of the Florida Rules of Appellate Procedure establishes timeframes in which briefs must be filed, and specifies that if a brief is delinquent, an order to show cause can be

issued and sanctions may be imposed. The bill provides that a brief submitted after the timeframes is barred and cannot be heard.

- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a specific timeframe in which the Court must hear oral argument - only that oral argument be scheduled after the filing of the defendant's reply brief. The bill requires oral arguments to be scheduled within 30 days after the filing of the defendant's reply brief.
- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a timeframe in which the Court must ultimately rule on an appeal of an initial or successive postconviction motion. The bill requires the Court to rule within 180 days after oral arguments have concluded, and specifies that if the Court affirms a denial of an action for postconviction relief, the Governor may proceed to issue a warrant for execution.
- In instances in which the Court does not rule within 180 days after oral arguments, the bill requires the Chief Justice of the Court to, within 10 days after the expiration of the 180-day deadline, submit a report to the Legislature explaining why a decision was not timely rendered. Such report must be submitted every 30 days thereafter in which a decision is not rendered.

Reporting Requirements

The bill creates s. 924.0585, F.S., to bar postconviction actions filed in violation of established time limits, specify that all claims raised in these actions are waived, and prohibit a court from hearing these actions. The bill requires the AG to deliver to the Governor and the Legislature a copy of any pleading or order that alleges or adjudicates any claim filed in violation of the established time limits.

Severability

The bill contains a severability clause specifying that if any provision of the act or the application thereof is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

Effective Dates

The bill specifies that postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal before July 1, 2015, will be governed by the rules and laws in effect immediately prior to the effective date of the bill.

Therefore, the revisions to policy and procedure in capital cases take effect July 1, 2015, contingent on voter approval of SJR 1740 in the general election of 2014. Other provisions in the bill, removing right to counsel in clemency proceedings, eliminating the registry attorney pilot program in capital cases and reinstating the Capital Collateral Regional Counsel in the Northern region of Florida take effect July 1, 2013.

Section Directory

Section 1. Entitles the bill the "Timely Justice Act of 2013."

Section 2. Amends s. 27.40, F.S., relating to court-appointed counsel; circuit registries; minimum requirements; appointment by court.

Section 3. Amends s. 27.51, F.S., relating to duties of public defender.

Section 4. Amends s. 27.51, F.S., relating to duties of public defender.

Section 5. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 6. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 7. Amends s. 27.5305, F.S., relating to public defenders; criminal conflict and civil regional counsel; conflict of interest.

Section 8. Amends s. 27.5304, F.S., relating to private court-appointed counsel; compensation; notice.

Section 9. Amends s. 27.701, F.S., relating to capital collateral regional counsel.

Section 10. Reenacts s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 11. Amends s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 12. Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

Section 13. Amends s. 27.708, F.S., relating to access to prisoners; compliance with the Florida Rules of Criminal Procedure; records requests.

Section 14. Amends s. 27.7081, F.S., relating to capital postconviction public records production.

Section 15. Amends s. 27.7091, F.S., relating to legislative recommendations to Supreme Court; postconviction proceedings; pro bono service credit.

Section 16. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 17. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 18. Amends s. 922.095, F.S., relating to grounds for death warrant; limitations of actions.

Section 19. Amends s. 922.108, F.S., relating to sentencing orders in capital cases.

Section 20. Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

Section 21. Amends s. 924.056, F.S., relating to Commencement of capital postconviction actions for which sentence of death is imposed on or after January 14, 2000; limitations on actions.

Section 22. Amends s. 924.057, F.S., relating to limitation on postconviction cases in which the death sentence was imposed before January 14, 2000.

Section 23. Amends s. 924.058, F.S., relating to capital postconviction claims.

Section 24. Creates s. 924.0581, F.S., relating to capital postconviction appeals to the Florida Supreme Court.

Section 25. Creates s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

Section 26. Amends s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

Section 27. Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

Section 28. Creates s. 924.0591, F.S., relating to incompetence to proceed in capital postconviction proceedings.

Section 29. Creates s. 924.0592, F.S., relating to capital postconviction proceedings after a death warrant has been issued.

Section 30. Creates s. 924.0593, F.S., relating to insanity at the time of execution.

Section 31. Creates s. 924.0594, F.S., relating to dismissal of postconviction proceedings.

Section 32. Provides a severability clause.

Section 33. Provides effective dates.

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:

Capital Postconviction Proceedings

The bill codifies many of the current procedures that relate to capital postconviction proceedings. However, the bill modifies the rules or creates provisions designed to make the postconviction process more efficient. For example, the bill:

- Sets standards for conflict of interest determinations;
- Bars postconviction motions that are not filed within statutorily established timeframes or that are not fully pled;
- Prohibits courts from granting extensions of time at various stages of the postconviction process;
- Shortens timeframes relating to case management conferences and the amendment of postconviction motions;
- Establishes timeframes in which the Florida Supreme Court must hear oral arguments;
- Requires the Florida Supreme Court to rule on an appeal of an initial or successive postconviction motion within 180 days after oral arguments have concluded; and
- Creates reporting requirements that hold courts accountable for delays in the postconviction process.

To the extent that these provisions shorten the postconviction process, they will likely result in a cost savings to the state.

Death Row Inmates

Death row inmates are currently housed at Union Correctional Institution and Florida State Prison. The average per diem for inmates housed at these facilities is $67.58 and

$61.35, respectively, per day. It should be noted that these figures are not specific to death row inmates but instead apply to the entire inmate populations at those facilities.

On average, Florida death row inmates spend 13.22 years on death row prior to execution. Using the per diem figures above, Florida spends anywhere between $326,093 and $296,032 housing a death row inmate prior to his or her execution. To the extent, the bill shortens the postconviction process and thereby the time an inmate spends on death row prior to execution, the bill would have a positive fiscal impact on DOC.

Clemency

Currently, the court is authorized to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. Section 27.5304, F.S., requires appointed attorney to be allowed compensation, not to exceed $1,000, for attorney's fees and costs incurred in representing the defendant in clemency proceedings. Such compensation is paid out of the General Revenue Fund from funds budgeted to DOC.

The bill removes the court's authorization to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings in instances where the application for clemency is filed on or after July 1, 2013. This will likely result in a savings to DOC and the public defenders.

Capital Collateral Regional Counsel

The bill eliminates the registry attorney "pilot program" and reestablishes the CCRC in the northern region of the state.

For FY 13/14, the base budget for the Middle and Southern Region CCRC offices is $7,020,537. In FY 2011/2012, the Department of Financial Services spent $1.6 million compensating registry attorneys, who are paid based on the amounts set forth in s. 27.711, F.S. (note that this figure represents the amount paid to registry attorneys appointed in postconviction proceedings throughout the state, not just those in the northern region).

Reestablishing the CCRC in the northern region will likely have a negative fiscal impact on state government expenditures. However, the extent of impact is unknown.

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 Negron

32-01271A-13 20131750__

A bill to be entitled

An act relating to postconviction capital case proceedings; providing a short title; amending ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S.; removing the right to have appointed counsel in clemency proceedings; repealing s. 27.701(2), F.S., relating to the pilot project for capital representation; amending s. 27.702, F.S.; providing that the capital collateral regional counsel and the attorneys appointed pursuant to law shall file only those postconviction or collateral actions authorized by statute; amending s. 27.703, F.S.; providing that if the collateral counsel believes continued representation of a person creates a conflict of interest, the court shall hold a hearing to determine if a conflict actually exists; amending s. 27.708, F.S.; directing capital collateral counsel to comply with statutory requirements rather than rules of court; amending s. 27.7081, F.S., relating to public records; defining terms; describing access to public records; proscribing procedures to obtain relevant records; amending s. 27.7091, F.S.; removing a request to the Supreme Court to adopt by rule the provisions that limit the time for postconviction proceedings in capital cases; amending s. 27.711, F.S.; revising provisions to conform to changes made by the act; amending s. 922.095, F.S.; providing that any postconviction claim not pursued within the statutory time limits is barred; reenacting s. 922.108, F.S.,

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relating to sentencing orders in capital cases; amending s. 924.055, F.S.; providing legislative intent; directing courts to expedite postconviction proceedings; amending s. 924.056, F.S.; providing that the section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after a specified date; providing for the appointment of postconviction counsel; amending s.924.057, F.S.; providing that the section governs all postconviction proceeding to capital postconviction actions brought before a specified date; making technical changes; amending s. 924.058, F.S.; providing that the section regulates procedures in actions involving successive postconviction motions in all postconviction proceedings in capital cases affirmed on or after a specified date; creating s. 924.0581, F.S.; providing that the section governs capital postconviction appeals to the Florida Supreme Court in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after a specified date; creating s. 924.0585, F.S.; requiring the Florida Supreme Court to annually report to the Speaker of the Florida House of Representatives and the President of the Florida Senate concerning the status of each capital case in which a postconviction action has been filed that has been pending for more than 3 years; amending s. 924.059, F.S.; providing procedures to resolve

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

59 conflicts of interest in capital postconviction
60 proceedings; creating s. 924.0591, F.S.; providing
61 that a death-sentenced inmate pursuing collateral
62 relief who is found by the court to be mentally
63 incompetent shall not be proceeded against; providing
64 procedures for competency examinations and hearings;
65 creating s. 924.0592, F.S.; providing that the section
66 governs all postconviction proceedings in every
67 capital case in which the conviction and sentence of
68 death have been affirmed on direct appeal on or after
69 a specified date and in which a death warrant has been
70 issued; creating s. 924.0593, F.S.; governing
71 procedures relating to claims of insanity at the time
72 of execution; creating s. 924.0594, F.S.; providing
73 procedures that apply if an inmate seeks both to
74 dismiss a pending postconviction proceeding and to
75 discharge collateral counsel; providing for
76 severability; providing for a contingent effective
77 date.
78
79 WHEREAS, it is in the best interest of the administration
80 of justice that a sentence of death ordered by a court of this
81 state be carried out in a manner that is fair, just, and humane
82 and that conforms to constitutional requirements, and
83 WHEREAS, in order for capital punishment to be fair, just,
84 and humane for both the family of victims and for offenders,
85 there must be a prompt and efficient administration of justice
86 following any sentence of death ordered by the courts of this
87 state, and

88 WHEREAS, in order to ensure the fair, just, and humane
89 administration of capital punishment, it is necessary for the
90 Legislature to comprehensively address the processes by which an
91 offender sentenced to death may pursue postconviction and
92 collateral review of the judgment and the sentence of death, and
93 WHEREAS, the Death Penalty Reform Act of 2000, chapter
94 2000-3, Laws of Florida, was designed to accomplish these
95 objectives and was passed by the Legislature and approved by the
96 Governor of Florida in January of 2000, and
97 WHEREAS, the Death Penalty Reform Act of 2000, chapter
98 2000-3, Laws of Florida, was declared unconstitutional by the
99 Florida Supreme Court three months after becoming a law in *Allen*
100 *v. Butterworth*, 756 So.2d 52 (Fla. 2000), as being an
101 encroachment on the court's "exclusive power to 'adopt rules for
102 the practice and procedure in all courts,'" and
103 WHEREAS, the Constitution of the State of Florida has been
104 amended to require postconviction and collateral review of
105 capital cases resulting in a sentence of death to be governed
106 by, and to the extent provided by, general law, and
107 WHEREAS, provisions of the Death Penalty Reform Act of 2000
108 which were held unconstitutional may now be reenacted, while
109 other provisions can be modified, and new provisions added to
110 ensure a prompt and efficient administration of justice
111 following any sentence of death, NOW, THEREFORE,
112
113 Be It Enacted by the Legislature of the State of Florida:
114
115 Section 1. This act may be cited as the "Timely Justice
116 Act."

117 Section 2. Effective July 1, 2013, subsection (1) of
118 section 27.40, Florida Statutes, is amended to read:
119 27.40 Court-appointed counsel; circuit registries; minimum
120 requirements; appointment by court.—
121 (1) Counsel shall be appointed to represent any individual
122 in a criminal or civil proceeding entitled to court-appointed
123 counsel under the Federal or State Constitution or as authorized
124 by general law. Such proceedings do not include proceedings for
125 relief by executive clemency in which the application for
126 executive clemency was filed on or after July 1, 2013. The court
127 shall appoint a public defender to represent indigent persons as
128 authorized in s. 27.51. The office of criminal conflict and
129 civil regional counsel shall be appointed to represent persons
130 in those cases in which provision is made for court-appointed
131 counsel but the public defender is unable to provide
132 representation due to a conflict of interest or is not
133 authorized to provide representation.
134 Section 3. Effective July 1, 2013, paragraph (a) of
135 subsection (5) of section 27.51, Florida Statutes, is amended to
136 read:
137 27.51 Duties of public defender.—
138 (5)(a) When direct appellate proceedings prosecuted by a
139 public defender on behalf of an accused and challenging a
140 judgment of conviction and sentence of death terminate in an
141 affirmance of such conviction and sentence, whether by the
142 Florida Supreme Court or by the United States Supreme Court or
143 by expiration of any deadline for filing such appeal in a state
144 or federal court, the public defender shall notify the accused
145 of his or her rights pursuant to Rule 3.850, Florida Rules of

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146 Criminal Procedure, including any time limits pertinent thereto,
147 and shall advise such person that representation in any
148 collateral proceedings is the responsibility of the capital
149 collateral regional counsel. The public defender shall then
150 forward all original files on the matter to the capital
151 collateral regional counsel, retaining such copies for his or
152 her files as may be desired. However, for clemency applications
153 pending or filed before July 1, 2013, the trial court shall
154 retain the power to appoint the public defender or other
155 attorney not employed by the capital collateral regional counsel
156 to represent such person in proceedings for relief by executive
157 clemency pursuant to ss. 27.40 and 27.5303.
158 Section 4. Paragraph (a) of subsection (5) of section
159 27.51, Florida Statutes, as amended by this act, is amended to
160 read:
161 27.51 Duties of public defender.—
162 (5)(a) When direct appellate proceedings prosecuted by a
163 public defender on behalf of an accused and challenging a
164 judgment of conviction and sentence of death terminate in an
165 affirmance of such conviction and sentence, whether by the
166 Florida Supreme Court or by the United States Supreme Court or
167 by expiration of any deadline for filing such appeal in a state
168 or federal court, the public defender shall notify the accused
169 of his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida~~
170 ~~Rules of Criminal Procedure~~, including any time limits pertinent
171 thereto, and shall advise such person that representation in any
172 collateral proceedings is the responsibility of the capital
173 collateral regional counsel. The public defender shall then
174 forward all original files on the matter to the capital

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175 collateral regional counsel, retaining such copies for his or
176 her files as may be desired. However, for clemency applications
177 pending or filed before July 1, 2013, the trial court shall
178 retain the power to appoint the public defender or other
179 attorney not employed by the capital collateral regional counsel
180 to represent such person in proceedings for relief by executive
181 clemency pursuant to ss. 27.40 and 27.5303.
182 Section 5. Effective July 1, 2013, subsection (9) of
183 section 27.511, Florida Statutes, is amended to read:
184 27.511 Offices of criminal conflict and civil regional
185 counsel; legislative intent; qualifications; appointment;
186 duties.—
187 (9) When direct appellate proceedings prosecuted by the
188 office of criminal conflict and civil regional counsel on behalf
189 of an accused and challenging a judgment of conviction and
190 sentence of death terminate in an affirmance of such conviction
191 and sentence, whether by the Supreme Court or by the United
192 States Supreme Court or by expiration of any deadline for filing
193 such appeal in a state or federal court, the office of criminal
194 conflict and civil regional counsel shall notify the accused of
195 his or her rights pursuant to Rule 3.850, Florida Rules of
196 Criminal Procedure, including any time limits pertinent thereto,
197 and shall advise such person that representation in any
198 collateral proceedings is the responsibility of the capital
199 collateral regional counsel. The office of criminal conflict and
200 civil regional counsel shall forward all original files on the
201 matter to the capital collateral regional counsel, retaining
202 such copies for his or her files as may be desired or required
203 by law. However, for clemency applications pending or filed

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204 before July 1, 2013, the trial court shall retain the power to
205 appoint the office of criminal conflict and civil regional
206 counsel or other attorney not employed by the capital collateral
207 regional counsel to represent such person in proceedings for
208 relief by executive clemency pursuant to ss. 27.40 and 27.5303.
209 Section 6. Subsection (9) of section 27.511, Florida
210 Statutes, as amended by this act, is amended to read:
211 27.511 Offices of criminal conflict and civil regional
212 counsel; legislative intent; qualifications; appointment;
213 duties.—
214 (9) When direct appellate proceedings prosecuted by the
215 office of criminal conflict and civil regional counsel on behalf
216 of an accused and challenging a judgment of conviction and
217 sentence of death terminate in an affirmance of such conviction
218 and sentence, whether by the Supreme Court or by the United
219 States Supreme Court or by expiration of any deadline for filing
220 such appeal in a state or federal court, the office of criminal
221 conflict and civil regional counsel shall notify the accused of
222 his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida~~
223 ~~Rules of Criminal Procedure~~, including any time limits pertinent
224 thereto, and shall advise such person that representation in any
225 collateral proceedings is the responsibility of the capital
226 collateral regional counsel. The office of criminal conflict and
227 civil regional counsel shall forward all original files on the
228 matter to the capital collateral regional counsel, retaining
229 such copies for his or her files as may be desired or required
230 by law. However, for clemency applications pending or filed
231 before July 1, 2013, the trial court shall retain the power to
232 appoint the office of criminal conflict and civil regional

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233 counsel or other attorney not employed by the capital collateral
234 regional counsel to represent such person in proceedings for
235 relief by executive clemency pursuant to ss. 27.40 and 27.5303.
236 Section 7. Effective July 1, 2013, subsection (4) of
237 section 27.5303, Florida Statutes, is amended to read:
238 27.5303 Public defenders; criminal conflict and civil
239 regional counsel; conflict of interest.—
240 (4)(a) If a defendant is convicted and the death sentence
241 is imposed, the appointed attorney shall continue representation
242 through appeal to the Supreme Court. The attorney shall be
243 compensated as provided in s. 27.5304. If the attorney first
244 appointed is unable to handle the appeal, the court shall
245 appoint another attorney and that attorney shall be compensated
246 as provided in s. 27.5304.
247 (b) The public defender or an attorney appointed pursuant
248 to this section may be appointed by the court rendering the
249 judgment imposing the death penalty to represent an indigent
250 defendant who, before July 1, 2013, has an application for
251 executive clemency pending or has applied for executive clemency
252 as relief from the execution of the judgment imposing the death
253 penalty.
254 (c) When the appointed attorney in a capital case has
255 completed the duties imposed by this section, the attorney shall
256 file a written report in the trial court stating the duties
257 performed by the attorney and apply for discharge.
258 Section 8. Effective July 1, 2013, subsection (5) of
259 section 27.5304, Florida Statutes, is amended to read:
260 27.5304 Private court-appointed counsel; compensation;
261 notice.—

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262 (5) The compensation for representation in a criminal
263 proceeding shall not exceed the following:
264 (a)1. For misdemeanors and juveniles represented at the
265 trial level: $1,000.
266 2. For noncapital, nonlife felonies represented at the
267 trial level: $2,500.
268 3. For life felonies represented at the trial level:
269 $3,000.
270 4. For capital cases represented at the trial level:
271 $15,000. For purposes of this subparagraph, a “capital case” is
272 any offense for which the potential sentence is death and the
273 state has not waived seeking the death penalty.
274 5. For representation on appeal: $2,000.
275 (b) If a death sentence is imposed and affirmed on appeal
276 to the Supreme Court, the appointed attorney shall be allowed
277 compensation, not to exceed $1,000, for attorney fees and costs
278 incurred in representing the defendant as to an application for
279 executive clemency submitted before July 1, 2013, with
280 compensation to be paid out of general revenue from funds
281 budgeted to the Department of Corrections.
282 Section 9. Effective July 1, 2013, subsection (2) of
283 section 27.701, Florida Statutes, is repealed.
284 Section 10. Subsection (1) of section 27.702, Florida
285 Statutes, is amended to read:
286 27.702 Duties of the capital collateral regional counsel;
287 reports.—
288 (1) The capital collateral regional counsel shall represent
289 each person convicted and sentenced to death in this state for
290 the sole purpose of instituting and prosecuting collateral

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291 actions challenging the legality of the judgment and sentence
292 imposed against such person in the state courts, federal courts
293 in this state, the United States Court of Appeals for the
294 Eleventh Circuit, and the United States Supreme Court. ~~The~~
295 ~~capital collateral regional counsel and the attorneys appointed~~
296 ~~pursuant to s. 27.710 shall file only those postconviction or~~
297 ~~collateral actions authorized by statute.~~ The three capital
298 collateral regional counsel's offices shall function
299 independently and be separate budget entities, and the regional
300 counsel shall be the office heads for all purposes. The Justice
301 Administrative Commission shall provide administrative support
302 and service to the three offices to the extent requested by the
303 regional counsel. The three regional offices shall not be
304 subject to control, supervision, or direction by the Justice
305 Administrative Commission in any manner, including, but not
306 limited to, personnel, purchasing, transactions involving real
307 or personal property, and budgetary matters.
308 Section 11. Effective July 1, 2013, paragraph (b) of
309 subsection (4) of section 27.702, Florida Statutes, is amended
310 to read:
311 27.702 Duties of the capital collateral regional counsel;
312 reports.—
313 (4)
314 (b) Each capital collateral regional counsel ~~and each~~
315 ~~attorney participating in the pilot program in the northern~~
316 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report
317 to the President of the Senate and the Speaker of the House of
318 Representatives which details the number of hours worked by
319 investigators and legal counsel per case and the amounts per

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320 case expended during the preceding quarter in investigating and
321 litigating capital collateral cases.
322 Section 12. Section 27.703, Florida Statutes, is reenacted
323 to read:
324 27.703 Conflict of interest and substitute counsel.—
325 (1) The capital collateral regional counsel shall not
326 accept an appointment or take any other action that will create
327 a conflict of interest. If, at any time during the
328 representation of a person, the capital collateral regional
329 counsel alleges ~~determines~~ that the continued representation of
330 that person creates a conflict of interest, the sentencing court
331 shall hold a hearing in accordance with s. 924.059 to determine
332 if an actual conflict exists. If the court determines that an
333 actual conflict exists and that such conflict will adversely
334 affect the capital collateral regional counsel's performance,
335 the court shall~~, upon application by the regional counsel,~~
336 designate another regional counsel. If the replacement regional
337 counsel alleges that a conflict of interest exists, the
338 sentencing court shall hold a hearing in accordance with s.
339 924.059 to determine if an actual conflict exists. If the court
340 determines that an actual conflict exists and that such conflict
341 will adversely affect the replacement regional counsel's
342 performance, the court shall ~~and, only if a conflict exists with~~
343 ~~the other two counsel,~~ appoint one or more members of The
344 Florida Bar to represent the person ~~one or more of such persons~~.
345 (2) Appointed counsel shall be paid from funds appropriated
346 to the Chief Financial Officer. The hourly rate may not exceed
347 $100. However, all appointments of private counsel under this
348 section shall be in accordance with ss. 27.710 and 27.711.

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349 (3) Prior to employment, counsel appointed pursuant to this
350 section must have participated in at least five felony jury
351 trials, five felony appeals, or five capital postconviction
352 evidentiary hearings, or any combination of at least five of
353 such proceedings.
354 Section 13. Section 27.708, Florida Statutes, is amended to
355 read:
356 27.708 Access to inmates ~~prisoners~~; ~~compliance with the~~
357 ~~Florida Rules of Criminal Procedure;~~ records requests.—
358 (1) Each capital collateral regional counsel and his or her
359 assistants may inquire of all persons sentenced to death who are
360 incarcerated and tender them advice and counsel at any
361 reasonable time, but this section does not apply with respect to
362 persons who are represented by other counsel.
363 (2) The capital collateral regional counsel and contracted
364 private counsel must timely comply with all statutory
365 requirements ~~provisions of the Florida Rules of Criminal~~
366 ~~Procedure~~ governing collateral review of capital cases.
367 (3) Except as provided in s. 27.7081, the capital
368 collateral regional counsel or contracted private counsel shall
369 not make any public records request on behalf of his or her
370 client.
371 Section 14. Section 27.7081, Florida Statutes, is amended
372 to read:
373 (Substantial rewording of section.
374 See s. 27.7081, F.S., for present text.)
375 27.7081 Capital postconviction public records production.—
376 (1) DEFINITIONS.—As used in this section, the term:
377 (a) "Agency" has the same meaning as provided in s.

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378 119.011.
379 (b) "Collateral counsel" means a capital collateral
380 regional counsel from one of the three regions in Florida, a
381 private attorney who has been appointed to represent a capital
382 defendant for postconviction litigation, or a private attorney
383 who has been hired by the capital defendant or who has agreed to
384 work pro bono for a capital defendant for postconviction
385 litigation.
386 (c) "Public records" has the same meaning as provided in s.
387 119.011.
388 (d) "Trial court" means:
389 1. The judge who entered the judgment and imposed the
390 sentence of death; or
391 2. If a motion for postconviction relief in a capital case
392 has been filed and a different judge has already been assigned
393 to that motion, the judge who is assigned to rule on that
394 motion.
395 (2) APPLICABILITY AND SCOPE.—This section only applies to
396 the production of public records for capital postconviction
397 defendants and does not change or alter the time periods
398 specified in s. 924.056 or s. 924.058. Furthermore, this section
399 does not affect, expand, or limit the production of public
400 records for any purposes other than use in a proceeding held
401 pursuant to s. 924.056 or s. 924.058. This section shall not be
402 a basis for renewing public records requests that have been
403 initiated previously or for relitigating issues pertaining to
404 production of public records upon which a court has ruled prior
405 to July 1, 2015. Public records requests made in postconviction
406 proceedings in capital cases in which the conviction and

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407 sentence of death have been affirmed on direct appeal before
408 July 1, 2015, shall be governed by the rules and laws in effect
409 immediately prior to the effective date of this act.
410 (3) RECORDS REPOSITORY.—The Secretary of State shall
411 establish and maintain a records repository for the purpose of
412 archiving capital postconviction public records as provided for
413 in this section.
414 (4) FILING AND SERVICE.—
415 (a) The original of all notices, requests, or objections
416 filed under this section must be filed with the clerk of the
417 trial court. Copies must be served on the trial court, the
418 Attorney General, the state attorney, collateral counsel, and
419 any affected person or agency, unless otherwise required by this
420 section.
421 (b) Service shall be made pursuant to Florida Rule of
422 Criminal Procedure 3.030.
423 (c) In all instances requiring written notification or
424 request, the party who has the obligation of providing a
425 notification or request shall provide proof of receipt.
426 (d) Persons and agencies receiving postconviction public
427 records notifications or requests pursuant to this section are
428 not required to furnish records filed in a trial court prior to
429 the receipt of the notice.
430 (5) ACTION UPON ISSUANCE OF THE MANDATE ON DIRECT APPEAL.—
431 (a) Within 15 days after receiving written notification of
432 the Supreme Court of Florida's mandate affirming the sentence of
433 death, the Attorney General shall file with the trial court a
434 written notice of the mandate and serve a copy of it upon the
435 state attorney who prosecuted the case, the Department of

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436 Corrections, and the defendant's trial counsel. The notice to
437 the state attorney shall direct the state attorney to submit
438 public records to the records repository within 90 days after
439 receipt of written notification and to notify each law
440 enforcement agency involved in the investigation of the capital
441 offense to submit public records to the records repository
442 within 90 days after receipt of written notification. The notice
443 to the Department of Corrections shall direct the department to
444 submit public records to the records repository within 90 days
445 after receipt of written notification.
446 (b) Within 90 days after receiving written notification of
447 issuance of the Supreme Court of Florida's mandate affirming a
448 death sentence, the state attorney shall provide written
449 notification to the Attorney General of the name and address of
450 any additional person or agency that has public records
451 pertinent to the case.
452 (c) Within 90 days after receiving written notification of
453 issuance of the Supreme Court of Florida's mandate affirming a
454 death sentence, the defendant's trial counsel shall provide
455 written notification to the Attorney General of the name and
456 address of any person or agency with information pertinent to
457 the case which has not previously been provided to collateral
458 counsel.
459 (d) Within 15 days after receiving written notification of
460 any additional person or agency pursuant to paragraphs (b) or
461 (c), the Attorney General shall notify all persons or agencies
462 identified pursuant to paragraphs (b) or (c) that these persons
463 or agencies are required by law to copy, index, and deliver to
464 the records repository all public records pertaining to the case

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465 that are in their possession. The person or agency shall bear
466 the costs related to copying, indexing, and delivering the
467 records.
468 (6) ACTION UPON RECEIPT OF NOTICE OF MANDATE.—
469 (a) Within 15 days after receipt of a written notice of the
470 mandate from the Attorney General, the state attorney shall
471 provide written notification to each law enforcement agency
472 involved in the specific case to submit public records to the
473 records repository within 90 days after receipt of written
474 notification. A copy of the notice shall be served upon the
475 defendant's trial counsel.
476 (b) Within 90 days after receipt of a written notice of the
477 mandate from the Attorney General, the state attorney shall
478 copy, index, and deliver to the records repository all public
479 records that were produced in the state attorney's investigation
480 or prosecution of the case. The state attorney shall bear the
481 costs. The state attorney shall also provide written
482 notification to the Attorney General of compliance with this
483 section, including certifying that, to the best of the state
484 attorney's knowledge or belief, all public records in the state
485 attorney's possession have been copied, indexed, and delivered
486 to the records repository as required by this section.
487 (c) Within 90 days after receipt of written notification of
488 the mandate from the Attorney General, the Department of
489 Corrections shall copy, index, and deliver to the records
490 repository all public records determined by the department to be
491 relevant to the subject matter of a proceeding under s. 924.056
492 or s. 924.058, unless such copying, indexing, and delivering
493 would be unduly burdensome. The department shall bear the costs.

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494 The secretary of the department shall provide written
495 notification to the Attorney General of compliance with this
496 paragraph certifying that, to the best of the secretary of the
497 department's knowledge or belief, all such public records in the
498 possession of the secretary of the department have been copied,
499 indexed, and delivered to the records repository.
500 (d) Within 90 days after receipt of written notification of
501 the mandate from the state attorney, a law enforcement agency
502 shall copy, index, and deliver to the records repository all
503 public records which were produced in the investigation or
504 prosecution of the case. Each agency shall bear the costs. The
505 chief law enforcement officer of each law enforcement agency
506 shall provide written notification to the Attorney General of
507 compliance with this paragraph including certifying that, to the
508 best of the chief law enforcement officer's knowledge or belief,
509 all such public records in possession of the agency or in
510 possession of any employee of the agency, have been copied,
511 indexed, and delivered to the records repository.
512 (e) Within 90 days after receipt of written notification of
513 the mandate from the Attorney General, each additional person or
514 agency identified pursuant to paragraphs (5)(b) or (5)(c) shall
515 copy, index, and deliver to the records repository all public
516 records which were produced during the prosecution of the case.
517 The person or agency shall bear the costs. The person or agency
518 shall provide written notification to the Attorney General of
519 compliance with this subdivision and shall certify, to the best
520 of the person or agency's knowledge and belief, all such public
521 records in the possession of the person or agency have been
522 copied, indexed, and delivered to the records repository.

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523 (7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—
524 (a) Any public records delivered to the records repository
525 pursuant to this section that are confidential or exempt from
526 the requirements of s. 119.07(1) or Art. I, Section 24(a),
527 Florida Constitution, must be separately contained, without
528 being redacted, and sealed. The outside of the container must
529 clearly identify that the public record is confidential or
530 exempt and that the seal may not be broken without an order of
531 the trial court. The outside of the container must identify the
532 nature of the public records and the legal basis for the
533 exemption.
534 (b) Upon the entry of an appropriate court order, sealed
535 containers subject to an inspection by the trial court shall be
536 shipped to the clerk of court. The containers may be opened only
537 for inspection by the trial court in camera. The moving party
538 shall bear all costs associated with the transportation and
539 inspection of such records by the trial court. The trial court
540 shall perform the unsealing and inspection without ex parte
541 communications and in accord with procedures for reviewing
542 sealed documents.
543 (8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—
544 (a) Within 240 days after collateral counsel is appointed,
545 retained, or appears pro bono, such counsel shall send a written
546 demand for additional public records to each person or agency
547 submitting public records or identified as having information
548 pertinent to the case under subsection (5).
549 (b) Within 90 days of receipt of the written demand, each
550 person or agency notified under this subsection shall deliver to
551 the records repository any additional public records in the

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552 possession of the person or agency that pertain to the case and
553 shall certify to the best of the person or agency's knowledge
554 and belief that all additional public records have been
555 delivered to the records repository or, if no additional public
556 records are found, shall recertify that the public records
557 previously delivered are complete.
558 (c) Within 60 days of receipt of the written demand, any
559 person or agency may file with the trial court an objection to
560 the written demand described in paragraph (a). The trial court
561 shall hold a hearing and issue a ruling within 30 days after the
562 filing of any objection, ordering a person or agency to produce
563 additional public records if the court determines each of the
564 following exists:
565 1. Collateral counsel has made a timely and diligent search
566 as provided in this section.
567 2. Collateral counsel's written demand identifies, with
568 specificity, those additional public records that are not at the
569 records repository.
570 3. The additional public records sought are relevant to the
571 subject matter of a postconviction proceeding under s. 924.056
572 or s. 924.058, or appear reasonably calculated to lead to the
573 discovery of admissible evidence.
574 4. The additional public records request is not overly
575 broad or unduly burdensome.
576 (9) LIMITATION ON POSTPRODUCTION REQUEST FOR ADDITIONAL
577 RECORDS.—
578 (a) In order to obtain public records in addition to those
579 provided under subsections (6), (7), and (8), collateral counsel
580 shall file an affidavit in the trial court which:

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581 1. Attests that collateral counsel has made a timely and
582 diligent search of the records repository; and
583 2. Identifies with specificity those public records not at
584 the records repository; and
585 3. Establishes that the additional public records are
586 either relevant to the subject matter of the postconviction
587 proceeding or are reasonably calculated to lead to the discovery
588 of admissible evidence; and
589 4. Shall be served in accord with subsection (4).
590 (b) Within 30 days after the affidavit of collateral
591 counsel is filed, the trial court shall order a person or agency
592 to produce additional public records only upon finding each of
593 the following:
594 1. Collateral counsel has made a timely and diligent search
595 of the records repository;
596 2. Collateral counsel's affidavit identifies with
597 specificity those additional public records that are not at the
598 records repository;
599 3. The additional public records sought are either relevant
600 to the subject matter of a capital postconviction proceeding or
601 appear reasonably calculated to lead to the discovery of
602 admissible evidence; and
603 4. The additional records request is not overly broad or
604 unduly burdensome.
605 (10) Collateral counsel shall provide the personnel,
606 supplies, and any necessary equipment to copy records held at
607 the records repository.
608 (11) AUTHORITY OF THE COURT.—In proceedings under this
609 section the trial court may:

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610 (a) Compel or deny disclosure of records;
611 (b) Conduct an in-camera inspection;
612 (c) Extend the times in this section upon a showing of good
613 cause;
614 (d) Impose sanctions upon any party, person, or agency
615 affected by this section including initiating contempt
616 proceedings, taxing expenses, extending time, ordering facts to
617 be established, and granting other relief; and
618 (e) Resolve any dispute arising under this section unless
619 jurisdiction is in an appellate court.
620 (12) SCOPE OF PRODUCTION AND RESOLUTION OF PRODUCTION
621 ISSUES.—
622 (a) Unless otherwise limited, the scope of production under
623 any part of this section shall be that the public records sought
624 are not privileged or immune from production and are either
625 relevant to the subject matter of a postconviction proceeding
626 under s. 924.056 or s. 924.058 or are reasonably calculated to
627 lead to the discovery of admissible evidence.
628 (b) Any objections or motions to compel production of
629 public records pursuant to this section shall be filed within 30
630 days after the end of the production time period provided by
631 this section. Counsel for the party objecting or moving to
632 compel shall file a copy of the objection or motion directly
633 with the trial court. The trial court shall hold a hearing on
634 the objection or motion on an expedited basis.
635 (c) The trial court may order mediation for any controversy
636 as to public records production pursuant to this section in
637 accord with Florida Rules of Civil Procedure 1.700, 1.710,
638 1.720, 1.730, or the trial court may refer any such controversy

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639 to a magistrate in accord with Florida Rule of Civil Procedure
640 1.490.
641 (13) DESTRUCTION OF RECORDS REPOSITORY RECORDS.—Sixty days
642 after a capital sentence is carried out, after a defendant is
643 released from incarceration following the granting of a pardon
644 or reversal of the sentence, or after a defendant has been
645 resentenced to a term of years, the Attorney General shall
646 provide written notification of this occurrence to the secretary
647 of State. After the expiration of the 60 days, the Secretary of
648 State may then destroy the copies of the records held by the
649 records repository that pertain to that case, unless an
650 objection to the destruction is filed in the trial court and
651 served upon the Secretary of State. If no objection has been
652 served within the 60-day period, the records may then be
653 destroyed. If an objection is served, the records shall not be
654 destroyed until a final disposition of the objection.
655 Section 15. Effective July 1, 2013, section 27.7091,
656 Florida Statutes, is amended to read:
657 27.7091 Legislative recommendations to Supreme Court;
658 postconviction proceedings; pro bono service credit.—In the
659 interest of promoting justice and integrity with respect to
660 capital collateral representation, the Legislature recommends
661 that the Supreme Court~~:~~
662 ~~(1) Adopt by rule the provisions of s. 924.055, which limit~~
663 ~~the time for postconviction proceedings in capital cases.~~
664 ~~(2)~~ award pro bono service credit for time spent by an
665 attorney in providing legal representation to an individual
666 sentenced to death in this state, regardless of whether the
667 attorney receives compensation for such representation.

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668 Section 16. Effective July 1, 2013, subsection (3) of
669 section 27.711, Florida Statutes, is amended to read:
670 27.711 Terms and conditions of appointment of attorneys as
671 counsel in postconviction capital collateral proceedings.—
672 (3) An attorney appointed to represent a capital defendant
673 is entitled to payment of the fees set forth in this section
674 only upon full performance by the attorney of the duties
675 specified in this section and approval of payment by the trial
676 court, and the submission of a payment request by the attorney,
677 subject to the availability of sufficient funding specifically
678 appropriated for this purpose. ~~An attorney may not be~~
679 ~~compensated under this section for work performed by the~~
680 ~~attorney before July 1, 2003, while employed by the northern~~
681 ~~regional office of the capital collateral counsel.~~ The Chief
682 Financial Officer shall notify the executive director and the
683 court if it appears that sufficient funding has not been
684 specifically appropriated for this purpose to pay any fees which
685 may be incurred. The attorney shall maintain appropriate
686 documentation, including a current and detailed hourly
687 accounting of time spent representing the capital defendant. The
688 fee and payment schedule in this section is the exclusive means
689 of compensating a court-appointed attorney who represents a
690 capital defendant. When appropriate, a court-appointed attorney
691 must seek further compensation from the Federal Government, as
692 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
693 corpus litigation in the federal courts.
694 Section 17. Paragraph (b) of subsection (4) of section
695 27.711, Florida Statutes, is amended to read:
696 27.711 Terms and conditions of appointment of attorneys as

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697 counsel in postconviction capital collateral proceedings.—
698 (4) Upon approval by the trial court, an attorney appointed
699 to represent a capital defendant under s. 27.710 is entitled to
700 payment of the following fees by the Chief Financial Officer:
701 (b) The attorney is entitled to $100 per hour, up to a
702 maximum of $20,000, after timely filing in the trial court the
703 capital defendant's complete original motion for postconviction
704 relief ~~under the Florida Rules of Criminal Procedure~~. The motion
705 must raise all issues to be addressed by the trial court.
706 However, an attorney is entitled to fees under this paragraph if
707 the court schedules a hearing on a matter that makes the filing
708 of the original motion for postconviction relief unnecessary or
709 if the court otherwise disposes of the case.
710
711 The hours billed by a contracting attorney under this subsection
712 may include time devoted to representation of the defendant by
713 another attorney who is qualified under s. 27.710 and who has
714 been designated by the contracting attorney to assist him or
715 her.
716 Section 18. Section 922.095, Florida Statutes, is amended
717 to read:
718 922.095 Grounds for death warrant; limitations of actions.—
719 A person who is convicted and sentenced to death must pursue all
720 possible collateral remedies within the time limits provided by
721 statute. Failure to seek relief within the statutory time limits
722 constitutes grounds for issuance of a death warrant under s.
723 922.052 or s. 922.14. Any postconviction claim not pursued
724 within the statutory time limits is barred. No postconviction
725 claim filed after the time required by law shall be grounds for

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726 a judicial stay of any warrant.
727 Section 19. Section 922.108, Florida Statutes, is reenacted
728 to read:
729 922.108 Sentencing orders in capital cases.—The sentence of
730 death must not specify any particular method of execution. The
731 wording or form of the sentencing order shall not be grounds for
732 reversal of any sentence.
733 Section 20. Section 924.055, Florida Statutes, is amended
734 to read:
735 924.055 Postconviction review in capital cases; legislative
736 findings and intent.—
737 (1) It is the intent of the Legislature to reduce delays in
738 capital cases and to ensure that all ~~appeals and~~ postconviction
739 actions in capital cases are resolved as quickly as possible
740 ~~within 5 years~~ after the date a sentence of death is imposed in
741 the circuit court. ~~All capital postconviction actions must be~~
742 ~~filed as early as possible after the imposition of a sentence of~~
743 ~~death which may be during a direct appeal of the conviction and~~
744 ~~sentence.~~ A person sentenced to death or that person's capital
745 postconviction counsel must file any postconviction ~~legal~~ action
746 in compliance with the timeframes ~~statutes of limitation~~
747 established in s. 924.056, s. 924.058, and elsewhere in this
748 chapter. Except as expressly allowed by s. 924.058 ~~s.~~
749 ~~924.056(5)~~, a person sentenced to death or that person's capital
750 postconviction counsel may not file more than one postconviction
751 action in a sentencing court and one appeal therefrom to the
752 Florida Supreme Court, unless authorized by law.
753 (2) It is the further intent of the Legislature that no
754 state resources be expended in violation of this act. In the

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755 event that any state employee or party contracting with the
756 state violates the provisions of this act, the Attorney General
757 shall deliver to the Speaker of the House of Representatives and
758 the President of the Senate a copy of any court pleading or
759 order that describes or adjudicates a violation.
760 Section 21. Section 924.056, Florida Statutes, is amended
761 to read:
762 (Substantial rewording of section.
763 See s. 924.056, F.S., for present text.)
764 924.056 Capital postconviction proceedings.—This section
765 governs all postconviction proceedings in every capital case in
766 which the conviction and sentence of death have been affirmed on
767 direct appeal on or after July 1, 2015.
768 (1) APPOINTMENT OF POSTCONVICTION COUNSEL.—
769 (a) Upon the issuance of the mandate affirming a judgment
770 and sentence of death on direct appeal, the Supreme Court of
771 Florida shall at the same time issue an order appointing the
772 appropriate office of the Capital Collateral Regional Counsel.
773 (b) Within 30 days of being appointed, the regional counsel
774 shall file a notice of appearance in the trial court or a motion
775 to withdraw based on an actual conflict of interest or some
776 other legal ground. Motions to withdraw filed more than 30 days
777 after being appointed shall not be entertained unless based on
778 an actual conflict of interest.
779 (c) The court shall conduct a hearing in accordance with s.
780 924.059 if the regional counsel's motion to withdraw is based on
781 an actual conflict. If the regional counsel files a motion to
782 withdraw based on any other legal ground, the chief judge or
783 assigned judge shall rule on the motion within 15 days of the

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784 filling of the motion. If the court determines that new
785 postconviction counsel should be appointed, the court shall
786 appoint another regional counsel and, only if a conflict exists
787 with the replacement regional counsel, appoint new
788 postconviction counsel from the statewide registry of attorneys
789 compiled and maintained by the Justice Administrative Commission
790 pursuant to s. 27.710.
791 (d) If the defendant requests without good cause that any
792 attorney appointed under this subsection be removed or replaced,
793 the court shall notify the defendant that no further state
794 resources may be expended for postconviction representation for
795 that defendant, unless the defendant withdraws the request to
796 remove or replace postconviction counsel. If the defendant does
797 not withdraw his or her request, then any appointed attorney
798 must be removed from the case and no further state resources may
799 be expended for the defendant's postconviction representation.
800 (2) PRELIMINARY PROCEDURES.—
801 (a) Within 30 days of the issuance of mandate affirming a
802 judgment and sentence of death on direct appeal, the chief judge
803 shall assign the case to a judge qualified under the Rules of
804 Judicial Administration to conduct capital proceedings.
805 (b) The assigned judge shall conduct a status conference no
806 later than 90 days after the judicial assignment, and shall hold
807 status conferences at least every 90 days thereafter until the
808 evidentiary hearing has been completed or the postconviction
809 motion has been ruled on without a hearing. The attorneys, with
810 leave of the trial court, may, with leave of the court, appear
811 electronically at the status conferences. Requests to appear
812 electronically shall be liberally granted. Pending motions,

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813 disputes involving public records, or any other matters ordered
814 by the court shall be heard at the status conferences. The
815 inmate's presence is not required at status conferences held
816 pursuant to this paragraph.
817 (c) Within 45 days of appointment of postconviction
818 counsel, the defendant's trial counsel shall provide to
819 postconviction counsel all information pertaining to the
820 defendant's capital case which was obtained during the
821 representation of the defendant. Postconviction counsel shall
822 maintain the confidentiality of all confidential information
823 received.
824 (3) TIME LIMITATIONS ON FILING A POSTCONVICTION MOTION.—
825 (a) Any postconviction motion must be filed by the inmate
826 within one year after the judgment and sentence become final.
827 For the purposes of this subsection, a judgment is final:
828 1. Upon the expiration of the time permitted to file in the
829 United States Supreme Court a petition for writ of certiorari
830 seeking review of the Supreme Court of Florida decision
831 affirming a judgment and sentence of death; or
832 2. Upon the disposition of the petition for writ of
833 certiorari by the United States Supreme Court, if filed.
834 (b) No postconviction motion shall be filed or considered
835 pursuant to this subsection if filed beyond the time limitation
836 provided in paragraph (a) unless it alleges:
837 1. The facts on which the motion is predicated were unknown
838 to the movant or the movant's attorney and could not have been
839 ascertained by the exercise of due diligence;
840 2. The fundamental constitutional right asserted was not
841 established within the period provided for in paragraph (a) and

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842 has been held to apply retroactively; or
843 3. Postconviction counsel, through neglect, failed to file
844 the motion.
845 (c) All petitions for extraordinary relief in which the
846 Supreme Court of Florida has original jurisdiction, including
847 petitions for writs of habeas corpus, shall be filed
848 simultaneously with the initial brief filed on behalf of the
849 death-sentenced inmate in the appeal of the circuit court's
850 order on the initial motion for postconviction relief filed
851 under this subsection.
852 (d) The time limitation provided in paragraph (a) is
853 established with the understanding that each inmate sentenced to
854 death will have counsel assigned and available to begin
855 addressing the inmate's postconviction issues within the time
856 specified in this subsection. Should the Governor sign a death
857 warrant before the expiration of the time limitation provided in
858 paragraph (a), the Supreme Court of Florida, on a defendant's
859 request, will grant a stay of execution to allow any
860 postconviction relief motions to proceed in a timely manner.
861 (4) CONTENTS OF A POSTCONVICTION MOTION.—
862 (a) No state court shall consider a postconviction motion
863 unless the motion is fully pled. For the purposes of this
864 subsection, a fully pled postconviction motion is one which
865 complies with paragraph (b). The fully pled postconviction
866 motion must raise all cognizable claims that the defendant's
867 judgment or sentence was entered in violation of the
868 Constitution or laws of the United States or the Constitution or
869 the laws of the state, including any claim of ineffective
870 assistance of trial counsel or direct appeal counsel,

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871 allegations of innocence, or that the state withheld evidence
872 favorable to the defendant.
873 (b) The defendant's postconviction motion shall be filed
874 under oath and shall be fully pled to include:
875 1. The judgment or sentence under attack and the court
876 which rendered the same;
877 2. A statement of each issue raised on appeal and the
878 disposition thereof;
879 3. Whether a previous postconviction motion has been filed
880 and, if so, the disposition of all previous claims raised in
881 postconviction litigation; if a previous motion or motions have
882 been filed, the reason or reasons the claim or claims in the
883 present motion were not raised in the former motion or motions;
884 4. The nature of the relief sought;
885 5. A fully detailed allegation of the factual basis for any
886 claim for which an evidentiary hearing is sought, including the
887 attachment of any document supporting the claim, the name and
888 address of any witness, the attachment of affidavits of the
889 witnesses or a proffer of the testimony;
890 6. A fully detailed allegation as to the basis for any
891 purely legal or constitutional claim for which an evidentiary
892 hearing is not required and the reason that this claim could not
893 have been or was not raised on direct appeal; and
894 7. A concise memorandum of applicable case law as to each
895 claim asserted.
896 (c) A postconviction motion and memorandum of law filed
897 under this subsection shall not exceed 75 pages exclusive of the
898 attachments. Attachments shall include, but are not limited to,
899 the judgment and sentence. The memorandum of law shall set forth

900 the applicable case law supporting the granting of relief as to
901 each separately pled claim.
902 (d) Claims raised in a postconviction motion that could
903 have or should have been raised at trial and, if properly
904 preserved, on direct appeal of the judgment and sentence, are
905 barred.
906 (e) A postconviction motion may not include a claim of
907 ineffective assistance of collateral postconviction counsel.
908 (f) A postconviction motion may not be amended without
909 court approval. In no instance shall such motion be amended
910 beyond the time limitations provided by subsection (3) for the
911 filing of a postconviction motion. If amendment is allowed, the
912 state shall file an amended answer within 20 days after the
913 amended motion is filed.
914 (g) Any postconviction motion that does not comply with any
915 requirement in this subsection shall not be considered in any
916 state court.
917 (5) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—
918 (a) All pleadings in a postconviction proceeding shall be
919 filed with the clerk of the trial court and served on the
920 assigned judge, opposing party, and the Attorney General. The
921 clerk shall immediately deliver to the chief judge or the
922 assigned judge any motion filed in a postconviction proceeding
923 along with the court file.
924 (b) If the defendant intends to offer expert testimony of
925 his or her mental status in a postconviction proceeding, the
926 state shall be entitled to have the defendant examined by its
927 own mental health expert. If the defendant fails to cooperate
928 with the state's expert, the trial court may, in its discretion,

929 proceed as provided in rule 3.202(e) of the Florida Rules of
930 Criminal Procedure. Reports provided to either party by an
931 expert witness shall be disclosed to opposing counsel upon
932 receipt.
933 (c) The state shall file its answer within 60 days of the
934 filing of an initial postconviction motion. The answer and
935 accompanying memorandum of law shall not exceed 75 pages,
936 exclusive of attachments and exhibits. The answer shall address
937 the legal sufficiency of any claim in the motion, respond to the
938 allegations of the motion, address any procedural bars, and
939 state the reasons that an evidentiary hearing is or is not
940 required. As to any claims of legal insufficiency or procedural
941 bar, the state shall include a short statement of any applicable
942 case law.
943 (d) No later than 30 days after the state files its answer
944 to an initial motion, the trial court shall hold a case
945 management conference. At the case management conference, both
946 parties shall disclose all documentary exhibits that they intend
947 to offer at the evidentiary hearing, provide an exhibit list of
948 all such exhibits, and exchange a witness list with the names
949 and addresses of any potential witnesses. All expert witnesses
950 shall be specifically designated on the witness list, and copies
951 of all expert reports shall be attached. At the case management
952 conference, the trial court shall:
953 1. Schedule an evidentiary hearing, to be held within 90
954 days, on claims listed by the defendant as requiring a factual
955 determination;
956 2. Hear argument on any purely legal claims not based on
957 disputed facts; and

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958 3. Resolve disputes arising from the exchange of
959 information under this paragraph.
960 (e) If the court determines that an evidentiary hearing is
961 not necessary and that the defendant's postconviction motion is
962 legally insufficient or that the motion, files, and records in
963 the case show that the defendant is not entitled to relief, the
964 court shall, within 30 days of the conclusion of the case
965 management conference, deny the motion, setting forth a detailed
966 rationale therefore, and attaching or referencing such portions
967 of the record as are necessary to allow for meaningful appellate
968 review.
969 (f) Immediately following an evidentiary hearing, the trial
970 court shall order a transcript of the hearing which shall be
971 filed within 30 days. Within 30 days of receipt of the
972 transcript, the court shall render its order, ruling on each
973 claim considered at the evidentiary hearing and all other claims
974 raised in the postconviction motion, making detailed findings of
975 fact and conclusions of law with respect to each claim, and
976 attaching or referencing such portions of the record as are
977 necessary to allow for meaningful appellate review. The order
978 issued after the evidentiary hearing shall resolve all the
979 claims raised in the postconviction motion and shall be
980 considered the final order for purposes of appeal. The clerk of
981 the trial court shall promptly serve upon the parties and the
982 Attorney General a copy of the final order, with a certificate
983 of service.
984 (g) Motions for rehearing shall be filed within 15 days of
985 the rendition of the trial court's order and a response thereto
986 filed within 10 days thereafter. The trial court's order

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987 disposing of the motion for rehearing shall be rendered no later
988 than 15 days after the response is filed.
989 (h) An appeal may be taken by filing a notice to appeal
990 with the Florida Supreme Court within 15 days of the entry of a
991 final order on a capital postconviction motion. No interlocutory
992 appeal shall be permitted.
993 Section 22. Section 924.057, Florida Statutes, is amended
994 to read:
995 924.057 ~~Limitation on~~ Capital postconviction proceedings in
996 cases in which the conviction and sentence of death were
997 affirmed on direct appeal before July 1, 2015 ~~death sentence was~~
998 ~~imposed before January 14, 2000. This section shall govern all~~
999 ~~capital postconviction actions in cases in which the trial court~~
1000 ~~imposed the sentence of death before the effective date of this~~
1001 ~~act.~~
1002 (1) Nothing in this act shall expand any right or time
1003 period allowed for the prosecution of capital postconviction
1004 claims in any case in which a postconviction action was
1005 commenced or should have been commenced prior to the effective
1006 date of this act.
1007 (2) Postconviction proceedings in every capital case in
1008 which the conviction and sentence of death have been affirmed on
1009 direct appeal before July 1, 2015, shall be governed by the
1010 rules and laws in effect immediately prior to the effective date
1011 of this act.
1012 ~~(2) Except as provided in s. 924.056(5), in every case in~~
1013 ~~which mandate has issued in the Florida Supreme Court concluding~~
1014 ~~at least one capital postconviction action in the state court~~
1015 ~~system, a successive capital postconviction action shall be~~

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1016 ~~barred on the effective date of this act, unless the rules or~~
1017 ~~law in effect immediately prior to the effective date of this~~
1018 ~~act permitted the successive postconviction action, in which~~
1019 ~~case the action shall be barred on the date provided in~~
1020 ~~subsection (4).~~
1021 ~~(3) All capital postconviction actions pending on the~~
1022 ~~effective date of this act shall be barred, and shall be~~
1023 ~~dismissed with prejudice, unless fully pled in substantial~~
1024 ~~compliance with s. 924.058, or with any superseding order or~~
1025 ~~rule, on or before:~~
1026 ~~(a) The time in which the action would be barred by this~~
1027 ~~section if the action had not begun prior to the effective date~~
1028 ~~of this act, or~~
1029 ~~(b) Any earlier date provided by the rules or law, or court~~
1030 ~~order, in effect immediately prior to the effective date of this~~
1031 ~~act.~~
1032 ~~(4) In every capital case in which the trial court imposed~~
1033 ~~the sentence of death before the effective date of this act, a~~
1034 ~~capital postconviction action shall be barred unless it is~~
1035 ~~commenced on or before January 8, 2001, or any earlier date~~
1036 ~~provided by the rule or law in effect immediately prior to the~~
1037 ~~effective date of this act.~~
1038 Section 23. Section 924.058, Florida Statutes, is amended
1039 to read:
1040 (Substantial rewording of section.
1041 See s. 924.058, F.S., for present text.)
1042 924.058 Successive postconviction motions.—This section
1043 governs successive postconviction motions in all postconviction
1044 proceedings in every capital case in which the conviction and

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1045 sentence of death have been affirmed on direct appeal on or
1046 after July 1, 2015. A postconviction motion is successive if a
1047 state court has previously ruled on a postconviction motion
1048 challenging the same judgment and sentence.
1049 (1) TIME LIMITATIONS ON FILING A SUCCESSIVE POSTCONVICTION
1050 MOTION.—
1051 (a) A successive postconviction motion is barred unless
1052 commenced by filing a fully pled successive postconviction
1053 motion within 90 days:
1054 1. After the facts giving rise to the claim were discovered
1055 or should have been discovered with the exercise of due
1056 diligence; or
1057 2. After the fundamental constitutional right asserted was
1058 established and held to apply retroactively.
1059 (b) No successive postconviction motion shall be filed or
1060 considered pursuant to this subsection if filed beyond the time
1061 limitation provided in paragraph (a) unless it alleges that
1062 postconviction counsel, through neglect, failed to file the
1063 motion.
1064 (2) CONTENTS OF A SUCCESSIVE POSTCONVICTION MOTION.—
1065 (a) No state court shall consider a successive
1066 postconviction motion unless the motion is fully pled. For the
1067 purposes of this subsection, a fully pled successive
1068 postconviction motion includes:
1069 1. All of the pleading requirements of an initial
1070 postconviction motion under s. 924.056;
1071 2. The disposition of all previous claims raised in
1072 postconviction proceedings and the reason or reasons the claim
1073 or claims raised in the present motion were not raised in the

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1074 former motion or motions;
1075 3. If based upon newly discovered evidence, *Brady v.*
1076 *Maryland*, 373 U.S. 83 (1963), or *Giglio v. United States*, 405
1077 U.S. 150 (1972), the following:
1078 a. The names, addresses, and telephone numbers of all
1079 witnesses supporting the claim;
1080 b. A statement that the witness will be available, should
1081 an evidentiary hearing be scheduled, to testify under oath to
1082 the facts alleged in the motion or affidavit;
1083 c. If evidentiary support is in the form of documents,
1084 copies of all documents shall be attached, including any
1085 affidavits obtained; and
1086 d. As to any witness or document listed in the motion or
1087 attachment to the motion, a statement of the reason why the
1088 witness or document was not previously available.
1089 (b) A successive postconviction motion and memorandum of
1090 law filed under this subsection shall not exceed 25 pages
1091 exclusive of the attachments. Attachments shall include, but are
1092 not limited to, the judgment and sentence. The memorandum of law
1093 shall set forth the applicable case law supporting the granting
1094 of relief as to each separately pled claim.
1095 (c) Claims raised in a successive postconviction motion
1096 that could have or should have been raised at trial, on direct
1097 appeal of the judgment and sentence, if properly preserved, and
1098 in the initial postconviction motion, are barred.
1099 (d) A successive postconviction motion may not include a
1100 claim of ineffective assistance of collateral postconviction
1101 counsel.
1102 (e) A succesive postconviction motion may not be amended

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1103 without court approval. In no instance shall such motion be
1104 amended beyond the time limitations provided by subsection (1)
1105 for the filing of a successive postconviction motion. If
1106 amendment is allowed, the state shall file an amended answer
1107 within 20 days after the amended motion is filed.
1108 (f) Any successive postconviction motion that does not
1109 comply with any requirement in this subsection shall not be
1110 considered in any state court.
1111 (3) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—
1112 (a) If the defendant intends to offer expert testimony of
1113 his or her mental status in a successive postconviction motion
1114 proceeding, the state shall be entitled to have the defendant
1115 examined by its own mental health expert. If the defendant fails
1116 to cooperate with the state's expert, the trial court may, in
1117 its discretion, proceed as provided in rule 3.202(e) of the
1118 Florida Rules of Criminal Procedure. Reports provided to either
1119 party by an expert witness shall be disclosed to opposing
1120 counsel upon receipt.
1121 (b) The state shall file its answer within 20 days of the
1122 filing of a successive postconviction motion. The answer shall
1123 not exceed 25 pages, exclusive of attachments and exhibits. The
1124 answer shall address the legal sufficiency of any claim in the
1125 motion, respond to the allegations of the motion, address any
1126 procedural bars, and state the reasons that an evidentiary
1127 hearing is or is not required. As to any claims of legal
1128 insufficiency or procedural bar, the answer shall include a
1129 short statement of any applicable case law.
1130 (c) No later than 30 days after the state files its answer
1131 to a successive postconviction motion, the trial court shall

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1132 hold a case management conference. At the case management
1133 conference, both parties shall disclose all documentary exhibits
1134 that they intend to offer at the evidentiary hearing, provide an
1135 exhibit list of all such exhibits, and exchange a witness list
1136 with the names and addresses of any potential witnesses. All
1137 expert witnesses shall be specifically designated on the witness
1138 list, and copies of all expert reports shall be attached. At the
1139 case management conference, the trial court shall:
1140 1. Schedule an evidentiary hearing, to be held within 90
1141 days, on claims listed by the defendant as requiring a factual
1142 determination;
1143 2. Hear argument on any purely legal claims not based on
1144 disputed facts; and
1145 3. Resolve disputes arising from the exchange of
1146 information under this paragraph.
1147 (d) If the court determines that an evidentiary hearing is
1148 not necessary and that the defendant's successive postconviction
1149 motion is legally insufficient or that the motion, files, and
1150 records in the case show that the defendant is not entitled to
1151 relief, the court shall, within 30 days of the conclusion of the
1152 case management conference, deny the motion, setting forth a
1153 detailed rationale therefore, and attaching or referencing such
1154 portions of the record as are necessary to allow for meaningful
1155 appellate review.
1156 (e) Immediately following an evidentiary hearing, the trial
1157 court shall order a transcript of the hearing which shall be
1158 filed within 30 days. Within 30 days of receipt of the
1159 transcript, the court shall render its order, ruling on each
1160 claim considered at the evidentiary hearing and all other claims

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1161 raised in the successive postconviction motion, making detailed
1162 findings of fact and conclusions of law with respect to each
1163 claim, and attaching or referencing such portions of the record
1164 as are necessary to allow for meaningful appellate review. The
1165 order issued after the evidentiary hearing shall resolve all the
1166 claims raised in the successive postconviction motion and shall
1167 be considered the final order for purposes of appeal. The clerk
1168 of the trial court shall promptly serve upon the parties and the
1169 Attorney General a copy of the final order, with a certificate
1170 of service.
1171 (f) Motions for rehearing shall be filed within 15 days of
1172 the rendition of the trial court's order and a response thereto
1173 filed within 10 days thereafter. The trial court's order
1174 disposing of the motion for rehearing shall be rendered no later
1175 than 15 days after the response is filed.
1176 (g) An appeal may be taken by filing a notice to appeal
1177 with the Florida Supreme Court within 15 days of the entry of a
1178 final order on a capital postconviction motion. No interlocutory
1179 appeal shall be permitted.
1180 Section 24. Section 924.0581, Florida Statutes, is created
1181 to read:
1182 924.0581 Capital postconviction appeals to the Florida
1183 Supreme Court.—This section governs capital postconviction
1184 appeals to the Florida Supreme Court in every capital case in
1185 which the conviction and sentence of death have been affirmed on
1186 direct appeal on or after July 1, 2015.
1187 (1) Initial and Successive Postconviction Motion Appeals.—
1188 (a) When the notice of appeal is filed in the Florida
1189 Supreme Court, the chief justice shall direct the appropriate

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1190 chief judge of the circuit court to monitor the preparation of
1191 the complete record for timely filing in the Florida Supreme
1192 Court.
1193 (b) The complete record in a death penalty appeal shall
1194 include transcripts of all proceedings conducted in the lower
1195 court, all items required by rule 9.200 of the Florida Rules of
1196 Appellate Procedure, and any item listed in any order issued by
1197 the Florida Supreme Court. The record shall begin with the most
1198 recent mandate issued by the Florida Supreme Court; or, in the
1199 event the preceding appeal was disposed of without a mandate,
1200 the most recent filing not already transmitted to the Florida
1201 Supreme Court in a prior record. The record shall exclude any
1202 materials already transmitted to the Florida Supreme Court as
1203 the record in any prior appeal.
1204 (c) The Florida Supreme Court shall take judicial notice of
1205 the appellate records in all prior appeals and writ proceedings
1206 involving a challenge to the same judgment of conviction and
1207 sentence of death. Appellate records subject to judicial notice
1208 under this section shall not be duplicated in the record
1209 transmitted for the appeal under review.
1210 (d) If the sentencing court has denied the initial or
1211 successive postconviction motion without an evidentiary hearing,
1212 the Florida Supreme Court shall initially review the case to
1213 determine whether the trial court correctly resolved the
1214 defendant's claims without an evidentiary hearing. If the
1215 Florida Supreme Court determines an evidentiary hearing should
1216 have been held, the court may remand the case for an evidentiary
1217 hearing. Jurisdiction shall be relinquished to the trial court
1218 for the purpose of conducting an evidentiary hearing on any

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1219 issues identified in the Florida Supreme Court's order. The
1220 trial court must schedule an evidentiary hearing within 30 days
1221 of the Florida Supreme Court's order and conclude the hearing
1222 within 90 days of scheduling. Upon conclusion of the evidentiary
1223 hearing, the record shall be supplemented with the hearing
1224 transcript.
1225 (e) The defendant has 30 days from the date the record is
1226 filed to file an initial brief. The answer brief must be filed
1227 within 20 days after filing of the initial brief. The reply
1228 brief, if any, must be filed within 20 days after filing of the
1229 answer brief. The cross-reply brief, if any, shall be filed
1230 within 20 days thereafter. A brief submitted after these time
1231 periods is barred and shall not be heard.
1232 (f) Oral arguments shall be scheduled within 30 days after
1233 the filing of the defendant's replay brief.
1234 (g)1. The Florida Supreme Court shall render its decision
1235 within 180 days after oral arguments have concluded. If a denial
1236 of an action for postconviction relief is affirmed, the Governor
1237 may proceed to issue a warrant for execution.
1238 2. In instances where the Florida Supreme Court does not
1239 comply with subparagraph 1., the Chief Justice of the Florida
1240 Supreme Court shall, within 10 days after the expiration of the
1241 180 day deadline, submit a report to the Speaker of the Florida
1242 House of Representatives and the President of the Florida Senate
1243 explaining why a decision was not timely rendered. The Chief
1244 Justice shall submit a report to the Speaker of the Florida
1245 House of Representatives and the President of the Florida Senate
1246 every 30 days thereafter in which a decision is not rendered
1247 explaining the reasons therefore.

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1248 (2) PETITIONS FOR EXTRAORDINARY RELIEF.—
1249 (a) Review proceedings under this subsection shall be
1250 treated as original proceedings under rule 9.100 of the Rules of
1251 Appellate Procedure, except as otherwise provided in this
1252 subsection.
1253 (b) A petition for extraordinary relief shall be in the
1254 form prescribed by rule 9.100 of the Rules of Appellate
1255 Procedure, may include supporting documents, and shall recite in
1256 the statement of facts:
1257 1. The date and nature of the lower tribunal's order sought
1258 to be reviewed;
1259 2. The name of the lower tribunal rendering the order;
1260 3. The nature, disposition, and dates of all previous court
1261 proceedings;
1262 4. If a previous petition was filed, the reason the claim
1263 in the present petition was not raised previously; and
1264 5. The nature of the relief sought.
1265 (c) 1. A petition for belated appeal shall include a
1266 detailed allegation of the specific acts sworn to by the
1267 petitioner or petitioner's counsel that constitute the basis for
1268 entitlement to belated appeal, including whether petitioner
1269 requested counsel to proceed with the appeal and the date of any
1270 such request, whether counsel misadvised the petitioner as to
1271 the availability of appellate review or the filing of the notice
1272 of appeal, or whether there were circumstances unrelated to
1273 counsel's action or inaction, including names of individuals
1274 involved and dates of the occurrences, that were beyond the
1275 petitioner's control and otherwise interfered with the
1276 petitioner's ability to file a timely appeal.

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1277 2. A petition for belated appeal shall not be filed more
1278 than 1 year after the expiration of time for filing the notice
1279 of appeal from a final order denying relief pursuant to s.
1280 924.056 or s. 924.058, unless it alleges under oath with a
1281 specific factual basis that the petitioner:
1282 a. Was unaware an appeal had not been timely filed, was not
1283 advised of the right to an appeal, was misadvised as to the
1284 rights to an appeal, or was prevented from timely filing a
1285 notice of appeal due to circumstances beyond the petitioner's
1286 control; and
1287 b. Could not have ascertained such facts by the exercise of
1288 due diligence.
1289 (d) A petition alleging ineffective assistance of appellate
1290 counsel must include detailed allegations of the specific acts
1291 that constitute the alleged ineffective assistance of counsel on
1292 direct appeal and must be filed simultaneously with the initial
1293 brief in the appeal from the lower tribunal's final order
1294 denying relief pursuant to s. 924.056 or s. 924.058.
1295 (3) PETITIONS SEEKING RELIEF OF NONFINAL ORDERS IN DEATH
1296 PENALTY POSTCONVICTION PROECEDINGS.—
1297 (a) This subsection applies to proceedings that invoke the
1298 jurisdiction of the supreme court for review of nonfinal orders
1299 issued in postconviction proceedings following the imposition of
1300 the death penalty. Review of such proceedings shall be treated
1301 as original proceedings under rule 9.100 of the Rules of
1302 Appellate Procedure, except as otherwise provided in this
1303 subsection.
1304 (b) Jurisdiction of the Florida Supreme Court shall be
1305 invoked by filing a petition with the Clerk of the Florida

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1306 Supreme Court within 30 days of rendition of the nonfinal order
1307 to be reviewed. A copy of the petition shall be served on the
1308 opposing party and furnished to the judge who issued the order
1309 to be reviewed. Either party to the death penalty postconviction
1310 proceedings may seek review under this subsection.
1311 (c) The petition shall be in the form prescribed by rule
1312 9.100 of the Rules of Appellate Procedure, and shall contain:
1313 1. The basis for invoking the jurisdiction of the court;
1314 2. The date and nature of the order sought to be reviewed;
1315 3. The name of the lower tribunal rendering the order;
1316 4. The name, disposition, and dates of all previous trial,
1317 appellate, and postconviction proceedings relating to the
1318 conviction and death sentence that are the subject of the
1319 proceedings in which the order sought to be reviewed was
1320 entered;
1321 5. The facts on which the petitioner relies, with
1322 references to the appropriate pages of the supporting appendix;
1323 6. Argument in support of the petition, including an
1324 explanation of why the order departs from the essential
1325 requirements of law and how the order may cause material injury
1326 for which there is no adequate remedy on appeal, and appropriate
1327 citations of authority; and
1328 7. The nature of the relief sought.
1329 (d) The petition shall be accompanied by an appendix, as
1330 prescribed by rule 9.220 of the Rules of Appellate Procedure,
1331 which shall contain the portions of the record necessary for a
1332 determination of the issues presented.
1333 (e) If the petition demonstrates a preliminary basis for
1334 relief or a departure from the essential requirements of law

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1335 that may cause material injury for which there is no adequate
1336 remedy by appeal, the court may issue an order directing the
1337 respondent to show cause, within the time set by the court, why
1338 relief should not be granted. No response shall be permitted
1339 unless ordered by the court. Within 20 days after service of the
1340 response or such other time set by the court, the petitioner may
1341 serve a reply, which shall not exceed 15 pages in length, and
1342 supplemental appendix.
1343 (f) A stay of proceedings under this subsection is not
1344 automatic. The party seeking a stay must petition the Florida
1345 Supreme Court for a stay of proceedings. During the pendency of
1346 a review of a nonfinal order, unless a stay is granted by the
1347 Florida Supreme Court, the lower tribunal may proceed with all
1348 matters, except that the lower tribunal may not render a final
1349 order disposing of the cause pending review of the nonfinal
1350 order.
1351 (g) The parties may not file any other pleadings, motions,
1352 replies, or miscellaneous papers without leave of court.
1353 (h) Seeking review under this subsection shall not extend
1354 the time limitations in s. 924.056, s. 924.058, or s. 27.7081.
1355 Section 25. Effective July 1, 2013, section 924.0585,
1356 Florida Statutes, is created to read:
1357 924.0585 Capital postconviction proceedings; reporting
1358 requirements.—The Florida Supreme Court shall annually report to
1359 the Speaker of the Florida House of Representatives and the
1360 President of the Florida Senate the status of each capital case
1361 in which a postconviction action has been filed that has been
1362 pending for more than 3 years. The report must include the name
1363 of the state court judge involved in the case.

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1364 Section 26. Section 924.0585, Florida Statutes, as created
1365 by this act, is amended to read:
1366 924.0585 Capital postconviction proceedings; reporting
1367 requirements.—
1368 (3) A capital postconviction action filed in violation of
1369 the time limitations provided by statute is barred, and all
1370 claims raised therein are waived. A state court shall not
1371 consider any capital postconviction action filed in violation of
1372 s. 924.056 or s. 924.058. The Attorney General shall deliver to
1373 the Governor, the President of the Senate, and the Speaker of
1374 the House of Representatives a copy of any pleading or order
1375 that alleges or adjudicates any violation of this provision.
1376 Section 27. Section 924.059, Florida Statutes, is amended
1377 to read:
1378 (Substantial rewording of section.
1379 See s. 924.059, F.S., for present text.)
1380 924.059 Conflicts of interest in capital postconviction
1381 proceedings.—In any capital postconviction proceeding in which
1382 it is alleged that there is a conflict of interest with
1383 postconviction counsel, the court shall hold a hearing within 30
1384 days of such allegation to determine whether an actual conflict
1385 exists and whether such conflict will adversely affect a
1386 defendant’s lawyer’s performance. An actual conflict of interest
1387 exists when an attorney actively represents conflicting
1388 interests. To demonstrate an actual conflict, the defendant must
1389 identify specific evidence suggesting that his or her interests
1390 were or may be compromised. A possible, speculative, or merely
1391 hypothetical conflict is insufficient to support an allegation
1392 that a conflict of interest exists. The court must rule within

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1393 10 days of the conclusion of the hearing.
1394 Section 28. Section 924.0591, Florida Statutes, is created
1395 to read:
1396 924.0591 Incompetence to proceed in capital postconviction
1397 proceedings.—
1398 (1) A death-sentenced inmate pursuing collateral relief who
1399 is found by the court to be mentally incompetent shall not be
1400 proceeded against if there are factual matters at issue, the
1401 development or resolution of which require the inmate's input.
1402 However, all collateral relief issues that involve only matters
1403 of record and claims that do not require the inmate's input
1404 shall proceed in collateral proceedings notwithstanding the
1405 inmate's incompetency.
1406 (2) If, at any stage of a postconviction proceeding, the
1407 court determines that there are reasonable grounds to believe
1408 that a death-sentenced inmate is incompetent to proceed and that
1409 factual matters are at issue, the development or resolution of
1410 which require the inmate's input, a judicial determination of
1411 incompetency is required.
1412 (3) Collateral counsel may file a motion for competency
1413 determination and an accompanying certificate of counsel that
1414 the motion is made in good faith and on reasonable grounds to
1415 believe that the death-sentenced inmate is incompetent to
1416 proceed. The motion and certificate shall replace the signed
1417 oath by the inmate that otherwise must accompany a
1418 postconviction motion filed under s. 924.056 and s. 924.058.
1419 (4) The motion for competency examination shall be in
1420 writing and shall allege with specificity the factual matters at
1421 issue and the reason that a competency consultation with the

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1422 inmate is necessary with respect to each factual matter
1423 specified. To the extent that it does not invade the lawyer-
1424 client privilege with collateral counsel, the motion shall
1425 contain a recital of the specific observations of, and
1426 conversations with, the death-sentenced inmate that have formed
1427 the basis of the motion.
1428 (5) If the court finds that there are reasonable grounds to
1429 believe that a death-sentenced inmate is incompetent to proceed
1430 in a postconviction proceeding in which factual matters are at
1431 issue, the development or resolution of which require the
1432 inmate's input, the court shall order the inmate examined by no
1433 more than 3, nor fewer than 2, experts before setting the matter
1434 for a hearing. The court may seek input from the death-sentenced
1435 inmate's counsel and the state attorney before appointment of
1436 the experts.
1437 (6) The order appointing experts shall:
1438 (a) Identify the purpose of the evaluation and specify the
1439 area of inquiry that should be addressed;
1440 (b) Specify the legal criteria to be applied; and
1441 (c) Specify the date by which the report shall be submitted
1442 and to whom it shall be submitted.
1443 (7) Counsel for both the death-sentenced inmate and the
1444 state may be present at the examination, which shall be
1445 conducted at a date and time convenient for all parties and the
1446 Department of Corrections.
1447 (8) On appointment by the court, the experts shall examine
1448 the death-sentenced inmate with respect to the issue of
1449 competence to proceed, as specified by the court in its order
1450 appointing the experts to evaluate the inmate, and shall

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1451 evaluate the inmate as ordered.
1452 (a) The experts first shall consider factors related to the
1453 issue of whether the death-sentenced inmate meets the criteria
1454 for competence to proceed, that is, whether the inmate has
1455 sufficient present ability to consult with counsel with a
1456 reasonable degree of rational understanding and whether the
1457 inmate has a rational as well as factual understanding of the
1458 pending collateral proceedings.
1459 (b) In considering the issue of competence to proceed, the
1460 experts shall consider and include in their report:
1461 1. The inmate's capacity to understand the adversary nature
1462 of the legal process and the collateral proceedings;
1463 2. The inmate's ability to disclose to collateral counsel
1464 facts pertinent to the postconviction proceeding at issue; and
1465 3. Any other factors considered relevant by the experts and
1466 the court as specified in the order appointing the experts.
1467 (c) Any written report submitted by an expert shall:
1468 1. Identify the specific matters referred for evaluation;
1469 2. Describe the evaluative procedures, techniques, and
1470 tests used in the examination and the purpose or purposes for
1471 each;
1472 3. State the expert's clinical observations, findings, and
1473 opinions on each issue referred by the court for evaluation, and
1474 indicate specifically those issues, if any, on which the expert
1475 could not give an opinion; and
1476 4. Identify the sources of information used by the expert
1477 and present the factual basis for the expert's clinical findings
1478 and opinions.
1479 (9) If the experts find that the death-sentenced inmate is

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1480 incompetent to proceed, the experts shall report on any
1481 recommended treatment for the inmate to attain competence to
1482 proceed. In considering the issues relating to treatment, the
1483 experts shall report on:
1484 (a) The mental illness or mental retardation causing the
1485 incompetence;
1486 (b) The treatment or treatments appropriate for the mental
1487 illness or mental retardation of the inmate and an explanation
1488 of each of the possible treatment alternatives in order of
1489 choices; and
1490 (c) The likelihood of the inmate attaining competence under
1491 the treatment recommended, an assessment of the probable
1492 duration of the treatment required to restore competence, and
1493 the probability that the inmate will attain competence to
1494 proceed in the foreseeable future.
1495 (10) Within 30 days after the experts have completed their
1496 examinations of the death-sentenced inmate, the court shall
1497 schedule a hearing on the issue of the inmate's competence to
1498 proceed.
1499 (11) If, after a hearing, the court finds the inmate
1500 competent to proceed, or, after having found the inmate
1501 incompetent, finds that competency has been restored, the court
1502 shall enter its order so finding and shall proceed with a
1503 postconviction motion. The inmate shall have 60 days to amend
1504 his or her postconviction motion only as to those issues that
1505 the court found required factual consultation with counsel.
1506 (12) If the court does not find the inmate incompetent, the
1507 order shall contain:
1508 (a) Findings of fact relating to the issues of competency;

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1509 (b) Copies of the reports of the examining experts; and
1510 (c) Copies of any other psychiatric, psychological, or
1511 social work reports submitted to the court relative to the
1512 mental state of the death-sentenced inmate.
1513 (13) If the court finds the inmate incompetent or finds the
1514 inmate competent subject to the continuation of appropriate
1515 treatment, the court shall follow the procedures set forth in
1516 rule 3.212(c) of the Florida Rules of Criminal Procedure, except
1517 that, to the extent practicable, any treatment shall take place
1518 at a custodial facility under the direct supervision of the
1519 Department of Corrections.
1520 Section 29. Section 924.0592, Florida Statutes, is created
1521 to read:
1522 924.0592 Capital postconviction proceedings after a death
1523 warrant has been issued.—This section governs all postconviction
1524 proceedings in every capital case in which the conviction and
1525 sentence of death have been affirmed on direct appeal on or
1526 after July 1, 2015, and in which a death warrant has been
1527 issued.
1528 (1) Upon issuance of a death warrant pursuant to s. 922.052
1529 or s. 922.14, the issuing entity shall notify the chief judge of
1530 the circuit that sentenced the inmate to death. The chief judge
1531 shall assign the case to a judge qualified under the Rules of
1532 Judicial Administration to conduct capital cases immediately
1533 upon receipt of such notification.
1534 (2) Postconviction proceedings after a death warrant has
1535 been issued shall take precedence over all other cases. The
1536 assigned judge shall make every effort to resolve scheduling
1537 conflicts with other cases including cancellation or

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1538 rescheduling of hearings or trials and requesting senior judge
1539 assistance.
1540 (3) The time limitations provided in s. 924.056 and s.
1541 924.058 do not apply after a death warrant has been issued. All
1542 postconviction motions filed after a death warrant has been
1543 issued shall be heard expeditiously considering the time
1544 limitations set by the date of execution and the time required
1545 for appellate review.
1546 (4) The location of any hearings after a death warrant is
1547 issued shall be determined by the trial judge considering the
1548 availability of witnesses or evidence, the security problems
1549 involved in the case, and any other factor determined by the
1550 trial court.
1551 (5) All postconviction motions filed after a death warrant
1552 is issued shall be considered successive motions and subject to
1553 the content requirement of s. 924.058.
1554 (6) The assigned judge shall schedule a case management
1555 conference as soon as reasonably possible after receiving
1556 notification that a death warrant has been issued. During the
1557 case management conference the court shall set a time for filing
1558 a postconviction motion, shall schedule a hearing to determine
1559 whether an evidentiary hearing should be held, and shall hear
1560 arguments on any purely legal claims not based on disputed
1561 facts. If the postconviction motion, files, and records in the
1562 case conclusively show that the movant is entitled to no relief,
1563 the motion may be denied without an evidentiary hearing. If the
1564 trial court determines that an evidentiary hearing should be
1565 held, the court shall schedule the hearing to be held as soon as
1566 reasonably possible considering the time limitations set by the

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1567 date of execution and the time required for appellate review.
1568 (7) The assigned judge shall require all proceedings
1569 conducted pursuant to this section to be reported using the most
1570 advanced and accurate technology available in general use at the
1571 location of the hearing. The proceedings shall be transcribed
1572 expeditiously considering the time limitations set by the
1573 execution date.
1574 (8) The court shall obtain a transcript of all proceedings
1575 conducted pursuant to this section and shall render its order in
1576 accordance with s. 924.056(5)(e) as soon as possible after the
1577 hearing is concluded. A copy of the final order shall be
1578 electronically transmitted to the Supreme Court of Florida and
1579 to the attorneys of record. The record shall be immediately
1580 delivered to the clerk of the Supreme Court of Florida by the
1581 clerk of the trial court or as ordered by the assigned judge.
1582 The record shall also be electronically transmitted if the
1583 technology is available. A notice of appeal shall not be
1584 required to transmit the record.
1585 Section 30. Section 924.0593, Florida Statutes, is created
1586 to read:
1587 924.0593 Insanity at the time of execution.—
1588 (1) A person under sentence of death shall not be executed
1589 while insane. A person under sentence of death is insane for
1590 purposes of execution if the person lacks the mental capacity to
1591 understand the fact of the impending execution and the reason
1592 for it.
1593 (2) No motion for a stay of execution pending hearing,
1594 based on grounds of the inmate's insanity to be executed, shall
1595 be entertained by any court until such time as the Governor of

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1596 Florida has held appropriate proceedings for determining the
1597 issue pursuant to s. 922.07.
1598 (3)(a) On determination of the Governor of Florida,
1599 subsequent to the signing of a death warrant for an inmate under
1600 sentence of death and pursuant to s. 922.07, that the inmate is
1601 sane to be executed, counsel for the inmate may move for a stay
1602 of execution and a hearing based on the inmate's insanity to be
1603 executed. The motion:
1604 1. Shall be filed in the circuit court of the circuit in
1605 which the execution is to take place and shall be heard by one
1606 of the judges of that circuit or such other judge as shall be
1607 assigned by the Chief Justice of the Florida Supreme Court to
1608 hear the motion. The state attorney of the circuit shall
1609 represent the State of Florida in any proceedings held on the
1610 motion; and
1611 2. Shall be in writing and shall contain a certificate of
1612 counsel that the motion is made in good faith and on reasonable
1613 grounds to believe that the prisoner to be executed is insane.
1614 (b) Counsel for the inmate shall file, along with the
1615 motion, all reports of experts that were submitted to the
1616 governor pursuant to s. 922.07. If any of the evidence is not
1617 available to counsel for the inmate, counsel shall attach to the
1618 motion an affidavit so stating, with an explanation of why the
1619 evidence is unavailable.
1620 (c) Counsel for the inmate and the state may submit such
1621 other evidentiary material and written submissions including
1622 reports of experts on behalf of the inmate that are relevant to
1623 determination of the issue.
1624 (d) A copy of the motion and all supporting documents shall

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1625 be served on the Florida Department of Legal Affairs and the
1626 state attorney of the circuit in which the motion has been
1627 filed.
1628 (4) If the circuit judge, upon review of the motion and
1629 submissions, has reasonable grounds to believe that the inmate
1630 to be executed is insane, the judge shall grant a stay of
1631 execution and may order further proceedings which may include a
1632 hearing.
1633 (5) Any hearing on the insanity of the inmate to be
1634 executed shall not be a review of the Governor's determination,
1635 but shall be a hearing de novo. At the hearing, the issue the
1636 court must determine whether the inmate presently meets the
1637 criteria for insanity at time of execution, that is, whether the
1638 prisoner lacks the mental capacity to understand the fact of the
1639 pending execution and the reason for it.
1640 (6) The court may do any of the following as may be
1641 appropriate and adequate for a just resolution of the issues
1642 raised:
1643 (a) Require the presence of the inmate at the hearing;
1644 (b) Appoint no more than 3 disinterested mental health
1645 experts to examine the inmate with respect to the criteria for
1646 insanity and to report their findings and conclusions to the
1647 court; or
1648 (c) Enter such other orders as may be appropriate to
1649 effectuate a speedy and just resolution of the issues raised.
1650 (7) At hearings held pursuant to this section, the court
1651 may admit such evidence as the court deems relevant to the
1652 issues, including but not limited to the reports of expert
1653 witnesses, and the court shall not be strictly bound by the

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1654 rules of evidence.
1655 (8) If, at the conclusion of the hearing, the court finds,
1656 by clear and convincing evidence, that the inmate is insane, the
1657 court shall enter its order continuing the stay of the death
1658 warrant; otherwise, the court shall deny the motion and enter
1659 its order dissolving the stay of execution.
1660 Section 31. Section 924.0594, Florida Statutes, is created
1661 to read:
1662 924.0594 Dismissal of postconviction proceedings.—This
1663 section applies only when an inmate seeks both to dismiss a
1664 pending postconviction proceedings and to discharge collateral
1665 counsel.
1666 (1) If an inmate files a motion to dismiss a pending
1667 postconviciton motion and to discharge collateral counsel pro
1668 se, the Clerk of the Court shall serve copies of the motion on
1669 counsel of record for both the inmate and the state. Counsel of
1670 record may file responses within 10 days.
1671 (2) The trial judge shall review the motion and the
1672 responses and schedule a hearing. The inmate, collateral
1673 counsel, and the state shall be present at the hearing.
1674 (3) The judge shall examine the inmate at the hearing and
1675 shall hear argument of the inmate, collateral counsel, and the
1676 state. No fewer than 2 or more than 3 qualified experts shall be
1677 appointed to examine the inmate if the judge concludes that
1678 there are reasonable grounds to believe the inmate is not
1679 mentally competent for purposes of this section. The experts
1680 shall file reports with the court setting forth their findings.
1681 Thereafter, the court shall conduct an evidentiary hearing and
1682 enter an order setting forth findings of competency or

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1683 incompetency.
1684 (4) If the inmate is found to be incompetent for purposes
1685 of this section, the court shall deny the motion without
1686 prejudice.
1687 (5) If the inmate is found to be competent for purposes of
1688 this section, the court shall conduct a complete
1689 Durocher/Faretta inquiry to determine whether the inmate
1690 knowingly, freely, and voluntarily wants to dismiss pending
1691 postconviction proceedings and discharge collateral counsel.
1692 (6) If the court determines that the inmate has made the
1693 decision to dismiss pending postconviction proceedings and
1694 discharge collateral counsel knowingly, freely, and voluntarily,
1695 the court shall enter an order dismissing all pending
1696 postconviction proceedings and discharging collateral counsel.
1697 If the court determines that the inmate has not made the
1698 decision to dismiss pending postconviction proceedings and
1699 discharge collateral counsel knowingly, freely, and voluntarily,
1700 the court shall enter an order denying the motion without
1701 prejudice.
1702 (7) If the court denies the motion, the inmate may seek
1703 review pursuant to s. 924.0581(2). If the court grants the
1704 motion:
1705 (a) A copy of the motion, the order, and the transcript of
1706 the hearing or hearings conducted on the motion shall be
1707 forwarded to the Clerk of the Supreme Court of Florida within 30
1708 days; and
1709 (b) Discharged counsel shall, within 10 days after issuance
1710 of the order, file with the clerk of the circuit court 2 copies
1711 of a notice seeking review in the Supreme Court of Florida, and

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1712 shall, within 20 days after the filing of the transcript, serve
1713 an initial brief. Both the inmate and the state may serve
1714 responsive briefs.
1715 (8)(a) Within 10 days of the rendition of an order granting
1716 a inmate's motion to discharge counsel and dismiss the motion
1717 for postconviction relief, discharged counsel must file with the
1718 clerk of the circuit court a notice seeking review in the
1719 Florida Supreme Court.
1720 (b) The circuit judge presiding over the motion to dismiss
1721 and discharge counsel shall order a transcript of the hearing to
1722 be prepared and filed with the clerk of the circuit court no
1723 later than 25 days from rendition of the final order. Within 30
1724 days of the granting of a motion to dismiss and discharge
1725 counsel, the clerk of the circuit court shall forward a copy of
1726 the motion, order, and transcripts of all hearings held on the
1727 motion to the Clerk of the Florida Supreme Court.
1728 (c) Within 20 days of the filing of the record in the
1729 Florida Supreme Court, discharged counsel shall serve an initial
1730 brief. Both the state and the prisoner may serve responsive
1731 briefs. All briefs must be served and filed as prescribed by
1732 rule 9.210 of the Rules of Appellate Procedure.
1733 (d) The Florida Supreme Court shall rule on the motion
1734 within 60 days of the last brief filing deadline.
1735 Section 32. If any provision of this act or the application
1736 thereof to any person or circumstance is held invalid, the
1737 invalidity does not affect other provisions or applications of
1738 the act which can be given effect without the invalid provision
1739 or application, and to this end the provisions of this act are
1740 declared severable.

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1741 Section 33. Except as otherwise provided herein, this act
1742 shall take effect July 1, 2015, contingent upon voter approval
1743 of SJR_____ in the General Election of 2014.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 288

INTRODUCER: Senator Bradley

SUBJECT: Costs of Prosecution, Investigation, and Representation

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.	Shankle	Cibula	JU	**Pre-meeting**
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 288 adds costs of prosecution and costs of representation to the fees, costs, and penalties to be withheld from cash bond posted on behalf of a defendant. The bill provides clarification regarding the collection of cost payments in certain traffic cases. The bill also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, and 985.032.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases, unless the prosecutor proves that costs are higher in the particular case before the court.[1] The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.[2]

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[3] Conviction, for this purpose,

[1] Section 938.27(8), F.S.
[2] *Id.*
[3] Section 938.27(1), F.S.

includes "a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld."[4]

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the $50 public defender application fee under s. 27.52(1)(b), F.S., and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of $50 in misdemeanor or criminal traffic offense cases and $100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.[5]

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.[6] The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing, or otherwise disposing of any debt or lien imposed.[7]

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.[8] The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.[9]

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

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[4] *Id.*
[5] Section 27.562, F.S.
[6] Section 938.29(1)(c), F.S.
[7] Section 938.29(3), F.S.
[8] Section 28.246(4), F.S.
[9] "A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent[10] to pay the following:

- Court fees;
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

Clerks are not currently authorized to withhold costs of prosecution or costs of representation.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Delinquency Cases Exempt

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.[11] A lien-enforcement procedure is currently available which allows the clerk to collect the costs of representation from the parents or guardians of the child.[12]

III. Effect of Proposed Changes:

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant, or if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The bill requires the clerk to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These particular cases may include criminal traffic violations disposed of pursuant to s. 318.14(10), F.S.[13] (See the Technical Deficiencies section below.)

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[10] Licensed under ch. 648, F.S.
[11] Sections 27.52 (6) and 938.29(2)(a)2., F.S.
[12] *Id.*
[13] In these cases, the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified in s. 318.14(10), F.S. Although s. 938.27(6), F.S., requires the clerk to "collect and dispense

The bill also requires that costs of prosecution be assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. Although current law provides for a lien against the child's parents to aid in collecting costs of representation, there is no such provision in the bill for costs of prosecution.

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:

Costs of prosecution will be assessed by the court in delinquency cases, which is a new cost not previously assessed. This assessment may be paid by the delinquent child if he or she has the ability to pay.

C. Government Sector Impact:

This bill appears to have a positive fiscal impact on state attorneys and public defenders because:

1. The costs of prosecution and costs of representation will be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This provision is likely to result in a positive fiscal impact for state attorneys and public defenders.

2. The costs of prosecution will now be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely

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cost payments in any case," which would include costs of prosecution and investigation listed in s. 938.27(8), F.S., state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

3. The state attorney may experience a positive fiscal impact from the costs of prosecution collected by the clerks of court in certain traffic violation cases.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), F.S.

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.

194054

LEGISLATIVE ACTION

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

1 **Senate Amendment**
2
3 Delete line 30
4 and insert:
5
6 prosecution, costs of representation as provided by ss. 27.52
7 and 938.29,

463082

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Amendment**
2
3 Delete line 38
4 and insert:
5
6 of prosecution, costs of representation as provided by ss. 27.52
7 and 938.29,
8

700548

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 131
4 and insert:
5
6 prosecution as provided in s. 938.27. A juvenile who is assessed
7 such costs may satisfy them by performing community service.
8 Section 4. Paragraph (d) is added to subsection (1) of
9 section 985.455, Florida Statutes, to read:
10 985.455 Other dispositional issues.—
11 (1) The court that has jurisdiction over an adjudicated
12 delinquent child may, by an order stating the facts upon which a
13 determination of a sanction and rehabilitative program was made

700548

14 at the disposition hearing:
15 (d) Upon a determination of the child's inability to pay,
16 the court may order the child to perform community service in
17 lieu of all court costs assessed against the delinquent child,
18 including costs of prosecution, public defender application fees
19 and costs of representation.
20
21 ========== T I T L E A M E N D M E N T ==========
22 And the title is amended as follows:
23
24 Delete line 14
25 and insert:
26
27 or has adjudication of delinquency withheld; amending
28 s. 985.455, F.S.; authorizing the court to order a
29 child to perform community service in lieu of court
30 costs assessed against the child; providing

385872

LEGISLATIVE ACTION

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

Senate Substitute for Amendment (700548) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any

385872

14 unpaid costs of prosecution, costs of representation as provided
15 by ss. 27.52 and 938.29, court fees, court costs, and criminal
16 penalties. If sufficient funds are not available to pay all
17 unpaid costs of prosecution, costs of representation as provided
18 by ss. 27.52 and 938.29, court fees, court costs, and criminal
19 penalties, the clerk of the court shall immediately obtain
20 payment from the defendant or enroll the defendant in a payment
21 plan pursuant to s. 28.246.
22 (2) All cash bond forms used in conjunction with the
23 requirements of s. 903.09 must prominently display a notice
24 explaining that all funds are subject to forfeiture and
25 withholding by the clerk of the court for the payment of costs
26 of prosecution, costs of representation as provided by ss. 27.52
27 and 938.29, court fees, court costs, and criminal penalties on
28 behalf of the criminal defendant regardless of who posted the
29 funds.
30 Section 2. Section 938.27, Florida Statutes, is amended to
31 read:
32 938.27 Judgment for costs of prosecution and investigation
33 ~~on conviction~~.—
34 (1) In all criminal and violation-of-probation or
35 community-control cases, convicted persons are liable for
36 payment of the costs of prosecution, including investigative
37 costs incurred by law enforcement agencies, by fire departments
38 for arson investigations, and by investigations of the
39 Department of Financial Services or the Office of Financial
40 Regulation of the Financial Services Commission, if requested by
41 such agencies. The court shall include these costs in every
42 judgment rendered against the convicted person. For purposes of

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43 this section, “convicted” means a determination of guilt, or of
44 violation of probation or community control, which is a result
45 of a plea, trial, or violation proceeding, regardless of whether
46 adjudication is withheld.
47 (2)(a) The court shall impose the costs of prosecution and
48 investigation notwithstanding the defendant’s present ability to
49 pay. The court shall require the defendant to pay the costs
50 within a specified period or pursuant to a payment plan under s.
51 28.246(4).
52 (b) The end of such period or the last such installment
53 must not be later than:
54 1. The end of the period of probation or community control,
55 if probation or community control is ordered;
56 2. Five years after the end of the term of imprisonment
57 imposed, if the court does not order probation or community
58 control; or
59 3. Five years after the date of sentencing in any other
60 case.
61
62 However, the obligation to pay any unpaid amounts does not
63 expire if not paid in full within the period specified in this
64 paragraph.
65 (c) If not otherwise provided by the court under this
66 section, costs must ~~shall~~ be paid immediately.
67 (3) If a defendant is placed on probation or community
68 control, payment of any costs under this section shall be a
69 condition of such probation or community control. The court may
70 revoke probation or community control if the defendant fails to
71 pay these costs.

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72 (4) Any dispute as to the proper amount or type of costs
73 shall be resolved by the court by the preponderance of the
74 evidence. The burden of demonstrating the amount of costs
75 incurred is on the state attorney. The burden of demonstrating
76 the financial resources of the defendant and the financial needs
77 of the defendant is on the defendant. The burden of
78 demonstrating such other matters as the court deems appropriate
79 is upon the party designated by the court as justice requires.
80 (5) Any default in payment of costs may be collected by any
81 means authorized by law for enforcement of a judgment.
82 (6) The clerk of the court shall collect and dispense cost
83 payments in any case, regardless of whether the disposition of
84 the case takes place before the judge in open court or in any
85 other manner provided by law.
86 (7) Investigative costs that are recovered must ~~shall~~ be
87 returned to the appropriate investigative agency that incurred
88 the expense. Such costs include actual expenses incurred in
89 conducting the investigation and prosecution of the criminal
90 case; however, costs may also include the salaries of permanent
91 employees. Any investigative costs recovered on behalf of a
92 state agency must be remitted to the Department of Revenue for
93 deposit in the agency operating trust fund, and a report of the
94 payment must be sent to the agency, except that any
95 investigative costs recovered on behalf of the Department of Law
96 Enforcement must ~~shall~~ be deposited in the department's
97 Forfeiture and Investigative Support Trust Fund under s.
98 943.362.
99 (8) Costs for the state attorney must ~~shall~~ be set in all
100 cases at no less than $50 per case when a misdemeanor or

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101 criminal traffic offense is charged and no less than $100 per
102 case when a felony offense is charged, including a proceeding in
103 which the underlying offense is a violation of probation or
104 community control. The court may set a higher amount upon a
105 showing of sufficient proof of higher costs incurred. Costs
106 recovered on behalf of the state attorney under this section
107 must ~~shall~~ be deposited into the State Attorneys Revenue Trust
108 Fund to be used during the fiscal year in which the funds are
109 collected, or in any subsequent fiscal year, for actual expenses
110 incurred in investigating and prosecuting criminal cases, which
111 may include the salaries of permanent employees, or for any
112 other purpose authorized by the Legislature.
113 Section 3. Section 985.032, Florida Statutes, is amended to
114 read:
115 985.032 Legal representation for delinquency cases.—
116 (1) For cases arising under this chapter, the state
117 attorney shall represent the state.
118 (2) A juvenile who has been adjudicated delinquent or has
119 adjudication of delinquency withheld shall be assessed costs of
120 prosecution as provided in s. 938.27.
121 Section 4. Paragraph (d) is added to subsection (1) of
122 section 985.455, Florida Statutes, to read:
123 985.455 Other dispositional issues.—
124 (1) The court that has jurisdiction over an adjudicated
125 delinquent child may, by an order stating the facts upon which a
126 determination of a sanction and rehabilitative program was made
127 at the disposition hearing:
128 (d) Order the child, upon a determination of the child's
129 inability to pay, to perform community service in lieu of all

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130 court costs assessed against the delinquent child, including
131 costs of prosecution, public defender application fees, and
132 costs of representation.
133 Section 5. This act shall take effect July 1, 2013.
134
135 ========== T I T L E A M E N D M E N T ==========
136 And the title is amended as follows:
137 Delete everything before the enacting clause
138 and insert:
139 A bill to be entitled
140 An act relating to costs of prosecution,
141 investigation, and representation; amending s.
142 903.286, F.S.; providing for the withholding of unpaid
143 costs of prosecution and representation from the
144 return of a cash bond posted on behalf of a criminal
145 defendant; requiring a notice on bond forms of such
146 possible withholding; amending s. 938.27, F.S.;
147 clarifying the types of cases that are subject to the
148 collection and dispensing of cost payments by the
149 clerk of the court; amending s. 985.032, F.S.;
150 providing for assessment of costs of prosecution
151 against a juvenile who has been adjudicated delinquent
152 or has adjudication of delinquency withheld; amending
153 s. 985.455, F.S.; providing that a child adjudicated
154 delinquent may perform community service in lieu of
155 certain costs and fees; providing an effective date.

By Senator Bradley

7-00349A-13 2013288__

A bill to be entitled

An act relating to costs of prosecution, investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid costs of prosecution and representation from the return of a cash bond posted on behalf of a criminal defendant; requiring a notice on bond forms of such possible withholding; amending s. 938.27, F.S.; clarifying the types of cases that are subject to the collection and dispensing of cost payments by the clerk of the court; amending s. 985.032, F.S.; providing for assessment of costs of prosecution against a juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of

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

7-00349A-13 2013288__

prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.

Section 2. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs of prosecution and investigation ~~on conviction~~.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and

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

59 investigation notwithstanding the defendant's present ability to
60 pay. The court shall require the defendant to pay the costs
61 within a specified period or pursuant to a payment plan under s.
62 28.246(4).
63 (b) The end of such period or the last such installment
64 must not be later than:
65 1. The end of the period of probation or community control,
66 if probation or community control is ordered;
67 2. Five years after the end of the term of imprisonment
68 imposed, if the court does not order probation or community
69 control; or
70 3. Five years after the date of sentencing in any other
71 case.
72
73 However, the obligation to pay any unpaid amounts does not
74 expire if not paid in full within the period specified in this
75 paragraph.
76 (c) If not otherwise provided by the court under this
77 section, costs must ~~shall~~ be paid immediately.
78 (3) If a defendant is placed on probation or community
79 control, payment of any costs under this section shall be a
80 condition of such probation or community control. The court may
81 revoke probation or community control if the defendant fails to
82 pay these costs.
83 (4) Any dispute as to the proper amount or type of costs
84 shall be resolved by the court by the preponderance of the
85 evidence. The burden of demonstrating the amount of costs
86 incurred is on the state attorney. The burden of demonstrating
87 the financial resources of the defendant and the financial needs

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

88 of the defendant is on the defendant. The burden of
89 demonstrating such other matters as the court deems appropriate
90 is upon the party designated by the court as justice requires.
91 (5) Any default in payment of costs may be collected by any
92 means authorized by law for enforcement of a judgment.
93 (6) The clerk of the court shall collect and dispense cost
94 payments in any case regardless of whether the disposition of
95 the case takes place before the judge in open court or in any
96 other manner provided by law.
97 (7) Investigative costs that are recovered must ~~shall~~ be
98 returned to the appropriate investigative agency that incurred
99 the expense. Such costs include actual expenses incurred in
100 conducting the investigation and prosecution of the criminal
101 case; however, costs may also include the salaries of permanent
102 employees. Any investigative costs recovered on behalf of a
103 state agency must be remitted to the Department of Revenue for
104 deposit in the agency operating trust fund, and a report of the
105 payment must be sent to the agency, except that any
106 investigative costs recovered on behalf of the Department of Law
107 Enforcement must ~~shall~~ be deposited in the department's
108 Forfeiture and Investigative Support Trust Fund under s.
109 943.362.
110 (8) Costs for the state attorney must ~~shall~~ be set in all
111 cases at no less than $50 per case when a misdemeanor or
112 criminal traffic offense is charged and no less than $100 per
113 case when a felony offense is charged, including a proceeding in
114 which the underlying offense is a violation of probation or
115 community control. The court may set a higher amount upon a
116 showing of sufficient proof of higher costs incurred. Costs

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

117 recovered on behalf of the state attorney under this section
118 must ~~shall~~ be deposited into the State Attorneys Revenue Trust
119 Fund to be used during the fiscal year in which the funds are
120 collected, or in any subsequent fiscal year, for actual expenses
121 incurred in investigating and prosecuting criminal cases, which
122 may include the salaries of permanent employees, or for any
123 other purpose authorized by the Legislature.
124 Section 3. Section 985.032, Florida Statutes, is amended to
125 read:
126 985.032 Legal representation for delinquency cases.—
127 (1) For cases arising under this chapter, the state
128 attorney shall represent the state.
129 (2) A juvenile who has been adjudicated delinquent or has
130 adjudication of delinquency withheld shall be assessed costs of
131 prosecution as provided in s. 938.27.
132 Section 4. This act shall take effect July 1, 2013.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 570

INTRODUCER: Senator Bradley and Senator Simmons

SUBJECT: Revising Age Limits for Justices and Judges

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

SJR 570 proposes an amendment to the Florida Constitution which increases the general mandatory retirement age of judges and justices to age 75 from age 70. The amendment, however, applies to judges elected or appointed on or after January 1, 2014.

This joint resolution amends section 8, Article V of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age.[1] In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.[2]

[1] *See* Memorandum from John Sylvia of the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division to Honorable Edwin J. Bowman, Chairman (Jan. 5, 2005) (on file with the Senate Committee on Judiciary).

[2] G. Alan Tarr, *Designing an Appointive System: The Key Issues*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

Florida Age Requirements for Judicial Office

Florida currently does not have a minimum age requirement for judicial office, but generally precludes a person from serving as a justice or judge of any court after attaining 70 years of age.[3] A justice or judge may serve after 70 years of age on a temporary assignment or to complete a term, one-half of which has been served.[4] Florida's previous constitution, the Constitution of 1885, did not provide a mandatory retirement age, but did require that justices and judges be at least 25 years old and attorneys at law.[5] This provision was removed from the Constitution effective in 1973 as part of a revision of Article V[6] and replaced with the current eligibility requirements, including the mandatory retirement age.

Constitutionality of Mandatory Retirement

A group of state court judges in Missouri challenged the Missouri Constitution's mandatory retirement provision, which required judges to retire at the age of 70.[7] The judges alleged that the provision, which was very similar to Florida's analogous requirement, violated the Federal Age Discrimination in Employment Act (ADEA)[8] and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[9] The Court held that the ADEA excluded judges from its definition of employees because of their status as policymakers.[10] Additionally, the Court upheld Missouri's constitutional provision despite the judges' argument that it violated the Equal Protection Clause because it served the legitimate government purpose of enabling the people of Missouri to establish "a qualification for those who would be their judges."[11]

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the Constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[12] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[13] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first

[3] FLA. CONST. art. V, s. 8.
[4] *Id.*
[5] FLA. CONST. art. V, s. 3 (1885).
[6] SJR 52-D (1971), adopted in 1972 and effective Jan. 1, 1973.
[7] MO. CONST. art. V, s. 26.
[8] 29 U.S.C. ss. 621-34.
[9] *Gregory v. Ashcroft*, 501 U.S. 452, 456 (1991).
[10] *Id.* at 467.
[11] *Id.* at 473.
[12] FLA. CONST. art. XI, s. 1.
[13] FLA. CONST. art. XI, s. 5(a).

Monday in January following the election, or on such other date as may be specified in the amendment.[14]

III. Effect of Proposed Changes:

Senate Joint Resolution 570 proposes an amendment to Article V, section 8 of the Florida Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of 75 rather than 70. However, a judge who attains the age of 75 years may continue to serve on a temporary assignment or to complete a judicial term.

The amendment applies to justices or judges who are elected or appointed on or after January 1, 2014. As such, a judge or justice may not be eligible to serve until age 75 if the judge or justice reaches age 70 before January 1, 2014, or the 2014 General Election, which will be held on November 4, 2014.

This joint resolution takes effect on January 1, 2014, and applies to justices or judges elected or appointed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In order for the Legislature to submit SJR 570 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.[15] If SJR 570 is agreed to by the Legislature, it will be submitted to the voters at the 2014 General Election, which will be held on November 4, 2014. In order for SJR 570 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.[16]

[14] FLA. CONST. art. XI, s. 5(e).
[15] FLA. CONST. art. XI, s. 1.
[16] FLA. CONST. art. XI, s. 5(e).

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, this joint resolution has no fiscal or workload impact on the judiciary.[17]

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[18] Costs for advertising vary depending upon the length of the amendment.

VI. Technical Deficiencies:

Senate Joint Resolution 570 provides that it takes effect on January 1, 2014. Unless the amendment will be placed on a special election ballot, the amendment will be submitted to the electors at the 2014 General Election, which is scheduled for November 4, 2014. If retroactive application is not intended, the Legislature may wish to revise the effective date to be January 1, 2015.

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.

[17] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SJR 570* (Mar. 5, 2013) (on file with the Senate Committee on Judiciary).
[18] FLA. CONST. art. XI, s. 5(d).

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LEGISLATIVE ACTION

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

1 **Senate Amendment (with ballot amendment)**
2
3 Delete line 46
4 and insert:
5 term and this section shall take effect January 1, 2015, and
6
7 ====== B A L L O T S T A T E M E N T A M E N D M E N T ======
8 And the ballot statement is amended as follows:
9 Delete line 62
10 and insert:
11 proposed amendment takes effect January 1, 2015, and applies to

By Senator Bradley

7-00225-13 2013570__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V and the creation of a new section to Article XII of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office, to provide for the amendment to apply to justices and judges appointed on or after a specified date, and to provide an effective date.

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

That the following amendment to Section 8 of Article V and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—A ~~No~~ person is not ~~shall be~~ eligible for the office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. A ~~No~~ justice or judge may not ~~shall~~ serve after attaining the age of seventy-five ~~seventy~~ years except upon temporary assignment or to complete a term, one-half of which has been served. A ~~No~~ person is not eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. A ~~No~~

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

7-00225-13 2013570__

person is not eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a ~~no~~ person is not eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person is ~~shall be~~ eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or fewer ~~less~~ if the person is a member in good standing of the bar of Florida.

ARTICLE XII

SCHEDULE

Eligibility of justices and judges.—The amendment to Section 8 of Article V changing the age after which a justice or judge is no longer eligible for the office of justice or judge of any court except upon temporary assignment or to complete a term and this section shall take effect January 1, 2014, and apply to justices and judges elected or appointed on or after that date.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

REVISING AGE LIMITS FOR JUSTICES AND JUDGES.—The State Constitution currently prohibits a justice or judge from serving in a judicial office after attaining the age of 70 years except upon temporary assignment or to complete a judicial term if one-half of the term has been served. This proposed amendment increases the age after which a justice or judge may no longer

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

59 serve to 75 years of age. However, a justice or judge who has
60 attained the age of 75 years may continue to serve upon
61 temporary assignment or to complete a judicial term. The
62 proposed amendment takes effect January 1, 2014, and applies to
63 justices or judges elected or appointed on or after that date.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 590

INTRODUCER: Senator Joyner

SUBJECT: Fees and Costs Incurred in Guardianship Proceedings

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Pre-meeting**
2.			CF	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 590 revises various provisions relating to Florida's guardianship law. The bill:

- Allows courts, without the admission of expert witness testimony, to determine reasonable compensation for the guardian, guardian's attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person. However, expert testimony may be offered at the option of a person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.
- Grants the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds $15,000, if it is necessary to protect the interests of the minor.
- Makes any settlement of a claim of a minor that exceeds $15,000 subject to the confidentiality provisions of Florida Guardianship Law.[1]
- Requires that the fees of a guardianship examining committee be paid upon court order as expert witness fees under s. 29.004(6), F.S., if the petition alleging incapacity is dismissed Section 29.004(6), F.S., authorizes courts to pay the fees of court-appointed experts from funds appropriated by the Legislature.
- Requires a petitioner found by a court to have filed a guardianship proceeding in bad faith to reimburse the state courts system for any amounts paid by a court to a committee.

[1] Chapter 744, F.S.

This bill substantially amends the following sections of the Florida Statutes: 744.108, 744.3025, and 744.331.

II. Present Situation:

Guardianship

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved one who is willing and able to manage their property or other personal matters. A guardian may be a court-appointed, surrogate decision-maker who makes personal or financial decisions for a minor or for an adult with mental or physical disabilities. A guardian may be described as a person "who has the legal authority and duty to care for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability."[2] Guardianships are governed completely and exclusively under statutes in Florida.[3]

Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.[4] An "incapacitated person" is a "person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person."[5]

A guardian is a court-appointed, surrogate decision-maker to make personal or financial decisions for a minor or an adult having mental or physical disabilities.[6] Under Florida law, a ward is defined as a person for whom a guardian has been appointed.[7]

The procedure to determine an alleged person's incapacity is prescribed by statute.[8] Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.[9] After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.[10] If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.[11] If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.[12]

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[2] BLACK'S LAW DICTIONARY (9th ed. 2009).
[3] *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla 2d DCA 1966).
[4] Section 744.3201, F.S.
[5] Section 744.102(12), F.S.
[6] *See e.g.*, s. 744.102(9), F.S.
[7] Section 744.102(22), F.S.
[8] Section 744.331, F.S.
[9] *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency. Section 26.012(2)(b), F.S.
[10] Section 744.331(3), F.S.
[11] Section 744.331(4), F.S.
[12] *See* s. 744.331(6)(b), F.S.

Attorney Fees and Costs Associated with Guardianship Administration

Section 744.108, F.S., outlines requirements for awarding of compensation to a guardian or attorney in connection with a guardianship. "A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward."[13] Similarly, s. 744.311(7), F.S., provides that any attorney appointed under s. 744.311(2), F.S., is entitled to a reasonable fee to be determined by the court.

Fees and costs incurred in determining compensation are part of the guardianship administration and are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.[14] The statute does not specifically address whether an attorney who has rendered services to a ward, a court-appointed counsel for the ward, is entitled to recover attorney fees and costs associated with proceedings to review and determine compensation.[15]

Additionally, it is unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney. Section 744.108, is silent on the subject.[16] Practitioners report that many attorneys and judges interpret the current law as requiring testimony from an expert witness to establish a reasonable attorney fee unless a statute dispenses with that requirement.[17]

Cost considerations are a significant factor in many guardianships.[18] The requirement for expert testimony to be rendered at every hearing for a determination of interim guardian's fees or attorney fees adds a layer of costs that depletes the ward's estate.[19] Practitioners report that the judiciary is capable of determining a reasonable fee without expert testimony in the vast majority of cases.[20]

Settlements

Florida's public policy favors settlement.[21] A settlement agreement is a contract.[22] As a contract between bargaining parties, "[s]ettlements are highly favored and will be enforced whenever possible."[23] Generally, an adult who has not been found to lack capacity or any entity may settle a legal claim and may keep the settlement confidential. In situations where parties settle their disputes based on a filed civil action, generally, the agreement is not required to be filed with the

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[13] Section 744.108(1), F.S.
[14] Section 744.108(8), F.S.
[15] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 744.108, F.S., Relating to Expert Testimony in Determining Attorney Fees and Guardian's Fees*. (2013) (on file with the Senate Committee on Judiciary).
[16] *Id.*
[17] *Id.* (citing *Shwartz, Gold & Cohen, P.A. v. Streicher*, 549 So. 2d 1044 (Fla. 4th DCA 1989); *In re Estate of Cordiner v. Evans*, 497 So. 2d 920 (Fla. 2d DCA 1986); *Clark v. Squire, Sanders & Dempsey*, 495 So. 2d 264 (Fla. 3d DCA 1986).
[18] Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* at note 16.
[19] *Id.*
[20] *Id.*
[21] *Saleeby v. Rocky Elson Construction, Inc.*, 3 So. 3d 1078 (Fla. 2009).
[22] *Lazzaro v. Miller & Solomon General Contractors, Inc.*, 48 So. 3d 974 (Fla. 4th DCA 2010).
[23] *Hanson v. Maxfield*, 23 So. 3d 736, 739 (1st DCA 2009) (quoting *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985)).

court, and therefore does not become a public record.[24] In contrast, a *minor or ward under a guardianship* may not bring or settle a personal injury claim or other legal action without court approval.[25] If a minor or incapacitated person has a guardian or other legal representative, that guardian or legal representative may sue or defend any legal action.[26] If the minor needs a guardian of the person, the guardian will be appointed as a plenary guardian without an adjudication of incapacity.[27] A minor's parent or guardian ad litem may bring an action on behalf of the minor, depending on the amount of the claim.[28] On behalf of a ward, a natural guardian may settle and consummate any settlement claim or cause of action that does not exceed $15,000.[29] Section 744.387(3)(a), F.S., provides that:

> [n]o settlement after an action has been commenced by or on behalf of a [minor] ward shall be effective unless approved by the court having jurisdiction of the action.[30]

A court may disapprove a settlement if it finds that it is not in the best interests of the minor. Under s. 744.3025, F.S., the guardian of a minor who is negotiating a settlement in excess of $15,000 with other parties must appear first before the court and obtain the court's approval of the settlement. Under s. 744.3025(1)(b), F.S., the courts are required to appoint a guardian ad litem for settlements exceeding $50,000; unless a guardian ad litem having no potential interest adverse to the minor has previously been appointed. The duty of the guardian is to protect the minor's interests as described in the Florida Probate Rules.[31]

Examining Committee

Within 5 days after a petition for determination of incapacity has been filed, a court must appoint a three-member examining committee.[32] One member must be a psychiatrist or other physician. The remaining members must be either a psychologist; gerontologist; another psychiatrist or other physician; a registered nurse; nurse practitioner; licensed social worker; a person with an advanced degree in gerontology from an accredited institution of higher education; or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion.[33] One of the members of the committee must have knowledge of the type of incapacity alleged in the petition.[34] The clerk of the court must send notice of appointment to each person appointed to the examining committee no later than 3 days after the court's appointment.[35] Examining committee members must also complete 4 hours

[24] Correspondence with attorneys in the Real Property, Probate, and Trust Law Section of The Florida Bar. *Also see*, Rule 1.442(d) Fla. R.Civ.P. ("A proposal shall be served on the party or parties to whom it is made but shall not be filed unless necessary to enforce the provisions of this rule.").
[25] Sections 744.301 and 744.387(2), F.S.
[26] Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 4:5 (2007 edition).
[27] Section 744.361(1), F.S.
[28] Sections 744.301 and 744.387(2), F.
[29] Sections 744.387(2) and (3), F.S.
[30] See also s. 768.23 and s. 768.25.
[31] Section 744.3025(1)(d), F.S.
[32] Section 744.331(3)(a), F.S.
[33] *Id.*
[34] *Id*
[35] *Id.*

of initial training and 2 hours of continuing education during each 2-year period after the initial training.[36]

The written report of each member of the examining committee is "an essential element, but not necessarily the only element used [by a court] in making a capacity or guardianship decision."[37] Each committee member's written report must among other items include an evaluation of the alleged incapacitated person's ability to retain his or her rights.[38]

Each member of the examining committee must examine the person and determine the alleged incapacitated person's ability to exercise rights specified in s. 744.3215, F.S.[39]

Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

- To vote.
- To personally apply for governmental benefits.
- To have a driver's license.
- To travel.
- To seek or retain employment.[40]

Because the law presumes one has capacity, the guardian of the person may exercise only those rights which have been removed by a court.[41] Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

- To contract.
- To sue and defend lawsuits.
- To apply for governmental benefits.
- To manage property or to make any gift or disposition of property.
- To determine his or her residence.
- To consent to medical and mental health treatment.
- To make decisions about his or her social environment or other social aspects of his or her life.[42]

Section 744.3215(4), F.S., also outlines certain rights that may not be delegated to a guardian without first obtaining specific authority from a court.

The written report of each member of the examining committee must also describe any matters "with respect to which the person lacks the capacity to exercise rights, the extent of that

[36] Section 744.331(3)(d), F.S.
[37] Section 744.331(3)(f), F.S.
[38] Section 744.331(3)(g), F.S. Such rights include " the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine his or her residence; consent to medical treatment; and make decisions affecting her or his social environment." *Id.*
[39] Section 744.331(3)(e), F.S.
[40] Section 744.3215(2), F.S.
[41] See s. 744.3215(3), F.S.
[42] Section 744.3215(3), F.S.

incapacity, and the factual basis for the determination that the person lacks that capacity."[43] Additionally, there is no right to an evidentiary hearing to challenge the opinions of the examining committee findings when the committee has concluded that the subject of the incapacity hearing is not incapacitated.[44] A copy of each committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after the report is filed with the court.[45]

In construing the provisions regarding the examining committee's reports, Florida district courts of appeal have held that trial courts need only consider the reports of the examining committee.[46] If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated, the court must dismiss the petition.[47] Florida courts have held that "where a statute prescribes a certain method of [determining a person's competency], the statute must be strictly followed."[48]

Section 744.331(7), F.S., states that the examining committee and any attorney appointed to represent the person who is facing an incapacity petition is entitled to reasonable fees to be determined by the court.[49] Section 744.331(7)(b), F.S., provides that the examining committee fees are paid from the property of the incapacitated ward or if the ward is indigent from the state. If the alleged incapacitated person, who is subject to the examination pursuant to a petition for incapacity, is found to have capacity or the petition is dismissed, it is unclear which party is responsible for the payment of the examining committee fees.[50] Section 744.331(7)(c), F.S., specifies that if the court finds the petition to have been filed in bad faith, the court may, in its discretion assess court costs and attorney fees against the petitioner.

Courts acknowledge that a gap exists in s. 744.331(7), F.S., as to who should be responsible for payment of the examining committee fees where the guardianship petition is dismissed or denied.[51] Many courts are already using another funding source to address the issue and it is also

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[43] Section 744.331(3)(g)4., F.S.
[44] *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009).
[45] Section 744.331(3)(h), F.S.
[46] See *Rothman v. Rothman*, 93 So. 3d 1052, 1054 (Fla. 4th DCA) (citing *Faulkner v. Faulkner*, 65 So. 3d 1167, 1168 (Fla. 1st DCA 2011) ("'If the majority of the committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition to determine incapacity."'); *Levine v. Levine*, 4 So. 3d 730, 731 (Fla. 5th DCA 2009) (rejecting a request for an evidentiary hearing to challenge the opinion of the examining committee); and *Mathes v. Huelsman*, 743 So. 2d 626, 627 (Fla. 2d DCA 1999) ("'[O]nce the examining committee concluded that Mathes [the alleged incapacitated person] had full capacity, the trial court should have dismissed the petition to determine incapacity and the petition for appointment of a guardian."').
[47] Section 744.331(4), F.S.
[48] *Rothman* 93 So. 3d 1052, 1054 (Fla. 4th DCA 2012). *See also In re Keene*, 343 So. 2d 916 (Fla. 4th DCA 1977).
[49] *See also* s. 744.108(1), F.S., which provides that "a guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward." Section 744.108(8), F.S., states that "[w]hen court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection (2), such proceedings are part of the guardianship administration process and the costs, including fees for the guardian's attorney, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.
[50] See section 744.331(7), F.S.
[51] *Faulkner v. Faulkner*, 65 So.3d 1167, 1169 (Fla. 1st DCA 2011) (citing *Ehrlich v. Severson*, 985 So. 2d 639, 640 (Fla. 4th DCA 2008); and Levine v. Levine, 4 So. 3d 730, 731 (Fla. 5th DCA 2009)).

unknown how many proceedings result in a dismissal of the guardianship petition.[52] Court-appointed attorney fees and examining committee fees are paid from a ward's assets unless the ward is indigent or a party is found to have bad faith in bringing the petition to determine incapacity.[53] There is anecdotal information that the number of guardianship petitions that are dismissed is relatively small.[54] Some legal scholars argue that the examining committee should be paid from expert witness fees under s. 29.004(6), F.S., which awards fees to court appointed experts.[55]

III. Effect of Proposed Changes:

Attorney Fees and Costs Associated with Guardianship Administration

The bill amends s. 744.108, F.S., to allow courts to determine reasonable compensation for the guardian, guardian's attorney, a person employed by the guardian, or an attorney appointed to represent an alleged incapacitated person without the assistance of expert testimony.[56] However, expert testimony may be offered by any person or party after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.[57]

Claims of Minors

The bill amends s. 744.3025(1), F.S., to grant the court discretion to appoint a guardian ad litem in any case in which a minor has a claim or settlement that exceeds $15,000.

The bill additionally provides that any settlement of a claim of a minor that exceeds $15,000 is subject to the confidentiality provisions of ch. 744, F.S.[58]

Fees of the Examining Committee

The bill provides that the fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6), F.S. Section 29.004(6), F.S., authorizes a court to pay court-appointed experts from funds appropriated by the Legislature. Additionally, the bill provides that if the court finds that a petitioner has filed a guardianship proceeding in bad faith,

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[52] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) (on file with the Senate Committee on Judiciary).
[53] Section 744.331(7), F.S.
[54] Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper on Proposed Revisions to Section 744.337(7), F.S., Relating to Compensation of the Examining Committee in Incapacity Proceedings*, (2013).
[55] *Id.*
[56] An attorney appointed under s. 744.331(2), F.S.
[57] This provision is derived from and similar to s. 733.6175(4), F.S., which reads: "The court may determine reasonable compensation for the personal representative or any person employed by the personal representative without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the estate. The court shall direct from what part of the estate the fee shall be paid."
[58] The effect of this provision may not be clear because no provision exists in ch. 744, F.S., which provides for the confidentiality of a settlement of a minor. Senate Bill 590 appears to be related to SB 610, which would create a public records exemption for certain court records relating to the settlement of a ward's or minor's claim.

the petitioners must reimburse the state courts system for any amounts paid by court for the committee through the expert witness fees.

The bill takes effect upon becoming a law.

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 costs to guardianship estates may be reduced to the extent that fees may be determined by a court without the admission of expert witness testimony for the guardian, the guardian's attorneys, persons employed by the guardian, or an appointed attorney.

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill. The office estimates that the bill will have a fiscal impact for the payment by the state courts system of examining committee fees for non-indigent wards upon the dismissal of a proceeding to determine incapacity. Due to the lack of data on the number of such dismissals the actual fiscal impact is not known.[59] The Office of the State Courts Administrator, however, does not expect the fiscal impact from the legislation to be significant.

The Office of the State Courts Administrator reports that any new requirement to pay expenses from the due process funds of the state courts system, absent an increase in due process appropriations, could place additional pressure on the availability of such funds.

[59] Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 590* (Mar. 12, 2013) *supra* at note 52.

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 Joyner

19-00227A-13 2013590__

A bill to be entitled

An act relating to fees and costs incurred in guardianship proceedings; amending s. 744.108, F.S.; providing that fees and costs incurred by an attorney who has rendered services to a ward in compensation proceedings are payable from guardianship assets; providing that expert testimony is unnecessary in proceedings to determine compensation for an attorney or guardian; amending s. 744.3025, F.S.; providing that a court may appoint a guardian ad litem to a minor if necessary to protect the minor's interests in a settlement; providing that a settlement of a minor's claim is subject to certain confidentiality provisions; amending s. 744.331, F.S.; directing that the examining committee be paid from state funds as court-appointed expert witnesses if a petition for incapacity is dismissed; requiring that a petitioner reimburse the state for expert witness fees if the court finds the petition to have been filed in bad faith; providing an effective date.

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

Section 1. Subsection (8) of section 744.108, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

744.108 Guardian's and attorney's fees and expenses.—

(8) When court proceedings are instituted to review or determine a guardian's or an attorney's fees under subsection

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

19-00227A-13 2013590__

(2), such proceedings are part of the guardianship administration process and the costs, including costs and attorney fees for the guardian's attorney, an attorney appointed under subsection (2) of s. 744.331, or an attorney who rendered services to the ward, shall be determined by the court and paid from the assets of the guardianship estate unless the court finds the requested compensation under subsection (2) to be substantially unreasonable.

(9) The court may determine reasonable compensation for the guardian, the guardian's attorney, a person employed by the guardian, an attorney appointed under subsection (2) of s. 744.331, or an attorney who has rendered services to the ward without receiving expert testimony. Any person or party may offer expert testimony after giving notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the guardianship estate.

Section 2. Section 744.3025, Florida Statutes, is amended to read:

744.3025 Claims of minors.—

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the interests of the minor.

(b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor's interest

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before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds $50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor. ~~A court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor.~~

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

(3) Any settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

Section 3. Paragraph (c) of subsection (7) of section 744.331, Florida Statutes, is amended to read:

744.331 Procedures to determine incapacity.—

(7) FEES.—

(c) If the petition is dismissed:~~,~~

1. The fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6).

2. Costs and attorney ~~attorney's~~ fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith. If the court finds bad faith under this subparagraph, the petitioner shall reimburse

the state courts system for any amounts paid under subparagraph 1.

Section 4. This act shall take effect upon becoming law and shall apply to all proceedings pending on that date.

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 986

INTRODUCER: Senator Soto

SUBJECT: Requirements for Driver Licenses

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Eichin	TR	**Favorable**
2.	Brown	Cibula	JU	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 986 amends s. 322.08(2)(c), F.S., to include a notice of an approved application for Deferred Action for Childhood Arrivals as one of the documents acceptable for proving identity when applying for a driver license.

This bill substantially amends s. 322.08, Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 322.17(3), 322.18(2)(d), 322.18(4)(c), and 322.19(4).

II. Present Situation:

Proof of Identity Requirements for Driver License Application

Section 322.08, F.S., provides requirements for the issuance of a driver license, one of which is proof of an applicant's identity. Paragraph (c) of subsection (2) of s. 322.08, F.S., lists the documents that an applicant may use to prove his or her identity. An applicant may prove identity by producing one of the following:

1. A driver license issued by another jurisdiction that requires substantially similar proof of identity;
2. A certified copy of a United States (U.S.) birth certificate;
3. A valid U.S. passport;
4. A naturalization certificate issued by the U.S. Department of Homeland Security (DHS);
5. A valid alien registration receipt card (commonly known as a "green card");

6. A Consular Report of Birth Abroad from the U.S. Department of State;
7. An unexpired employment authorization card issued by the U.S. Department of Homeland Security (DHS); or
8. Proof of nonimmigrant classification provided by the U.S. DHS in the form of at least one of the following:
    a. A notice of hearing from an immigration court scheduling a hearing on any proceeding;
    b. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal;
    c. A notice of approval of an application for adjustment of status issued by the U.S. Bureau of Citizenship and Immigration Status (USCIS);
    d. An official document issued by the USCIS confirming a petition for asylum or refugee status;
    e. A notice of action issued by the USCIS transferring any pending matter to this state;
    f. An order of an immigration judge or officer authorizing the person to live and work in the U.S., such as for asylum;
    g. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status in the U.S., if a visa number is available having a current priority date for processing by the USCIS; and
    h. An unexpired foreign passport with an unexpired U.S. Visa attached, accompanied by an approved I-94, documenting the most recent U.S. entry.

Deferred Action for Childhood Arrivals (DACA)

On June 15, 2012, the DHS announced that it would extend temporary safety from deportation along with work authorization to certain individuals who had come to the U.S. as children.[1] The Deferred Action for Childhood Arrivals policy offers "deferred action," to this population on the basis that the DHS considers them a low priority for immigration enforcement. The DHS reserves the right to revoke deferred action at any time. Deferred action does not provide lawful immigration status or a path to a green card or citizenship.[2]

An individual may request consideration of deferred action for childhood arrivals if he or she:

- Was younger than 31 years old as of June 15, 2012;
- Came to the United States before turning 16 years old;
- Has continuously resided in the U.S. since June 15, 2007, up to the date of the application for deferred action;

[1] Koh, Jennifer Lee, *Waiving Due Process (Goodbye); Stipulated Orders of Removal and the Crisis in Immigration Adjudication*, 91 N. C. L. Rev. 475, FN 348 (Jan. 2013).
[2] USCIS, *Consideration of Deferred Action for Childhood Arrivals Process, available at* http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD (last visited March 28, 2013).

- Was physically present in the U.S. on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
- Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
- Is currently in school, graduated or obtained a certificate of completion from high school, obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a public safety or security threat.[3]

Requests for deferred action are authorized only for immigrants who are 15 years old or older, unless they are currently in removal proceedings or have a final order of removal or voluntary departure, in which case they may apply if they are under age 15.

Deferred action is granted for a 2-year period, and recipients may request renewal. According to DHS, individuals are eligible for future renewals of deferred action as long as they were under the age of 31 on June 15, 2012.

According to the DHSMV, persons who have been approved for DACA are currently not considered eligible for a driver license based on the approved application alone. Rather, once a person is approved for deferred action, they become eligible for an employment eligibility card. Once the person receives the employment authorization card, DHSMV will issue a driver license or state identification card.

III. Effect of Proposed Changes:

The bill amends s. 322.08(2)(c), F.S., to include a notice of an approved application for Deferred Action for Childhood Arrivals as an acceptable form of identification when applying for a driver license. According to the DHSMV, the majority of those approved for deferred action status also receive an employment authorization card from DHS, which is itself acceptable proof of identification for driver license applicants. Therefore, the impact of this bill is negligible since this population of people already has a legal path to a driver license.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[3] *Id.*

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.)

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 Soto

14-01440-13 2013986__

A bill to be entitled

An act relating to requirements for driver licenses; amending s. 322.08, F.S.; including notice of the approval of an application for Deferred Action for Childhood Arrivals status issued by the United States Citizenship and Immigration Services as valid proof of identity for purposes of applying for a driver license; reenacting ss. 322.17(3), 322.18(2)(d) and (4)(c), and 322.19(4), F.S., relating to conditions and limitations with respect to obtaining a duplicate or replacement instruction permit or driver license, expiration of and renewal of a driver license, and change of name or address on a driver license for licensees who establish their identity in a specified manner, to incorporate the amendments made by the act to s. 322.08, F.S., in references thereto; providing an effective date.

WHEREAS, over the past 3 years, the Obama administration has undertaken an unprecedented effort to transform the immigration enforcement system into one that focuses on public safety, border security, and the integrity of the immigration system, and

WHEREAS, as the United States Department of Homeland Security continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, including individuals convicted of crimes with particular emphasis on violent criminals, felons, and repeat offenders, the United States Department of Homeland

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Security intends to exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines, and

WHEREAS, individuals who demonstrate that they meet specified guidelines established by the department may request consideration under the Deferred Action for Childhood Arrivals program for a period of 2 years, subject to renewal, and may be eligible for employment authorization, and

WHEREAS, an individual may request consideration under the Deferred Action for Childhood Arrivals program if he or she was under the age of 31 as of June 15, 2012; came to the United States before reaching his or her 16th birthday; has continuously resided in the United States since June 15, 2007; was physically present in the United States on June 15, 2012, and at the time of making his or her request for consideration of deferred action with the United States Citizenship and Immigration Services; entered the United States without inspection before June 15, 2012, or experienced expiration of his or her lawful immigration status as of June 15, 2012; is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety, NOW, THEREFORE,

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

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59

60 Section 1. Paragraph (c) of subsection (2) of section
61 322.08, Florida Statutes, is amended to read:
62 322.08 Application for license; requirements for license
63 and identification card forms.—
64 (2) Each such application shall include the following
65 information regarding the applicant:
66 (c) Proof of identity satisfactory to the department. Such
67 proof must include one of the following documents issued to the
68 applicant:
69 1. A driver license record or identification card record
70 from another jurisdiction that required the applicant to submit
71 a document for identification which is substantially similar to
72 a document required under subparagraph 2., subparagraph 3.,
73 subparagraph 4., subparagraph 5., subparagraph 6., subparagraph
74 7., or subparagraph 8.;
75 2. A certified copy of a United States birth certificate;
76 3. A valid, unexpired United States passport;
77 4. A naturalization certificate issued by the United States
78 Department of Homeland Security;
79 5. A valid, unexpired alien registration receipt card
80 (green card);
81 6. A Consular Report of Birth Abroad provided by the United
82 States Department of State;
83 7. An unexpired employment authorization card issued by the
84 United States Department of Homeland Security; or
85 8. Proof of nonimmigrant classification provided by the
86 United States Department of Homeland Security, for an original
87 driver license. In order to prove nonimmigrant classification,

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88 an applicant must provide at least one of the following
89 documents. In addition, the department may require applicants to
90 produce United States Department of Homeland Security documents
91 for the sole purpose of establishing the maintenance of, or
92 efforts to maintain, continuous lawful presence:
93 a. A notice of hearing from an immigration court scheduling
94 a hearing on any proceeding.
95 b. A notice from the Board of Immigration Appeals
96 acknowledging pendency of an appeal.
97 c. A notice of the approval of an application for
98 adjustment of status issued by the United States Bureau of
99 Citizenship and Immigration Services.
100 d. An official documentation confirming the filing of a
101 petition for asylum or refugee status or any other relief issued
102 by the United States Bureau of Citizenship and Immigration
103 Services.
104 e. A notice of action transferring any pending matter from
105 another jurisdiction to this state issued by the United States
106 Bureau of Citizenship and Immigration Services.
107 f. An order of an immigration judge or immigration officer
108 granting relief that authorizes the alien to live and work in
109 the United States, including, but not limited to, asylum.
110 g. Evidence that an application is pending for adjustment
111 of status to that of an alien lawfully admitted for permanent
112 residence in the United States or conditional permanent resident
113 status in the United States, if a visa number is available
114 having a current priority date for processing by the United
115 States Bureau of Citizenship and Immigration Services.
116 h. On or after January 1, 2010, an unexpired foreign

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117 passport with an unexpired United States Visa affixed,
118 accompanied by an approved I-94, documenting the most recent
119 admittance into the United States.
120 i. A notice of the approval of an application for Deferred
121 Action for Childhood Arrivals status issued by the United States
122 Citizenship and Immigration Services.
123
124 A driver license or temporary permit issued based on documents
125 required in subparagraph 7. or subparagraph 8. is valid for a
126 period not to exceed the expiration date of the document
127 presented or 1 year.
128 Section 2. For the purpose of incorporating the amendment
129 made by this act to section 322.08, Florida Statutes, in
130 references thereto, subsection (3) of section 322.17, Florida
131 Statutes, is reenacted to read:
132 322.17 Replacement licenses and permits.—
133 (3) Notwithstanding any other provisions of this chapter,
134 if a licensee establishes his or her identity for a driver's
135 license using an identification document authorized under s.
136 322.08(2)(c)7. or 8., the licensee may not obtain a duplicate or
137 replacement instruction permit or driver's license except in
138 person and upon submission of an identification document
139 authorized under s. 322.08(2)(c)7. or 8.
140 Section 3. For the purpose of incorporating the amendment
141 made by this act to section 322.08, Florida Statutes, in
142 references thereto, paragraph (d) of subsection (2) and
143 paragraph (c) of subsection (4) of section 322.18, Florida
144 Statutes, are reenacted to read:
145 322.18 Original applications, licenses, and renewals;

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146 expiration of licenses; delinquent licenses.—
147 (2) Each applicant who is entitled to the issuance of a
148 driver's license, as provided in this section, shall be issued a
149 driver's license, as follows:
150 (d) Notwithstanding any other provision of this chapter, if
151 an applicant establishes his or her identity for a driver's
152 license using a document authorized in s. 322.08(2)(c)7. or 8.,
153 the driver's license shall expire 1 year after the date of
154 issuance or upon the expiration date cited on the United States
155 Department of Homeland Security documents, whichever date first
156 occurs.
157 (4)
158 (c) Notwithstanding any other provision of this chapter, if
159 a licensee establishes his or her identity for a driver's
160 license using an identification document authorized under s.
161 322.08(2)(c)7. or 8., the licensee may not renew the driver's
162 license except in person and upon submission of an
163 identification document authorized under s. 322.08(2)(c)7. or 8.
164 A driver's license renewed under this paragraph expires 1 year
165 after the date of issuance or upon the expiration date cited on
166 the United States Department of Homeland Security documents,
167 whichever date first occurs.
168 Section 4. For the purpose of incorporating the amendment
169 made by this act to section 322.08, Florida Statutes, in
170 references thereto, subsection (4) of section 322.19, Florida
171 Statutes, is reenacted to read:
172 322.19 Change of address or name.—
173 (4) Notwithstanding any other provision of this chapter, if
174 a licensee established his or her identity for a driver's

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175 license using an identification document authorized under s.
176 322.08(2)(c)7. or 8., the licensee may not change his or her
177 name or address except in person and upon submission of an
178 identification document authorized under s. 322.08(2)(c)7. or 8.
179 Section 5. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1210

INTRODUCER: Judiciary Committee and Senator Soto

SUBJECT: Family Law

DATE: April 3, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.			CF	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1210 revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing schedule exercised by the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes the opportunity to provide notice. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue.

The bill limits the authority of the Department of Revenue to determine paternity, establish an obligation of child support, or enforce or modify an existing child support obligation.

This bill substantially amends the following sections of the Florida Statutes: 61.14, 61.1814, 61.30, 90.204, 409.2564, 741.30, 784.046, and 784.0485.

II. Present Situation:

Child Support Guidelines

Child support guidelines are contained in s. 61.30(6), F.S., for the use of the court in determining child support. Guidelines take into account the combined monthly net income of the parents and the number of minor children of parties involved in a child support proceeding. The guidelines establish the minimum amount of support. These amounts may be increased for additional obligations, such as child care and health insurance costs of the children.[1] The court may also depart from the child support guidelines based on factors for deviation identified in law.[2] These are:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of a child or children.
- Documented financial support of a parent.
- Seasonal variation in income.
- The age of the child.
- Special needs.
- Total available assets of the obligee, obligor, and the child.
- The impact of federal tax treatment.
- An application of the child support guidelines schedule that requires a parent to pay another person more than 55 percent of his or her gross income for a current child support obligation.
- The parenting plan, such as where a child spends a significant amount of time, but less than 20 percent of overnight stays with a parent, or the refusal of a parent to participate in a child's activities.
- Any other adjustment needed to further equity for the parties.[3]

The First District Court of Appeal reviewed an administrative support order which provided for a deviation from child support guidelines.[4] The administrative support order based its decision on one of the statutory factors for deviation from the guidelines. This factor allows deviation where a child spends less than 20 percent of overnight stays with a parent based on a parenting plan. The parents in the case, however, did not have a court-ordered parenting plan. The parents were never married to each other. However, a formal parenting plan would have been required as part of a divorce proceeding. Instead, they "decided visitation among themselves."[5] In reversing the administrative order, the court indicated:

> a parenting plan is defined in section 61.046(14) as a court-approved parenting plan with a time-sharing arrangement than can be created through mediation and later approved by a court, or approved by a court where the parties cannot agree. Thus, the

[1] Sections 61.30(7) and (8), F.S.
[2] Section 61.30(11)(a), F.S.
[3] Section 61.30(11)(a)1. through 11., F.S.
[4] *Dept. of Rev. v. Daly*, 74 So. 3d 165, 166 (Fla. 1st DCA 2011).
[5] *Id.*

plain language of the statute prohibits a trial court from deviating from the guidelines based on a verbal visitation agreement even where equity compels the deviation.[6] [7]

A court is also required to adjust the allocation of the burden of a child support award on the parents if a child spends a substantial amount of time with each parent.[8] A child spends a substantial amount of time with a parent if a parent exercises time-sharing at least 20 percent of the overnights of the year.[9]

Child Support and the Department of Revenue

The Department of Revenue, in its capacity as a Title IV-D agency, is responsible for enforcing obligations for child support.[10] These responsibilities include providing "services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations."[11]

Judicial Notice

Florida's evidence code allows the court to take judicial notice of various matters.[12] These include:

- Acts and resolutions of Congress and the Florida Legislature.
- Decisional, constitutional, and public statutory law of every of other state, territory, and jurisdiction of the U.S.
- Contents of the Federal Register.
- Records of any court of this state or of any court of record of the U.S. or any other U.S. state, territory, or jurisdiction.
- Rules of court of this state, the U.S., or any other U.S. state, territory, or jurisdiction.[13]

Temporary Injunction Hearings

Florida law prohibits the admission of evidence other than verified pleadings or affidavits at ex parte hearings for temporary injunctions.[14] These injunctions relate to underlying allegations of domestic violence; repeat violence, sexual violence, or dating violence; and stalking. Evidence

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[6] *Id*. at 168.
[7] The parent's informal parenting agreement may have been an adequate basis for a court to deviate from the child support guidelines before s. 61.30, F.S., was amended in 2008. In 2008, the Legislature through s. 16, ch. 2008-61, L.O.F., replaced references to "shared parental arrangement" with "parenting plan."
[8] Section 61.30(11)(b), F.S.
[9] Section 61.30(11)(b)8. F.S.
[10] Section 409.25995, identifies the Department of Revenue (department) as the state Title IV-D agency. Pursuant to s. 409.2563(1)(f), F.S., a Title IV-D case is defined as a case or proceeding in which the department provides child support services within the scope of Title IV-D of the Social Security Act (42 U.S.C. ss. 651 et. seq.)
[11] 42 U.S.C.A. §654 (4)(A).
[12] Judicial notice is defined as "A court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." BLACK'S LAW DICTIONARY (9th ed. 2009).
[13] Section 90.202, F.S.
[14] Sections 741.30(5)(b), 784.046(6)(b), and 784.0485, F.S.

other than verified pleadings or affidavits may be admitted, however, if adequate notice and an opportunity to be present is provided to the respondent.

III. Effect of Proposed Changes:

This bill revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing schedule exercised by the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes an opportunity to provide advance notice to the parties. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue. Family law cases include:

> dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, Uniform Interstate Family Support Act, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.[15]

This bill also creates an exception to the current limits placed on admissibility of evidence at ex parte temporary injunction hearing. These hearings relate to temporary injunctions sought for domestic violence; repeat violence, sexual violence, or dating violence; and stalking. This bill will allow judicial notice to be taken of records other than verified pleadings or affidavits, without providing a respondent advance notice and an opportunity to be present.

Lastly, the bill prohibits the Department of Revenue from undertaking actions to determine paternity, establish a child support obligation, or enforce or modify a support obligation unless:

- The parent or a child is receiving public assistance; or
- The custodial parent or the parent entitled to receive support has requested assistance from the Department and has applied for services under Title IV-D of the Social Security Act.

Moreover, the bill precludes the Department from providing assistance to a parent who retains private counsel, unless the parent, the other parent, or the children are receiving public assistance. The Department indicates that federal law does not provide a basis for denying Title IV-D services for this reason.

[15] Rule 2.545(d)(2.), Rules of Jud. Admin.

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:

The Office of State Courts Administrator anticipates a fiscal impact resulting from the bill in the following respects:

- The bill includes amendments to ch. 61, F.S., that will impact the workload of the judiciary with regard to administrative child support cases that are heard in the circuit court and family law cases in which the parties are pro se litigants. However, the extent of the impact is unquantifiable at this time.
- The new provision amending 90.204, F.S., will affect court workload to the extent that when it is invoked, the court will be required to file notice in the pending case of the matters judicially noticed. However, fiscal impact is indeterminate.

The Department of Children and Families does not expect a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue (Department) expresses significant concerns relating to the changes to s. 409.2564, F.S. According to the Department, these changes do not conform to federal law and may compromise the Department's ability to receive federal moneys, which currently fund a majority of the state's expenses in administering the child support program. In FY 2010-11, Florida received $178.3 million in federal reimbursement plus $31.4 million in federal incentive funds. In FY 2011-12, Florida received $159.9 million in federal reimbursement plus $32.8 million in federal incentive funds. Additionally, "Having a federally approved IV-D state plan is also a condition of federal funding for the state's federal Temporary Assistance for Needy Families (TANF) block grant under Title IV-A of the Social Security Act."[16] For FY 2012-13, the state's TANF block grant is $562 million.

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 April 1, 2013:
The committee substitute amends s. 409.2564, F.S., to limit the situations in which a parent is eligible for assistance from the Department of Revenue (Department) in determining paternity, establishing a child support obligation, or enforcing or modifying a support obligation.

A parent is only eligible for assistance from the Department if:

- The parent or a child is receiving public assistance; or
- The custodial parent or the parent entitled to receive support has requested assistance from the department and has applied for services under Title IV-D of the Social Security Act.

The committee substitute prohibits the Department from providing assistance to a parent who has retained private counsel, unless the parent, the other parent, or the children are receiving public assistance.

B. Amendments:

None.

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

[16] Department of Revenue, *2013 Bill Analysis HB 905 Amendment #1 (393985)* (March 16, 2013).

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraphs (a) and (b) of subsection (11) of
6 section 61.30, Florida Statutes, are amended to read:
7 61.30 Child support guidelines; retroactive child support.—
8 (11)(a) The court may adjust the total minimum child
9 support award, or either or both parents' share of the total
10 minimum child support award, based upon the following deviation
11 factors:
12 1. Extraordinary medical, psychological, educational, or
13 dental expenses.

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14 2. Independent income of the child, not to include moneys
15 received by a child from supplemental security income.
16 3. The payment of support for a parent which has been
17 regularly paid and for which there is a demonstrated need.
18 4. Seasonal variations in one or both parents' incomes or
19 expenses.
20 5. The age of the child, taking into account the greater
21 needs of older children.
22 6. Special needs, such as costs that may be associated with
23 the disability of a child, that have traditionally been met
24 within the family budget even though fulfilling those needs will
25 cause the support to exceed the presumptive amount established
26 by the guidelines.
27 7. Total available assets of the obligee, obligor, and the
28 child.
29 8. The impact of the Internal Revenue Service Child &
30 Dependent Care Tax Credit, Earned Income Tax Credit, and
31 dependency exemption and waiver of that exemption. The court may
32 order a parent to execute a waiver of the Internal Revenue
33 Service dependency exemption if the paying parent is current in
34 support payments.
35 9. An application of the child support guidelines schedule
36 that requires a person to pay another person more than 55
37 percent of his or her gross income for a child support
38 obligation for current support resulting from a single support
39 order.
40 10. The particular parenting plan, court-ordered time-
41 sharing schedule, or particular time-sharing schedule exercised
42 by agreement of the parties, such as where the child spends a

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43 significant amount of time, but less than 20 percent of the
44 overnights, with one parent, thereby reducing the financial
45 expenditures incurred by the other parent; or the refusal of a
46 parent to become involved in the activities of the child.
47 11. Any other adjustment that is needed to achieve an
48 equitable result which may include, but not be limited to, a
49 reasonable and necessary existing expense or debt. Such expense
50 or debt may include, but is not limited to, a reasonable and
51 necessary expense or debt that the parties jointly incurred
52 during the marriage.
53 (b) Whenever a particular parenting plan, court-ordered
54 time-sharing schedule, or particular time-sharing schedule
55 exercised by agreement of the parties provides that each child
56 spend a substantial amount of time with each parent, the court
57 shall adjust any award of child support, as follows:
58 1. In accordance with subsections (9) and (10), calculate
59 the amount of support obligation apportioned to each parent
60 without including day care and health insurance costs in the
61 calculation and multiply the amount by 1.5.
62 2. Calculate the percentage of overnight stays the child
63 spends with each parent.
64 3. Multiply each parent’s support obligation as calculated
65 in subparagraph 1. by the percentage of the other parent’s
66 overnight stays with the child as calculated in subparagraph 2.
67 4. The difference between the amounts calculated in
68 subparagraph 3. shall be the monetary transfer necessary between
69 the parents for the care of the child, subject to an adjustment
70 for day care and health insurance expenses.
71 5. Pursuant to subsections (7) and (8), calculate the net

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72 amounts owed by each parent for the expenses incurred for day
73 care and health insurance coverage for the child.
74 6. Adjust the support obligation owed by each parent
75 pursuant to subparagraph 4. by crediting or debiting the amount
76 calculated in subparagraph 5. This amount represents the child
77 support which must be exchanged between the parents.
78 7. The court may deviate from the child support amount
79 calculated pursuant to subparagraph 6. based upon the deviation
80 factors in paragraph (a), as well as the obligee parent's low
81 income and ability to maintain the basic necessities of the home
82 for the child, the likelihood that either parent will actually
83 exercise the time-sharing schedule set forth in the parenting
84 plan granted by the court, and whether all of the children are
85 exercising the same time-sharing schedule.
86 8. For purposes of adjusting any award of child support
87 under this paragraph, "substantial amount of time" means that a
88 parent exercises time-sharing at least 20 percent of the
89 overnights of the year.
90 Section 2. Subsection (4) is added to section 90.204,
91 Florida Statutes, to read:
92 90.204 Determination of propriety of judicial notice and
93 nature of matter noticed.—
94 (4) In family cases, the court may take judicial notice of
95 any matter described in s. 90.202(6) when imminent danger to
96 persons or property has been alleged and it is impractical to
97 give prior notice to the parties of the intent to take judicial
98 notice. Opportunity to present evidence relevant to the
99 propriety of taking judicial notice under subsection (1) may be
100 deferred until after judicial action has been taken. If judicial

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101 notice is taken under this subsection, the court shall, within 2
102 business days, file a notice in the pending case of the matters
103 judicially noticed. For purposes of this subsection, the term
104 "family cases" has the same meaning as provided in the Rules of
105 Judicial Administration.
106 Section 3. Subsections (4) through (13) of section
107 409.2564, Florida Statutes, are renumbered as subsections (5)
108 through (14), respectively, and a new subsection (4) is added to
109 that section, to read:
110 409.2564 Actions for support.—
111 (4)(a) The Department of Revenue shall not undertake an
112 action to determine paternity, to establish an obligation of
113 support, or to enforce or modify an obligation of support
114 unless:
115 1. Public assistance is being received by one of the
116 parents, both parents, or the dependent child or children; or
117 2. The custodial parent or the parent entitled to receive
118 support has requested the Department of Revenue's assistance in
119 enforcing or modifying a child support order and has filed a
120 signed application for services under Title IV-D of the Social
121 Security Act.
122 (b) Notwithstanding subparagraph (a)2., a parent is not
123 eligible to receive assistance from the Department of Revenue to
124 determine paternity, to establish an obligation of support, or
125 to enforce or modify an obligation of support, whichever is
126 applicable, if that parent is being represented by a private
127 attorney in proceedings to determine paternity, to establish an
128 obligation of support, or to enforce or modify an obligation of
129 support, whichever is applicable, unless public assistance is

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130 being received by that parent, the other parent, or the
131 dependent child or children.
132 Section 4. Paragraph (b) of subsection (5) of section
133 741.30, Florida Statutes, is amended to read:
134 741.30 Domestic violence; injunction; powers and duties of
135 court and clerk; petition; notice and hearing; temporary
136 injunction; issuance of injunction; statewide verification
137 system; enforcement; public records exemption.—
138 (5)
139 (b) Except as provided in s. 90.204, in a hearing ex parte
140 for the purpose of obtaining such ex parte temporary injunction,
141 no evidence other than verified pleadings or affidavits shall be
142 used as evidence, unless the respondent appears at the hearing
143 or has received reasonable notice of the hearing. A denial of a
144 petition for an ex parte injunction shall be by written order
145 noting the legal grounds for denial. When the only ground for
146 denial is no appearance of an immediate and present danger of
147 domestic violence, the court shall set a full hearing on the
148 petition for injunction with notice at the earliest possible
149 time. Nothing herein affects a petitioner’s right to promptly
150 amend any petition, or otherwise be heard in person on any
151 petition consistent with the Florida Rules of Civil Procedure.
152 Section 5. Paragraph (b) of subsection (6) of section
153 784.046, Florida Statutes, is amended to read:
154 784.046 Action by victim of repeat violence, sexual
155 violence, or dating violence for protective injunction; dating
156 violence investigations, notice to victims, and reporting;
157 pretrial release violations; public records exemption.—
158 (6)

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159 (b) Except as provided in s. 90.204, in a hearing ex parte
160 for the purpose of obtaining such temporary injunction, no
161 evidence other than the verified pleading or affidavit shall be
162 used as evidence, unless the respondent appears at the hearing
163 or has received reasonable notice of the hearing.
164 Section 6. Paragraph (b) of subsection (5) of section
165 784.0485, Florida Statutes, is amended to read:
166 784.0485 Stalking; injunction; powers and duties of court
167 and clerk; petition; notice and hearing; temporary injunction;
168 issuance of injunction; statewide verification system;
169 enforcement.—
170 (5)
171 (b) Except as provided in s. 90.204, in a hearing ex parte
172 for the purpose of obtaining such ex parte temporary injunction,
173 evidence other than verified pleadings or affidavits may not be
174 used as evidence, unless the respondent appears at the hearing
175 or has received reasonable notice of the hearing. A denial of a
176 petition for an ex parte injunction shall be by written order
177 noting the legal grounds for denial. If the only ground for
178 denial is no appearance of an immediate and present danger of
179 stalking, the court shall set a full hearing on the petition for
180 injunction with notice at the earliest possible time. This
181 paragraph does not affect a petitioner’s right to promptly amend
182 any petition, or otherwise be heard in person on any petition
183 consistent with the Florida Rules of Civil Procedure.
184 Section 7. Paragraph (c) of subsection (1) of section
185 61.14, Florida Statutes, is amended to read:
186 61.14 Enforcement and modification of support, maintenance,
187 or alimony agreements or orders.—

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188 (1)
189 (c) For each support order reviewed by the department as
190 required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the
191 child support award under the order differs by at least 10
192 percent but not less than $25 from the amount that would be
193 awarded under s. 61.30, the department shall seek to have the
194 order modified and any modification shall be made without a
195 requirement for proof or showing of a change in circumstances.
196 Section 8. Paragraph (e) of subsection (2) of section
197 61.1814, Florida Statutes, is amended to read:
198 61.1814 Child Support Enforcement Application and Program
199 Revenue Trust Fund.—
200 (2) With the exception of fees required to be deposited in
201 the Clerk of the Court Child Support Enforcement Collection
202 System Trust Fund under s. 61.181(2)(b) and collections
203 determined to be undistributable or unidentifiable under s.
204 409.2558, the fund shall be used for the deposit of Title IV-D
205 program income received by the department. Each type of program
206 income received shall be accounted for separately. Program
207 income received by the department includes, but is not limited
208 to:
209 (e) Fines imposed under ss. 409.256(7)(b), 409.2464(8)
210 ~~409.2564(7)~~, and 409.2578; and
211 Section 9. Paragraph (c) of subsection (1) of section
212 61.30, Florida Statutes, is amended to read:
213 61.30 Child support guidelines; retroactive child support.—
214 (1)
215 (c) For each support order reviewed by the department as
216 required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the

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217 child support award under the order differs by at least 10
218 percent but not less than $25 from the amount that would be
219 awarded under this section, the department shall seek to have
220 the order modified and any modification shall be made without a
221 requirement for proof or showing of a change in circumstances.
222 Section 10. This act shall take effect July 1, 2013.
223
224 ========== T I T L E A M E N D M E N T ==========
225 And the title is amended as follows:
226 Delete everything before the enacting clause
227 and insert:
228 A bill to be entitled
229 An act relating to family law; amending s. 61.30,
230 F.S.; providing for consideration of time-sharing
231 schedules as a factor in the adjustment of awards of
232 child support; amending s. 90.204, F.S.; authorizing
233 judges in family cases to take judicial notice of
234 certain court records without prior notice to the
235 parties when imminent danger to persons or property
236 has been alleged and it is impractical to give prior
237 notice; providing for a deferred opportunity to
238 present evidence; requiring a notice of such judicial
239 notice having been taken to be filed within a
240 specified period; providing that the term “family
241 cases” has the same meaning as provided in the Rules
242 of Judicial Administration; amending s. 409.2564,
243 F.S.; providing that the Department of Revenue may not
244 undertake certain actions regarding paternity or
245 support except in certain circumstances; providing

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246 that a parent is not eligible to receive assistance
247 from the department for certain actions if the parent
248 is being represented by a private attorney unless
249 public assistance is being received; amending ss.
250 741.30, 784.046, and 784.0485, F.S.; creating an
251 exception to a prohibition against using evidence
252 other than the verified pleading or affidavit in an ex
253 parte hearing for a temporary injunction for
254 protection against domestic violence, repeat violence,
255 sexual violence, dating violence, or stalking;
256 amending ss. 61.14, 61.1814, and 61.30, F.S.;
257 conforming cross-references; providing an effective
258 date.

By Senator Soto

14-01021A-13 20131210__

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules as a factor in the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing the court in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (11) of section 61.30, Florida Statutes, are amended to read:

61.30 Child support guidelines; retroactive child support.—

(11)(a) The court may adjust the total minimum child

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

14-01021A-13 20131210__

support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support

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59 obligation for current support resulting from a single support
60 order.
61 10. The particular parenting plan, court-ordered time-
62 sharing schedule, or particular time-sharing schedule exercised
63 by agreement of the parties, such as where the child spends a
64 significant amount of time, but less than 20 percent of the
65 overnights, with one parent, thereby reducing the financial
66 expenditures incurred by the other parent; or the refusal of a
67 parent to become involved in the activities of the child.
68 11. Any other adjustment that is needed to achieve an
69 equitable result which may include, but not be limited to, a
70 reasonable and necessary existing expense or debt. Such expense
71 or debt may include, but is not limited to, a reasonable and
72 necessary expense or debt that the parties jointly incurred
73 during the marriage.
74 (b) Whenever a particular parenting plan, court-ordered
75 time-sharing schedule, or particular time-sharing schedule
76 exercised by agreement of the parties provides that each child
77 spend a substantial amount of time with each parent, the court
78 shall adjust any award of child support, as follows:
79 1. In accordance with subsections (9) and (10), calculate
80 the amount of support obligation apportioned to each parent
81 without including day care and health insurance costs in the
82 calculation and multiply the amount by 1.5.
83 2. Calculate the percentage of overnight stays the child
84 spends with each parent.
85 3. Multiply each parent's support obligation as calculated
86 in subparagraph 1. by the percentage of the other parent's
87 overnight stays with the child as calculated in subparagraph 2.

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88 4. The difference between the amounts calculated in
89 subparagraph 3. shall be the monetary transfer necessary between
90 the parents for the care of the child, subject to an adjustment
91 for day care and health insurance expenses.
92 5. Pursuant to subsections (7) and (8), calculate the net
93 amounts owed by each parent for the expenses incurred for day
94 care and health insurance coverage for the child.
95 6. Adjust the support obligation owed by each parent
96 pursuant to subparagraph 4. by crediting or debiting the amount
97 calculated in subparagraph 5. This amount represents the child
98 support which must be exchanged between the parents.
99 7. The court may deviate from the child support amount
100 calculated pursuant to subparagraph 6. based upon the deviation
101 factors in paragraph (a), as well as the obligee parent's low
102 income and ability to maintain the basic necessities of the home
103 for the child, the likelihood that either parent will actually
104 exercise the time-sharing schedule set forth in the parenting
105 plan granted by the court, and whether all of the children are
106 exercising the same time-sharing schedule.
107 8. For purposes of adjusting any award of child support
108 under this paragraph, "substantial amount of time" means that a
109 parent exercises time-sharing at least 20 percent of the
110 overnights of the year.
111 Section 2. Subsection (4) is added to section 90.204,
112 Florida Statutes, to read:
113 90.204 Determination of propriety of judicial notice and
114 nature of matter noticed.—
115 (4) In family cases, the court may take judicial notice of
116 any matter described in s. 90.202(6) when imminent danger to

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117 persons or property has been alleged and it is impractical to
118 give prior notice to the parties of the intent to take judicial
119 notice. Opportunity to present evidence relevant to the
120 propriety of taking judicial notice under subsection (1) may be
121 deferred until after judicial action has been taken. If judicial
122 notice is taken under this subsection, the court shall, within 2
123 business days, file a notice in the pending case of the matters
124 judicially noticed. For purposes of this subsection, the term
125 "family cases" has the same meaning as provided in the Rules of
126 Judicial Administration.
127 Section 3. Paragraph (b) of subsection (5) of section
128 741.30, Florida Statutes, is amended to read:
129 741.30 Domestic violence; injunction; powers and duties of
130 court and clerk; petition; notice and hearing; temporary
131 injunction; issuance of injunction; statewide verification
132 system; enforcement; public records exemption.—
133 (5)
134 (b) Except as provided in s. 90.204, in a hearing ex parte
135 for the purpose of obtaining such ex parte temporary injunction,
136 no evidence other than verified pleadings or affidavits shall be
137 used as evidence, unless the respondent appears at the hearing
138 or has received reasonable notice of the hearing. A denial of a
139 petition for an ex parte injunction shall be by written order
140 noting the legal grounds for denial. When the only ground for
141 denial is no appearance of an immediate and present danger of
142 domestic violence, the court shall set a full hearing on the
143 petition for injunction with notice at the earliest possible
144 time. Nothing herein affects a petitioner's right to promptly
145 amend any petition, or otherwise be heard in person on any

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146 petition consistent with the Florida Rules of Civil Procedure.
147 Section 4. Paragraph (b) of subsection (6) of section
148 784.046, Florida Statutes, is amended to read:
149 784.046 Action by victim of repeat violence, sexual
150 violence, or dating violence for protective injunction; dating
151 violence investigations, notice to victims, and reporting;
152 pretrial release violations; public records exemption.—
153 (6)
154 (b) Except as provided in s. 90.204, in a hearing ex parte
155 for the purpose of obtaining such temporary injunction, no
156 evidence other than the verified pleading or affidavit shall be
157 used as evidence, unless the respondent appears at the hearing
158 or has received reasonable notice of the hearing.
159 Section 5. Paragraph (a) of subsection (5) of section
160 784.0485, Florida Statutes, is amended to read:
161 784.0485 Stalking; injunction; powers and duties of court
162 and clerk; petition; notice and hearing; temporary injunction;
163 issuance of injunction; statewide verification system;
164 enforcement.—
165 (5)
166 (b) Except as provided in s. 90.204, in a hearing ex parte
167 for the purpose of obtaining such ex parte temporary injunction,
168 evidence other than verified pleadings or affidavits may not be
169 used as evidence, unless the respondent appears at the hearing
170 or has received reasonable notice of the hearing. A denial of a
171 petition for an ex parte injunction shall be by written order
172 noting the legal grounds for denial. If the only ground for
173 denial is no appearance of an immediate and present danger of
174 stalking, the court shall set a full hearing on the petition for

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175 injunction with notice at the earliest possible time. This
176 paragraph does not affect a petitioner's right to promptly amend
177 any petition, or otherwise be heard in person on any petition
178 consistent with the Florida Rules of Civil Procedure.
179 Section 6. This act shall take effect July 1, 2013.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1098

INTRODUCER: Senator Richter

SUBJECT: General Assignments

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Favorable**
2.			BI	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1098 streamlines procedures and substantive procedures for the discharge of duties by an assignee under an assignment for the benefit of creditors. The changes to the law relating to an assignment for the benefit of creditors were recommended by the Business Law Section of The Florida Bar as part of its comprehensive review of the law.[1] This bill:

- Creates a negative notice procedure to allow an assignee when discharging duties under an assignment for the benefit of creditors to give notice to interested parties of a planned action. In the absence of objection, the assignee may proceed without a hearing. A form is created for providing negative notice of certain acts to be undertaken by the assignee.
- Sets a minimum bond for assignees under an assignment for the benefit of creditors of at least $25,000 or double the liquidation value of the unencumbered and liquid assets of the insolvent estate, whichever is higher.
- Authorizes an assignee to conduct discovery as provided for in the Florida Rules of Civil Procedure in the course of prosecuting or objecting to claims.
- Eliminates a conflict in existing law relating to an extension of the time within which an assignee may conduct the business of an insolvent debtor to allow the assignee to conduct the business of the insolvent debtor for 45 days or longer if needed and appropriate notice is given.
- Identifies the parties entitled to notice and the contents of the notice when an assignee rejects a lease when discharging his or her duties for an insolvent estate.

[1] *See*, The Business Law Section of The Florida Bar, *White Paper: Support for Proposed Amendments to Chapter 727, F.S., Assignments for the Benefit of Creditors* (on file with the Senate Committee on Judiciary).

- Creates a form for deeds for use by an assignee in the sale of real property by an insolvent estate.

This bill substantially amends the following sections of the Florida Statutes: 727.103, 727.104, 727.108, 727.109, 727.110, 727.111, and 727.113.

This bill creates section 727.117, Florida Statutes.

II. Present Situation:

The practice of assignment for the benefit of creditors is a state law procedure to administer an insolvent estate. Under an assignment for the benefit of a creditor, a debtor may voluntarily assign its assets to a third party.[2] The practice of assignment for the benefit of creditors involves an assignment in which the debtor voluntarily assigns its assets to a third party as a trustee for the purpose of liquidating the assets to satisfy, in full or in part, creditors' claims against the debtor.[3]

The practice of assignment for the benefit of creditors existed at common law and was codified in Florida law in 1889.[4] Florida law codifying the practice of assignment for the benefit of creditors was substantially re-drafted and codified in ch. 727, F.S.[5]

Under Florida law,[6] an assignment for the benefit of creditors "accomplishes the same result as a [federal] bankruptcy."[7] An assignment for the benefit of creditors is similar to federal bankruptcy proceedings by allowing the liquidation of a debtor's property for an equal distribution to creditors.[8] An assignment to the benefit of creditors may be distinguished from a federal bankruptcy proceeding in that it does not impose an automatic stay of collection efforts in favor of the debtor and the debtor is not discharged from his or her debt.[9]

An assignment for the benefit of creditors under ch. 727, F.S., commences with an assignment proceeding in which the insolvent debtor (assignor)[10] executes an irrevocable assignment in writing in compliance with a statutory form.[11] Then, the original assignment must be recorded in the county where the assignor had its principal place of business and a certified copy recorded in each county where assets of the assignor's estate are located.[12] The assignee[13] must file a petition with the clerk of the court to commence an assignment proceeding, and then file a motion

---

[2] *See, id.*
[3] *See Moecker v. Antoine*, 845 So. 2d 904, 910 (Fla. 1st DCA 2003) (citing *Brainard v. Fitzgerald*, 3 Cal.2d 157, 44 P.2d 336, 339 (Cal. 1935)). *See also*, The Business Law Section of The Florida Bar, *supra* note 1.
[4] *Moecker*, 845 So. 2d at 910.
[5] *See generally*, chapter 3891, Laws of Florida and substantial redrafting with the enactment of ch. 87-174, ss. 1-17, Laws of Florida.
[6] See ch. 727, F.S.
[7] Henry P. Trawick, Jr., *Trawick's Florida Practice and Procedure*, s. 37:18 (2012 ed.).
[8] *See also*, The Business Law Section of The Florida Bar, *supra* note 1.
[9] *Id.*
[10] "Assignor" means one who transfers property rights or powers to another. BLACK'S LAW DICTIONARY (9th ed. 2009).
[11] *See* Ronald G. Neiwirth and Jason Bloom, *Florida Legislature Overhauls Assignment for the Benefit of Creditors: More Similar to Bankruptcy, But With a Twist*, 82 FLA. B.J. 20, 20 (Jan. 2008) and s. 727.104(1)(a), F.S.
[12] *Id.* at 20 and s. 727.104(2)(a), F.S.
[13] "Assignee" means one to whom property rights or powers are transferred by another. BLACK'S LAW DICTIONARY (9th ed. 2009).

requesting the court to fix the appropriate amount of the assignee's bond.[14] The amount of the bond may not be less than double the liquidation value of the assets and is conditioned upon the assignee's discharge of the duties.[15]

Practitioners have stated that a need exists for more consistency and guidance in the procedures used to handle an assignment for the benefit of creditors.

III. Effect of Proposed Changes:

Negative Notice

The bill creates a new procedure for use with an assignment for the benefit of creditors. The purpose of the procedure is to reduce the administrative burden on courts and the administrative costs to the estate for hearings for relief that are not contested or opposed.[16] "Negative notice is a common procedural tool in federal bankruptcy court."[17] Under the bill, notice may be served by negative notice by including a specific form warning in the document (as set forth in s. 727.114(4), F.S., that:

- The assignee proposes to take certain actions described in the notice without further notice or hearing unless a party in interest files an objection within 21 days of service of the notice;
- Any objection to the notice must be filed with the clerk of the court and served on the assignee's attorney and any other appropriate person;
- If an objection is filed and served within the time permitted, the court must schedule a hearing; and
- If no objection is filed, the assignee and the court will presume that no party opposes the granting of the relief requested in the notice.

If an objection is not filed within the time prescribed, the assignee may take the actions described in the notice.[18]

Notice

A subtle conflict currently exists between s. 727.108(4), F.S., which allows an assignee to conduct the business of the assignor for up to 14 days (or longer upon notice), and s. 727.111(4), F.S., which requires not less than 20 days' notice of an assignee's continued operation of the assignor's business for longer than 14 calendar days. Thus, an assignee's compliance with both

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[14] *See* Ronald G. Neiwirth and Jason Bloom, *supra* note 11 at 20 and s. 727.104(2)(b), F.S.
[15] "The assignee must accept the trust created by the assignment and agree to carry it out as provided by law without delay." See Henry P. Trawick, Jr., *supra* note 6 and s. 727.104(1), F.S.
[16] *See* The Business Law Section of The Florida Bar, *supra* note 1.
[17] *See* Ronald G. Neiwirth and Jason Bloom, *supra* note 11 at 26 (citing Local Rule 9013-1(D) of the U.S. Bankruptcy Court for the Southern District of Florida which generally explains that "certain motions may be considered by the court without a hearing if appropriate notice and an opportunity to object to the relief requested is provided to interested parties ("negative notice")).")
[18] Under s. 727.111(4), F.S., the actions include: a proposed sale of assets of the estate other than in the ordinary course of business, the assignee's continued operation of the assignor's (insolvent debtor's) business for longer than 45 calendar days, the compromise or settlement of a controversy, and the payment of fees and expenses to the assignee and to professional persons employed by the assignee.

provisions is impossible unless the notice required by s. 727.111(4), F.S., is sent before the assignment has occurred.

To remedy the conflict, the bill provides an extension of the time within which an assignee may conduct the business of the assignor under s. 727.108(4), F.S., from 14 days to 45 days. The additional time is a larger window within which an assignee can assess the business, determine a strategy for liquidation, and, if necessary, give notice of intent to operate the business for an additional period of time. The assignee may continue to operate the business for up to 90 days if there is no objection to a negative notice given to interested parties. This period may also be extended. The bill leaves intact the condition that such operation of the business must be in the best interest of the estate.

Notice to Creditors

Currently, s. 727.111, F.S., provides for notice to be mailed at least 20 days before a proposed sale of assets, the payment of fees, or the settlement of a case which might be an asset of the estate. To streamline the deadlines set forth in the statute into multiples of 7 days, the bill extends the minimum amount of time for notice under the statute from 20 days to 21 days.

Assignee Bond

The purpose of the bond under an assignment for the benefit of creditors is to "protect the assignor's creditors from potential loss in the event of the assignee's improper and irreparable disposition of the assignor's assets."[19] Under current law, courts must set the bond in an amount not less than double the liquidation value of the assets of the estate. This requirement has led some courts to impose an unnecessarily high bond requirement which adds costs to the administration of an insolvent estate under assignment for the benefit of creditors.[20] The bill amends s. 727.104(4), F.S., to revise the assignee's bond requirement to be at least $25,000 or double the liquidation value of the unencumbered and liquid assets of the estate, whichever is higher. The amendment will have the effect of requiring a minimum bond amount without artificially inflating the bond amount based on a large amount of secured or unliquidated debt.

Objections to Claims

In an assignment for the benefit of creditors, creditors of an assignor file claims with the assignee who is charged with determining the validity and priority of such claims before distributing the assignor's assets in accordance with statutory requirements.[21] The assignee or any other party in interest may object to a creditor's claim.[22] The bill adds procedural amendments to s. 727.113(1), F.S., to specify which parties are entitled to service of any such objection and the service address of the claimant for objections to claims. This provision is also subject to the negative notice procedure created in the bill.

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[19] The Business Law Section of The Florida Bar, *supra* note 1 (citing *Williamson v. Leith*, 36 F.2d 643, 644 (Fla. 5th DCA 1929)).
[20] *Id.*
[21] Section 727.113, F.S.
[22] Section 727.113(3), F.S.

Assignee's Deed

The bill creates s. 727.117, F.S., adding a form deed to statutory provisions for an assignment for the benefit of creditors. The deed is in substantially the same form as the warranty deed set forth in s. 689.02, F.S., without the warranties of title. Instead, the assignee states that the grantor executes the instrument in its capacity as assignee of the estate of the insolvent debtor. The deed also states that the assignee is not personally liable as a result of the instrument.

Rejection of Unexpired Leases

The statute currently allows an assignee to reject an unexpired lease of non-residential real property or personal property.[23] However, it provides little guidance regarding the proper procedure for such rejection.[24] In the interest of establishing consistent practices, the bill revises s. 727.110, F.S., to codify the procedure for such rejection.

The bill specifies:

- The parties entitled to notice of the rejection;
- The information that must be included in the notice of such rejection; and
- The effective date of the rejection.

The bill also confirms the termination of an estate's rights, obligations, and liability concerning the leased property if a lessor fails to take possession upon rejection. The bill also authorizes an as assignee to use the negative notice procedure for the notice of rejection.

Discovery

The Business Law Section of The Florida Bar has indicated that disputes have arisen among practitioners regarding the applicability of the discovery provisions in the Florida Rules of Civil Procedure to cases involving the discharge of an assignee's statutory duties to:

- Determine whether to prosecute estate claims and causes of action;[25]
- Examine the validity and priority of claims against the estate;[26] and
- Investigate the value or benefits of an asset of the estate.[27]

The bill amends s. 727.108(1)(a), F.S., and s. 727.113, F.S., to confirm an assignee's right to conduct discovery as provided in the Florida Rules of Civil Procedure in the discharge of the assignee's duty to determine whether to prosecute such claims or causes of actions; and concerning objections to claims in all cases pending on July 1, 2013, or filed thereafter.

The bill takes effect upon becoming a law.

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[23] See ss. 727.108(5) and 727.109(6), F.S.
[24] The Business Law Section of The Florida Bar, *supra* note 1.
[25] Section 727.108(1)(a), F.S.
[26] Section 727.108(10), F.S.
[27] Section 727.108(11), F.S.

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:

To the extent that the bill reduces costs associated with assignments for the benefit of creditors, additional funds will be available to pay creditor claims.

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.)

None.

B. Amendments:

None.

By Senator Richter

23-00725A-13 20131098__

A bill to be entitled

An act relating to general assignments; amending s. 727.103, F.S.; defining the term “negative notice”; amending s. 727.104, F.S.; requiring an assignee’s bond to be in at least a specific amount or double the liquidation value of the unencumbered and liquid assets of the estate, whichever is higher; amending s. 727.108, F.S.; authorizing an assignee to conduct certain discovery to determine whether to prosecute certain claims or causes of action; extending the time period an assignee may conduct the business of the assignor; authorizing the assignee to continue conducting the business of the assignor under certain circumstances by serving negative notice; amending s. 727.109, F.S.; extending the time period for which a court may authorize an assignee to conduct the business of the assignor; amending s. 727.110, F.S.; providing procedures for an assignee’s rejection of an unexpired lease of nonresidential real property or of personal property; requiring the assignee to serve a notice of rejection on certain persons and file it with the court; requiring that a notice of rejection for personal property include certain information about the affected property; specifying the effective date of the rejection; requiring the estate’s rights and obligations to and liability for the affected property to terminate under certain circumstances; amending s. 727.111, F.S.; extending the minimum time period for giving notice to the assignor and

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creditors; conforming language; providing a procedure for serving notice on certain persons; requiring an objection to be filed and served within a specific time period; requiring the notice to be in a specified form; providing that the assignee may take certain actions if an objection is not filed; requiring the court to hear a filed objection; authorizing the court to shorten negative notice under certain circumstances; providing that a party may raise the shortened notice period in certain objections; requiring a certificate of service for negative notice to be filed with the court under certain circumstances; requiring negative notice to be given to certain persons under certain circumstances; amending s. 727.113, F.S.; providing procedures for serving an objection to a claim; providing that the Florida Rules of Civil Procedure apply to objections to claims in all pending cases beginning on a specific date; creating s. 727.117, F.S.; requiring an assignee’s deed to be in a specific form; providing an effective date.

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

Section 1. Present subsection (13) of section 727.103, Florida Statutes, is redesignated as subsection (14), and a new subsection (13) is added to that section, to read:

727.103 Definitions.—As used in this chapter, unless the context requires a different meaning, the term:

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(13) "Negative notice" means notice as set forth in s. 727.111(4) which, unless a response is filed within 21 days after the date of service thereof, allows certain actions set forth in the notice to occur.

Section 2. Subsection (2) of section 727.104, Florida Statutes, is amended to read:

727.104 Commencement of proceedings.—

(2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:

(a) Record the original assignment in the public records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment in each county where assets of the estate are located.~~;~~

(b) File, in the office of the clerk of the court in the county of the assignor's place of business if it has one, in the county of its chief executive office if it has more than one place of business, or in the county of the assignor's residence if the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor and the name and address of the assignee; a copy of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond is ~~shall be~~ subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond is ~~shall be~~ payable to the clerk of the court, in an amount not less than $25,000 or double the liquidation value of the

unencumbered and liquid assets of the estate as set forth in Schedule B, whichever is higher, conditioned upon the assignee's faithful discharge of her or his duties. Within 30 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond.

Section 3. Subsections (1) and (4) of section 727.108, Florida Statutes, are amended to read:

727.108 Duties of assignee.—The assignee shall:

(1) Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale, including, but not limited to, prosecuting any tort claims or causes of action that ~~which~~ were previously held by the assignor, regardless of any generally applicable law concerning the nonassignability of tort claims or causes of action.~~, and;~~

(a) With respect to the estate's claims and causes of action, the assignee may:

1. Conduct discovery as provided under the Florida Rules of Civil Procedure to determine whether to prosecute such claims or causes of actions.

2. Prosecute such claims or causes of action as provided in this section. ~~or~~

3. Sell and assign, in whole or in part, such claims or causes of action to another person or entity on the terms that the assignee determines are in the best interest of the estate under ~~to~~ s. 727.111(4).~~; and~~

(b) In an action in any court by the assignee or the first immediate transferee of the assignee, other than an affiliate or

117 insider of the assignor, against a defendant to assert a claim
118 or chose in action of the estate, the claim is not subject to,
119 and any remedy may not be limited by, a defense based on the
120 assignor's acquiescence, cooperation, or participation in the
121 wrongful act by the defendant which forms the basis of the claim
122 or chose in action.
123 (4) Conduct the business of the assignor for a limited
124 period ~~that may~~ not to exceed 45 ~~14~~ calendar days, if doing so
125 is in the best interest of the estate, or for a longer period
126 if~~,~~ in the best interest of the estate, upon notice and until
127 such time as an objection, if any, is sustained by the court~~;~~
128 ~~however, the assignee may not operate the business of the~~
129 ~~assignor for longer than 45 calendar days without a court order~~
130 ~~authorizing such operation if an objection by a party in~~
131 ~~interest is interposed to the assignee's motion for authority to~~
132 ~~operate the assignor's business~~. An assignee's authorization to
133 conduct the business of the assignor may be extended for a
134 period longer than 45 days upon service of negative notice. If
135 no timely objection is filed with the court, the assignee may
136 continue to operate the assignor's business for an additional 90
137 days. The court may extend the 90-day period if it finds an
138 extension to be in the best interest of the estate.
139 Section 4. Subsection (3) of section 727.109, Florida
140 Statutes, is amended to read:
141 727.109 Power of the court.—The court shall have power to:
142 (3) Upon notice and a hearing, if requested, authorize the
143 business of the assignor to be conducted by the assignee for
144 longer than 45 ~~14~~ calendar days, if in the best interest of the
145 estate.

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146 Section 5. Subsection (3) is added to section 727.110,
147 Florida Statutes, to read:
148 727.110 Actions by assignee and other parties in interest.—
149 (3) As to an assignee's rejection of an unexpired lease of
150 nonresidential real property or of personal property, as
151 provided under ss. 727.108(5) and 727.109(6):
152 (a) The assignee shall file a notice of rejection with the
153 court and serve a copy on the owner or lessor of the affected
154 property and, for personal property, on the landlord of the
155 premises on which the property is located. A notice of rejection
156 relating to personal property must identify the affected
157 property, the address at which the affected property is located,
158 the name and telephone number of the person in possession of the
159 affected property, and the deadline for removal of the affected
160 property.
161 (b) The effective date of the rejection is the date of
162 entry of a court order authorizing such rejection.
163 (c) If the lessor of the affected property fails to take
164 possession thereof after notice of the rejection, the estate's
165 rights and obligations to and liability for the property
166 terminate upon the effective date of the rejection.
167 Section 6. Subsections (4), (6), and (8) of section
168 727.111, Florida Statutes, are amended to read:
169 727.111 Notice.—
170 (4) The assignee shall give the assignor and all creditors
171 at least ~~not less than~~ 21 ~~20~~ days' notice by mail of a proposed
172 sale of assets of the estate other than in the ordinary course
173 of business, the assignee's continued operation of the
174 assignor's business for longer than 45 ~~14~~ calendar days, the

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175 compromise or settlement of a controversy, and the payment of
176 fees and expenses to the assignee and to professional persons
177 employed by the assignee pursuant to s. 727.108(7). The notice
178 shall be served on all creditors and their attorneys, if any, at
179 the address provided in the creditor's proof of claim. If a
180 proof of claim has not been filed by a creditor that is
181 registered to do business in this state, the notice must be
182 served on the creditor's registered agent as listed with the
183 Division of Corporations of the Department of State and on the
184 creditor's attorney, if known. If a proof of claim has not been
185 filed and the creditor does not have a registered agent within
186 the state, the notice must be served on the creditor at the
187 address listed in the schedules filed by the assignor. Objection
188 ~~Any objections~~ to the proposed action must be filed and served
189 upon the assignee and the assignee's attorney, if any, within 21
190 days after service of the notice ~~not less than 3 days before the~~
191 ~~date of the proposed action~~. The notice shall be in the
192 following form: ~~must include a description of the proposed~~
193 ~~action to be taken, the date of the proposed action, and the~~
194 ~~date and place for the hearing at which any objections will be~~
195 ~~heard.~~
196
197 NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING
198
199 IN THE CIRCUIT COURT
200 OF THE ....
201 CIRCUIT, IN AND FOR
202 .... COUNTY,
203 FLORIDA

204
205 IN RE:.....,
206 Assignor,
207 TO:.....,
208 Assignee.
209
210 TO CREDITORS AND OTHER INTERESTED PARTIES:
211
212 PLEASE TAKE NOTICE that, pursuant to s. 727.111(4), Florida
213 Statutes, the assignee may ...(List applicable action(s)
214 described in s. 727.111(4))..., and the Court may consider these
215 actions without further notice or hearing unless a party in
216 interest files an objection within 21 days from the date this
217 paper is served. If you object to the relief requested in this
218 paper, you must file your objection with the Clerk of the Court
219 at...(Clerk's address)..., and serve a copy on the assignee's
220 attorney,...(attorney's name and address)..., and any other
221 appropriate person.
222
223 If you file and serve an objection within the time permitted,
224 the Court shall schedule a hearing and notify you of the
225 scheduled hearing. If a hearing is already scheduled, list the
226 date, time, and location of the hearing: ...(date, time, and
227 location)...
228
229 If you do not file an objection within the time permitted, the
230 assignee and the Court will presume that you do not oppose the
231 granting of the relief requested in the paper.
232

233 .....
234 ASSIGNEE
235 Attorney for assignee (if any):.....
236 Address:.....
237
238 If no objections are ~~not~~ timely filed and served, the assignee
239 may take such action as described in the notice without further
240 order of the court or may obtain an order approving the action
241 without further notice or hearing ~~of the court granting such~~
242 ~~motion if the assignee reasonably believes that the order is~~
243 ~~necessary to proceed with the action contemplated by the motion~~.
244 If an objection is filed, the court shall hold a hearing on the
245 objection.
246 (6) For good cause shown and without notice of hearing, the
247 court may shorten the notice or negative notice period or limit
248 the parties to whom notice or negative notice need be given,
249 pursuant to subsection (3) or subsection (4). This subsection
250 does not affect the right of a party in interest to raise the
251 shortened notice period in any objection to the relief sought
252 under subsection (4).
253 (8) Wherever notice or negative notice is required to be
254 given under this chapter, a certificate of service of such
255 notice or negative notice shall be filed with the court, and
256 notice or negative notice shall be given to all consensual
257 lienholders and counsel who have filed a notice of appearance
258 with the court or who are identified in the assignor's
259 schedules.
260 Section 7. Subsection (1) of section 727.113, Florida
261 Statutes, is amended, and subsection (5) is added to that

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262 section, to read:
263 727.113 Objections to claims.—
264 (1) At any time before ~~prior to~~ the entry of an order
265 approving the assignee's final report, the assignee or any party
266 in interest~~, including another creditor of the assignor,~~ may
267 file with the court an objection to a claim, which objection
268 must be in writing and set forth the nature of the objection,
269 and shall serve a copy thereof on the creditor at the address
270 provided in the proof of claim, and to the assignee and the
271 assignee's attorney, if any. The objection may be served on
272 negative notice. ~~A copy of the objection, together with notice~~
273 ~~of hearing thereon, shall be mailed to the creditor at least 20~~
274 ~~days prior to the hearing.~~ All claims properly filed with the
275 assignee and not disallowed by the court constitute all claims
276 entitled to distribution from the estate.
277 (5) The discovery provisions of the Florida Rules of Civil
278 Procedure apply to objections to claims in all cases pending on
279 July 1, 2013, or filed thereafter.
280 Section 8. Section 727.117, Florida Statutes, is created to
281 read:
282 727.117 Assignee's deed form.—If an assignee sells property
283 of the estate, the deed shall be in substantially the following
284 form:
285
286 ASSIGNEE'S DEED
287
288 This Assignee's Deed is made and executed this .... day of
289 ...., ...(year)..., by ...., as Assignee for the Estate of ....,
290 Case No. .... in the Circuit Court of .... County, Florida,

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291 whose post office address is .... (hereinafter "Grantor"), to
292 ...., whose post office address is .... (hereinafter "Grantee").
293 Wherever used herein, the terms "Grantor" and "Grantee"
294 include all the parties to this instrument, singular and plural,
295 and the heirs, legal representatives, and assigns of these
296 individuals, and the successors and assigns of corporations,
297 wherever the context so admits or requires.
298
299 WITNESSETH:
300
301 That Grantor, for and in consideration of the sum of Ten
302 Dollars ($10.00) and other good and valuable consideration in
303 hand paid to said Grantor by Grantee, the receipt of which is
304 hereby acknowledged, hereby grants, bargains, sells, aliens,
305 remises, releases, conveys, and confirms unto Grantee, all of
306 that certain real property lying and being in the County of
307 ...., State of Florida, more particularly described as follows:
308
309 SEE ATTACHED "EXHIBIT A," which is incorporated herein by
310 the term "Property".
311
312 This conveyance is subject to taxes accruing for the year
313 of conveyance and subsequent years, and all encumbrances,
314 covenants, conditions, and restrictions of record, except
315 nothing herein operates to reimpose same.
316
317 TOGETHER with all the tenements, hereditaments, and
318 appurtenances thereto belonging or in anywise appertaining.
319

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320 TO HAVE AND TO HOLD the same in fee simple forever.
321
322 AND the Grantor hereby covenants with said Grantee that
323 Grantor has good right and lawful authority to sell and convey
324 said Property.
325
326 Grantor executed this instrument only in Grantor's capacity
327 as Assignee of the above referenced Assignment estate and no
328 personal judgment shall ever be sought or obtained against
329 Grantor individually by reason of this instrument.
330
331 IN WITNESS WHEREOF, said Grantor has caused these presents
332 to be executed the day and year first written above.
333
334 GRANTOR:
335
336 ...(Grantor's Signature)...
337 Print Name:.....
338 As Assignee for the Estate of ...(Assignor's Name)...
339 Case No. ....
340 Circuit Court of .... County, Florida
341
342 Signed, sealed and delivered
343 in the presence of:
344
345 ...(Witness's Signature)...
346 Witness
347 ...(Witness's Name Printed)...
348 Print Name

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349

350 ...Witness's Signature...

351 Witness

352 ...(Witness's Name Printed)...

353 Print Name

354

355 STATE OF FLORIDA

356 COUNTY OF ....

357

358 Sworn to and subscribed before me this .... day of ....,

359 ...(year)..., by ...(Assignee's Name)..., as Assignee for the

360 Estate of ...(Assignor's Name)..., Case No. ...., Circuit Court

361 of .... County, Florida, on behalf of said estate.

362

363 ...(Signature of Notary Public - State of Florida)...

364 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

365 Personally Known .... OR Produced Identification ....

366 Type of Identification Produced:....

367 Section 9. This act shall take effect upon becoming a law.

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