The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Monday, April 15, 2013
TIME: 1:00 —3:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1412** Richter (Similar H 7015)	Expert Testimony; Providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements, etc. JU 04/08/2013 Not Considered JU 04/15/2013 Favorable RC	Favorable Yeas 6 Nays 3
2	**CS/SB 1666** Banking and Insurance / Latvala (Compare CS/H 87, S 1380)	Mortgage Foreclosures; Providing that the second publication of the notice of sale may be published on a publicly accessible website of the clerk of the court in lieu of publication in any other form of media; requiring that a publicly accessible Internet website must be approved for legal publication, advertisement, and notice by the Florida Clerks of Court Operations Corporation; providing that between two specified dates, a retired justice or retired judge is not subject to certain limitations otherwise applicable to retired employees, etc. BI 03/20/2013 Fav/CS JU 04/08/2013 Not Considered JU 04/15/2013 Fav/CS AP RC	Fav/CS Yeas 6 Nays 2
3	**SB 634** Simpson (Similar CS/CS/H 1019)	Motor Vehicles; Revising provisions relating to the operation of radios or other soundmaking devices in vehicles; deleting a standard for determining prohibited sound levels; deleting an exception for vehicles operated for business or political purposes; authorizing local authorities to regulate the place where such soundmaking devices may be operated, etc. TR 03/21/2013 Favorable CJ 04/08/2013 Favorable JU 04/15/2013 Fav/CS	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 626** Education / Bullard (Compare CS/CS/H 609)	Bullying in the Public School System; Citing this act as the "Imagine Sheterria Elliot Act"; prohibiting cyberbullying in schools and during school-related activities; expanding the circumstances under which bullying or harassment of any student or employee of a public K-12 institution is prohibited; requiring each school district to incorporate a prohibition on cyberbullying into its policy on bullying and harassment; requiring that such policy mandate that computers without web-filtering software or computers with web-filtering software disabled be used when investigating complaints of cyberbullying, etc. ED 03/12/2013 Fav/CS JU 04/15/2013 Favorable RC	Favorable Yeas 9 Nays 0
5	**CS/SB 716** Children, Families, and Elder Affairs / Simpson (Similar CS/CS/H 1223)	Deceptive and Unfair Trade Practices; Authorizing a civil penalty for a person who willfully uses a deceptive or unfair trade act or practice against a military service member or the member's spouse or child in certain circumstances, etc. MS 03/07/2013 Favorable CF 03/18/2013 Fav/CS JU 04/15/2013 Favorable	Favorable Yeas 8 Nays 0
6	**CS/CS/SB 874** Criminal Justice / Regulated Industries / Galvano (Compare CS/CS/H 5)	Open Parties; Prohibiting a person from allowing a party to take place if a minor is in possession of or consuming alcohol or drugs; revising an exemption; providing criminal penalties, etc. RI 03/07/2013 Fav/CS CJ 04/01/2013 Fav/CS JU 04/15/2013 Favorable	Favorable Yeas 9 Nays 0
7	**CS/SB 836** Banking and Insurance / Simmons (Similar CS/CS/H 821, Compare CS/CS/H 823, Link CS/S 834)	Insurer Solvency; Providing additional calculations for determining whether an insurer has a company action level event; requiring an insurer's annual statement to include an actuarial opinion summary; protecting material supporting an insurer's annual actuarial opinion from subpoena, discovery, or admissibility in a civil action; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met, etc. BI 04/02/2013 Fav/CS JU 04/15/2013 Favorable RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 946** Criminal Justice / Simmons (Similar CS/H 787)	Computer or Electronic Device Harassment; Prohibiting knowing use of a computer or other device to transmit or post any photograph or video of an individual which depicts nudity and specified information relating to the depicted individual for the purpose of harassment; providing enhanced penalties for violations by persons 18 years of age or older involving victims younger than 16 years of age, etc. CJ 03/18/2013 Fav/CS JU 04/15/2013 Favorable ACJ AP	Favorable Yeas 9 Nays 0
9	**CS/SB 1000** Criminal Justice / Gibson (Identical CS/CS/H 1355)	Purchase of Firearms by Mentally Ill Persons; Providing conditions under which a person who has been voluntarily admitted to a mental institution for treatment and has undergone an involuntary examination under the Baker Act may be prohibited from purchasing a firearm; providing requirements for the examining physician; providing requirements with respect to the filing of specified records with the court and presentation of such records to a judge or magistrate; providing lawful authority of a judge or magistrate to review specified records and order such records be submitted to the Department of Law Enforcement, etc. CJ 04/01/2013 Fav/CS JU 04/15/2013 Favorable RC	Favorable Yeas 9 Nays 0
10	**CS/SB 1114** Criminal Justice / Altman (Similar CS/H 7031, Compare H 293, CS/H 585, CS/CS/H 1325, CS/S 1434, CS/CS/S 1644)	Sex Offenses; Providing that an out-of-court statement by a child victim with a physical, mental, emotional, or developmental age of 16 or less rather than 11 or less describing specified criminal acts is admissible in evidence in certain instances; requiring that a sexual predator who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff's office within a specified period after such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles, etc. CJ 04/01/2013 Fav/CS JU 04/15/2013 Favorable ACJ AP	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 1268** Criminal Justice / Detert (Identical CS/CS/H 1379)	Service of Process; Requiring sheriffs to charge a uniform fee for service of process; requiring an employer, employee, or representative or agent of an employer to permit an authorized individual to make service on an employee in a private area designated by the employer; providing criminal penalties for persons failing to comply with the process; revising provisions relating to the address used for service on a registered agent; requiring the levying creditor to deliver to the sheriff an affidavit setting forth how to pay out moneys received under an execution sale, etc. CJ 04/01/2013 Fav/CS JU 04/15/2013 Not Considered	Not Considered
12	**CS/SB 1482** Health Policy / Hays (Similar CS/H 1159)	Skilled Nursing Facilities; Providing an exemption from certificate-of-need requirements for construction of a licensed skilled nursing facility in a retirement community, etc. HP 04/02/2013 Fav/CS JU 04/15/2013 Fav/CS AP	Fav/CS Yeas 6 Nays 3
13	**CS/SB 1636** Health Policy / Flores (Identical CS/CS/CS/H 1129, Compare H 395, S 1056)	Infants Born Alive; Providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; requiring a health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health, etc. HP 04/09/2013 Fav/CS JU 04/15/2013 Fav/CS AP	Fav/CS Yeas 9 Nays 0
14	**SB 1166** Bradley (Similar CS/H 903)	Adverse Possession; Revising terminology; requiring certain conditions to be met before real property is legally adversely possessed without color of title; requiring a person claiming adverse possession to provide to the property appraiser certain attestations from the owner of the property on a uniform return, etc. JU 04/15/2013 Fav/CS BI	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/SB 1634** Ethics and Elections / Lee (Identical CS/CS/S 544, Compare H 593)	Legislative Lobbying Expenditures; Amending s. 11.045, F.S., and reenacting subsections (4)-(8), relating to lobbying before the Legislature; revising the term “expenditure” to exclude the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements; providing exceptions when a member or an employee of the Legislature may accept certain expenditures made by a lobbyist or a principal; providing for the future expiration and the reversion as of a specified date of statutory text, etc. EE 04/01/2013 Fav/CS JU 04/08/2013 Not Considered JU 04/15/2013 Not Considered RC	Not Considered

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: SB 1412

INTRODUCER: Senator Richter

SUBJECT: Expert Testimony

DATE: April 5, 2013 REVISED:

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

I. Summary:

SB 1412 conforms the standards for the admission of expert testimony in Florida courts to the Federal Rules of Evidence.

The bill amends s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise unless the testimony satisfies the following additional criteria:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods;
- The witness has applied the principles and methods reliably to the facts of the case.

As a result of the amendments, the effect of s. 90.702, F.S., is conformed to the effect of Federal Rule of Evidence 702.

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury's evaluation of the expert's opinion is substantially outweighed by their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

The bill further requires courts to interpret and apply ss. 90.702 and 90.704, F.S., in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and several related federal cases.[1]

[1] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which requires the party who wants to introduce the expert opinion testimony into evidence to show that the methodology or principle has sufficient reliability. Under the bill, *Frye* and subsequent Florida decisions applying or implementing *Frye* will no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion.

This bill amends sections 90.702 and 90.704, Florida Statutes.

II. Present Situation:

Admission of Expert Testimony (*Daubert* or *Frye* Standard)

Expert testimony has been used to assist the trier of fact in both civil and criminal trials for a wide range of subjects, including polygraph examination, battered woman syndrome, child abuse cases, and serum blood alcohol. The Florida Rules of Civil Procedure define an "expert witness" as a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.[2] Courts use expert witness testimony when scientific, technical, or other specialized knowledge may assist the trier of fact in understanding evidence or determining facts in issue during litigation. The Florida Evidence Code provides that the facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.[3] The Florida Supreme Court has considered the issue of whether experts can testify on direct examination that they relied on the hearsay opinions of other experts in forming their opinions.[4] The Court held that an expert is not permitted to testify on direct examination that the expert relied on consultations with colleagues or other experts in reaching his or her opinion because it impermissibly permits the testifying experts to bolster their opinions and creates the danger that the testifying experts will serve as conduits for the opinions of others who are not subject to cross-examination.[5] The Court emphasized that its holding did not preclude experts from relying on facts or data that are not independently admissible if the facts or data are a type reasonably relied upon by experts in the subject.[6]

Frye Standard

To admit scientific testimony into evidence, Florida courts currently use the standard governing the admissibility of scientific expert testimony imposed in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).[7] If the subject matter involves new or novel scientific evidence, the *Frye*

[2] Fla. R. Civ. P. 1.390(a).
[3] Section 90.704, F.S.
[4] *Linn v. Fossum*, 946 So. 2d 1032 (Fla. 2006).
[5] *Id.* at 1033.
[6] *Id.*
[7] *Stokes v. State*, 548 So. 2d 188 (Fla. 1989).

standard requires the party who wants to introduce the expert opinion into evidence to show that the methodology or principle has sufficient reliability. In *Frye*, the court held that the "principle or discovery" must be sufficiently established to "have gained general acceptance in the particular field in which it belongs."[8]

The Florida Supreme Court imposes four steps in its articulation of the *Frye* test:

1. The trial judge must determine whether such expert testimony will assist the jury in understanding the evidence or in determining a fact in issue.
2. The trial judge must decide whether the expert's testimony is based on a scientific principle or discovery that is "sufficiently established to have gained general acceptance in the particular field in which it belongs."
3. The trial judge must determine whether a particular witness is qualified as an expert to present opinion testimony on the subject in issue.
4. The judge may then allow the expert to render an opinion on the subject of his or her expertise, and it is then up to the jury to determine the credibility of the expert's opinion, which it may either accept or reject.[9]

The Florida Supreme Court noted that, under *Frye*, the court's inquiry focuses only on the general acceptance of the scientific principles and methodologies upon which an expert relies to give his or her opinion.[10] The *Frye* test is satisfied through the court's finding of proof of general acceptance of the basis of an expert's opinion.[11] Once the basis or foundation is established for an expert's opinion, the finder of fact may then assess and weigh the opinion for its value.[12]

The *Frye* test is not applicable to all expert opinion proffered for admissibility into evidence. If the expert opinion is based solely on the expert's experience and training, and the opinion does not rely on something that constitutes new or novel scientific tests or procedures, then it may be admissible without meeting the *Frye* standard.[13] By example, Florida courts admit medical expert testimony concerning medical causation when based solely on the expert's training and experience.[14] One court in determining the admissibility of medical expert testimony noted that *Frye* was not applicable to medical testimony (pure opinion) because the expert relied on his analysis of medical records and differential diagnosis rather than a study, test, procedure, or methodology that constituted new or novel scientific evidence.[15]

Florida Rules of Evidence

The Florida Evidence Code is codified in ch. 90, F.S. Section 90.102, specifies that the chapter replaces and supersedes existing statutory or common law in conflict with its provisions. As previously noted, the Florida Supreme Court regularly adopts amendments to the Evidence Code

[8] *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).
[9] *Ramirez v. State*, 651 So. 2d 1164, 1166-67 (Fla. 1995).
[10] *Marsh v. Valyou*, 977 So. 2d 543, 549 (Fla. 2007).
[11] *Id.*
[12] *Id*.
[13] *Id.* at 548. *See also* Charles W. Ehrhardt, *Florida Evidence*, s. 702.3 (2012 ed.).
[14] *See, e.g., Cordoba v. Rodriguez*, 939 So. 2d 319, 322 (Fla. 4th DCA 2006); *Fla. Power & Light Co. v. Tursi*, 729 So. 2d 995, 996 (Fla. 4th DCA 1999).
[15] *Gelsthorpe v. Weinstein*, 897 So. 2d 504, 510-11 (Fla. 2d DCA 2005); See also, *Marsh*, 977 So. 2d at 548-49.

as rules of court when it is determined that the matter is procedural rather than substantive. The Florida Evidence Code requires an expert to demonstrate knowledge, skill, experience, training, or education in the subject matter to qualify as an expert.[16] In a concurring opinion, one justice has argued that the Florida Supreme Court has "never explained how *Frye* has survived the adoption of the rules of evidence."[17] Justice Anstead also noted that the Florida Supreme Court has continued to apply *Frye* in determining the admissibility of scientific expert opinion testimony after the adoption of the Florida Rules of Evidence, but has done so without any mention that the rules do not mention *Frye* or the test set out in *Frye*.[18]

***Daubert* Standard**

The *Frye* standard was used in federal courts until 1993 when the U.S. Supreme Court issued its opinion in the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[19] The U.S. Supreme Court held that Federal Rule of Evidence 702 had superseded the *Frye* test, and it announced a new standard for determining the admissibility of novel scientific evidence.[20] Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue."[21] The Court announced other factors that a court may consider as part of its assessment under the *Daubert* test for the admissibility of expert scientific testimony:

- Whether the scientific methodology is susceptible to testing or has been tested;
- Whether the theory or technique has been subjected to peer review and publication;
- Whether in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error; and
- The existence and maintenance of standards controlling the technique's operation.[22]

Federal Rule of Evidence 702 was amended in 2000 to reflect *Daubert* and other decisions applying *Daubert*.[23] In *General Electric Co. v. Joiner*, the U.S. Supreme Court held that abuse of discretion is the appropriate standard of review for an appellate court to apply when reviewing a trial court's decision to admit or exclude evidence under *Daubert*.[24] In *Kumho Tire Co. v. Carmichael*, the Court held that a trial judge is not bound by the specific factors outlined in *Daubert*, but depending on the circumstances of the particular case at issue, the judge may consider other factors in his or her assessment under *Daubert*.[25] Additionally, the Court in *Kumho Tire Co.* held that the trial judge's obligation to be a gatekeeper is not limited to scientific testimony but extends to all expert testimony.[26]

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[16] Section 90.702, F.S.
[17] *Marsh*, 977 So. 2d at 551 (Anstead, J., concurring).
[18] *Id.*
[19] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
[20] *Id.*
[21] *Id.* at 592-93.
[22] *Id.* at 592-94.
[23] Fed. R. Evid. 702, Advisory Committee Notes for 2000 Amendments.
[24] *General Electric Co. v. Joiner*, 522 U.S. 136, 139 (1997).
[25] *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-52 (1999).
[26] *Id.*

The *Weisgram v. Marley Co.* case, a part of the *Daubert* progeny, was a wrongful death action against a manufacturer of heaters in which the plaintiff introduced expert testimony that the alleged heater defect caused a house fire.[27] The Court held that a federal appellate court may direct the entry of judgment as a matter of law when the court determines that evidence was erroneously admitted at trial and the remaining evidence that was properly admitted is insufficient to support the jury verdict.[28] The plaintiffs obtained a jury verdict based on the expert testimony that the heater was defective and that the heater's defect caused the fire.[29] The U.S. Supreme Court affirmed the Court of Appeals' reversal of the jury verdict, finding that the expert testimony offered by the plaintiff was speculation under Federal Rule of Evidence 702 as explicated in *Daubert* regarding the defectiveness of the heater.[30] The Court found the plaintiff's fears unconvincing that "allowing [federal] courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible."[31] The Court stated that *Daubert* put parties on notice regarding the exacting standards of reliability demanded of expert testimony.[32]

III. Effect of Proposed Changes:

The bill conforms the standard for Florida courts to admit expert witness testimony to the Federal Rule of Evidence 702 and the standard articulated in *Daubert*. The requirements for a witness qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion are revised to impose additional criteria for the admissibility of the testimony. Under the new criteria a court must consider whether:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

The bill requires Florida courts to interpret and apply requirements for the admissibility of expert witness testimony and the determination of the basis of an expert's opinion, in accordance with *Daubert* and subsequent U.S. Supreme Court decisions applying *Daubert.*[33] *Frye* and subsequent Florida decisions applying or implementing *Frye* will no longer apply to a court's determination of the admissibility of expert witness testimony in the form of opinion and a court's determination of the basis of the expert's opinion.

The bill amends s. 90.704, F.S., to specify that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of an opinion or by inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.[34] With the

[27] *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).
[28] *Id.* at 445-46.
[29] *Id.*
[30] *Id.* at 445-47.
[31] *Id.* at 455-56.
[32] *Id.*
[33] *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).
[34] *Linn*, 946 So. 2d at 1036-1037 (Florida Supreme Court acknowledging that s. 90.704, F.S., is modeled after Federal Rule of Evidence 703).

bill's amendment to s. 90.704, F.S., the language of the section tracks Federal Rule of Evidence 703.

Under the bill, all proposed expert testimony, including pure opinion testimony as described in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007) must comply with ss. 90.704 and 90.702, F.S., in accordance with *Daubert* and its progeny as interpreted by federal courts. Moreover, the bill provides that any facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data.

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.

D. Other Constitutional Issues:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S., and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Generally, in civil litigation such as negligence actions, the plaintiff has the burden of proof on issues essential to his or her cause of action.[35] The change in the new evidentiary standard may have a fiscal impact on the outcome of lawsuits or the number of such lawsuits.

It is difficult to quantify the fiscal impact of the bill's change in evidentiary standards for the admission of expert opinions. It may or may not result in a need for additional pre-trial hearings depending on the manner in which it is actually implemented by the courts.

C. Government Sector Impact:

The change in the standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed, but it is difficult to estimate due to the unavailability of data needed to quantify any increase or decrease in judicial workload.

In criminal proceedings, the state may incur additional costs in litigating the application and interpretation of the new standards supplied in this bill.

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.

[35] *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984). "On the issue of the fact of causation, as on other issues essential to his cause of action for negligence, the plaintiff, in general, has the burden of proof."(quoting *Prosser, Law of Torts* § 41 (4th ed. 1971)). *Id.*

By Senator Richter

23-00955A-13 20131412__

A bill to be entitled

An act relating to expert testimony; amending s. 90.702, F.S.; providing that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion as to the facts at issue in a case under certain circumstances; requiring the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions; subjecting pure opinion testimony to such requirements; amending s. 90.704, F.S.; providing that facts or data that are otherwise inadmissible in evidence may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that the probative value of the facts or data in assisting the jury to evaluate the expert's opinion substantially outweighs the prejudicial effect of the facts or data; providing an effective date.

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

Section 1. Section 90.702, Florida Statutes, is amended to read:

90.702 Testimony by experts.—

(1) If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or

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otherwise, if:

(a) The testimony is based upon sufficient facts or data;

(b) The testimony is the product of reliable principles and methods; and

(c) The witness has applied the principles and methods reliably to the facts of the case~~; however, the opinion is admissible only if it can be applied to evidence at trial~~.

(2) The courts of this state shall interpret and apply the requirements of subsection (1) and s. 90.704 in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent Florida decisions applying or implementing *Frye* no longer apply to subsection (1) or s. 90.704. All proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1) and s. 90.704.

Section 2. Section 90.704, Florida Statutes, is amended to read:

90.704 Basis of opinion testimony by experts.—The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the

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59 jury to evaluate the expert's opinion substantially outweighs
60 their prejudicial effect.
61 Section 3. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: EXPERT WITNESS (DAUBERT)

Bill Number: 1412 *(if applicable)*

Name: TROY RAFFERTY

Amendment Barcode: *(if applicable)*

Job Title: ATTORNEY

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Speaking: ☐ For ☒ Against ☐ Information

Representing: Fla. JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: expert testimony

Bill Number: SB 1412 *(if applicable)*

Name: Ed Brodsky

Amendment Barcode: *(if applicable)*

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Speaking: [ ] For [✓] Against [ ] Information

Representing: FL Prosecuting Attys Assoc

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____

Bill Number 1412 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

110-S
1:00 PM

THE FLORIDA SENATE

APPEARANCE RECORD

WAIVE IN SUPPORT

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

4-15-2013
Meeting Date

Topic: EXPERT TESTIMONY

Bill Number: SB 1412 (if applicable)

Name: STEPHEN R. WINN

Amendment Barcode: (if applicable)

Job Title: EXECUTIVE DIRECTOR

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Street

TALLAHASSEE FL 32301
City State Zip

Phone: 878-7463

E-mail:

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

Representing: FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Expert Testimony

Bill Number: 1412 (if applicable)

Name: Brewster Bevis

Amendment Barcode: _____ (if applicable)

Job Title: Senior Vice President

Address: 516 N. Adams
Street

Tallahassee FL 32312
City State Zip

Phone: 224-7173

E-mail: bbevis@awf.com

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

Representing: Associated Industries of Florida

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Expert Testimony

Bill Number: 1412 *(if applicable)*

Name: Monesia Brown

Amendment Barcode: *(if applicable)*

Job Title: Attorney

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Tallahassee, FL 32301
City *State* *Zip*

Phone: 205-9000

E-mail: monesia.brown@metzlaw.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Restaurant & Lodging Association

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04.15.13
Meeting Date

Topic: Expert Testimony

Bill Number: 1412 *(if applicable)*

Name: William Large

Amendment Barcode: _____ *(if applicable)*

Job Title: President

Address: 210 South Monroe Street
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-222-0170

E-mail: William@fljustice.org

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Justice Reform Institute

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: EXPERT EVIDENCE

Bill Number: 1412 (if applicable)

Name: GEORGE MERDS

Amendment Barcode: (if applicable)

Job Title: ATTY, GRAY ROBINSON

Address: 301 SD BRONOUGH
Street

TALLA, FL 32312
City, State, Zip

Phone: 850 577 9090

E-mail:

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

Representing: US CHAMBER

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Expert Testimony

Bill Number: SB 1412 *(if applicable)*

Name: David Hart

Amendment Barcode: *(if applicable)*

Job Title: Executive Vice President

Address: 136 S Bronough St
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone:

E-mail: dhart@flchamber.com

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

Representing: FL Chamber of Commerce

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Expert Testimony

Bill Number: 1412 *(if applicable)*

Name: Holly Miller

Amendment Barcode: _____ *(if applicable)*

Job Title: Assistant General Counsel

Address: _____
Street

_____
City *State* *Zip*

Phone: 850 224 6496

E-mail: hmiller@flmedical.org

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

Representing: FMA

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

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1666

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Latvala

SUBJECT: Mortgage Foreclosures

DATE: April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Johnson	Burgess	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.			AP	
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/SB 1666 is designed to revise Florida's mortgage foreclosure statute and related statutory provisions to expedite mortgage foreclosure actions and associated proceedings before the courts while providing additional rights for homeowners.

The bill expedites foreclosure proceedings by:

- Requiring the plaintiff to establish possession of a valid promissory note or authority to enforce the note in the foreclosure complaint
- Requiring financial institutions to post a bond or other financial means of providing adequate protection when alleging to be the holder of a note or entitled to enforce a lost, stolen, or destroyed note.
- Allowing any lienholder, instead of just the mortgagee, to use the expedited foreclosure process.
- Allowing the defendant to file other documents in defense of the foreclosure.
- Creating a higher standard for the defendant to show cause why a final judgment of foreclosure should not be entered.

- Exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises.

The bill also:

- Prevents a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final.
- Limits the amount of deficiency decrees.
- Reduces the statute of limitations from 5 years to 1 year for deficiency judgments related to mortgages on residential property that is a one-family to four-family dwelling unit. The period of limitation for an action for a deficiency judgment arising from a mortgage foreclosure commences to run on the day after the certificate of title is issued after the foreclosure sale.
- Creates a program to use retired justices and senior judges to assist with foreclosure proceedings.

The bill is effective upon becoming a law.

This bill amends the following sections of the Florida Statutes: 25.073, 95.11, 121.021, 121.091, 121.591, 702.06, and 702.10. The bill creates the following sections of the Florida Statutes: 702.015, 702.036, and 702.11.

II. Present Situation:

Background

Approximately 16.75 percent of all mortgage loans in Florida were 90 days or more delinquent or in the process of foreclosure, as of third quarter 2012.[1] In contrast, the national average delinquency rate was 7.03 percent. In addition, the foreclosure start rate in Florida was 1.50 percent, which was significantly higher than the national average of 1.08 percent.[2]

The Office of the State Court Administrator provided the following information concerning the number of mortgage foreclosure filings, dispositions, and estimated pending cases for calendar years 2011 and 2012.[3]

[1] Mortgage Bankers Association, *State Mortgage Market Profile of Florida, Third Quarter 2012.*
[2] *Id*.
[3] Office of the State Court Administrator, *Real Property/Mortgage Foreclosures* (on file with the Senate Committee on Judiciary).

Real Property/Mortgage Foreclosures All Circuits			
	Number of Filings	Number of Dispositions	Estimated Pending Cases, As of December
Calendar Year 2011	139,015	200,107	363,660
Calendar Year 2012	202,768	195,309	371,119

In 2012, the attorneys general of 49 states and the District of Columbia, the federal government, and five banks and mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase and Wells Fargo) reached an agreement on a mortgage settlement that will create new servicing standards, provide loan modification relief to distressed homeowners and provide funding for state and federal governments.[4] The settlement was made formal and binding on April 5, 2012, when the U.S. District Court in Washington, D.C. entered the consent judgments containing the settlement terms.[5] The settlement provides as much as $25 billion in relief to distressed borrowers and direct payments to states and the federal government. The agreement settles state and federal investigations regarding the mortgage loan and foreclosure abuses. The settlement requires new servicing standards that will prevent "robosigning,"[6] improper documentation, and lost paperwork. The new standards also provide for stricter oversight of foreclosure processing, including third-party vendors.

Foreclosure Procedure

Statutory process and the Florida Rules of Civil Procedure govern the foreclosure procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint,[7] which must allege that the plaintiff is the present owner and holder of the note

[4] Information concerning the national settlement can be found at http://www.nationalmortgagesettlement.com/ (last visited on Apr. 5, 2013). The court documents are available at http://www.justice.gov/opa/opa_mortgage-service.htm (last visited March 15, 2013.)
[5] Office of Mortgage Settlement Oversight, *First Take: Progress Report from the Monitor of the National Mortgage Settlement* (Aug. 29, 2012), *available at* https://www.mortgageoversight.com/wp-content/uploads/2012/08/ProgressReport08292012.pdf.
[6] This is a practice of an authorizing an employee to sign thousands of documents and affidavits without verifying the information in the document or affidavit that he or she is signing.
[7] Rule 1.944, Fla. R. Civ. P.

and mortgage,[8] contain a copy of the note and mortgage,[9] and allege a statement of default,[10] along with a filing fee,[11] and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.[12] A foreclosure is like any other civil action and generally has the following elements:

- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.[13]
- If a defendant has not filed an answer or another paper indicating intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.[14]
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.[15]
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.[16]
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.[17]
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.[18]
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale.[19]
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.[20]
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.[21]
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure,[22] and the court may, in its discretion, enter a deficiency decree for market value of the security received and the amount of the debt.[23]

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[8] *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).
[9] Rule 1.130(a), Fla. R. Civ. P.
[10] *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).
[11] The filing fee for foreclosure actions depends on the value of the claim. When the claim is for $50,000 or less, the fee is $395; when the claim is over $50,000 but less than $250,000, the fee is $900; and when the claim is $250,000 or more, the fee is $1900. Section 28.241(a)(1)(d), F.S.
[12] Section 48.23, F.S.
[13] Rule 1.070(j), Fla. R. Civ. P. *See also* chs. 48 and 49, F.S.
[14] Rule 1.040(a)(1), Fla. R. Civ. P.
[15] Rule 1.510(a), Fla. R. Civ. P.
[16] Section 45.031, F.S.
[17] Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.
[18] Section 45.031(1)(a), F.S.
[19] Section 45.031, F.S.
[20] Section 45.031(8), F.S.
[21] Section 45.031(7)(c), F.S.
[22] Section 45.031, F.S.
[23] Section 702.06, F.S.

Alternative Foreclosure Procedure

Section 702.10, F.S., provides an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The judge must verify that the complaint filed pursuant to s. 702.10(1), F.S., states a cause of action. If the judge finds the complaint is verified, the judge must issue an order to the defendant to show cause why a final judgment should not be entered. If the defendant waives the right to be heard, the judge must promptly enter a final judgment of foreclosure.[24] Attorney fees may be adjudged no greater than 3 percent of the principal amount owed in a foreclosure in which the defendant waives the right to be heard.[25] If the defendant files any defenses by a motion, or by a verified or sworn answer at or before the hearing, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.[26]

Section 702.10(1), F.S., does not specify a standard for the court to use when considering a defendant's defensive motions or answers to the show cause order. If the defendant files any defenses by a motion, or by a verified or sworn answer, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.[27] Some legal commentators believe that the "show cause proceeding" under both s. 702.10(1) and (2), F.S., is modeled on ss. 78.065 and 78.067, F.S., which outline a procedure for an order to show cause why a prejudgment writ of replevin should not be issued.[28] Under the replevin statute, "the court shall at the hearing on the order to show cause consider the affidavits and other showings made by the parties appearing and make a determination of which party, with reasonable probability, is entitled to the possession of the claimed property pending final adjudication of the claims of the parties. This determination shall be based on a finding as to the probable validity of the underlying claim against the defendant."[29]

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.[30]

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.[31]
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.[32]
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.[33]

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[24] Section 702.10(1)(d), F.S.
[25] Section 702.10(1)(c), F.S.
[26] Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 31:7 (2007 edition).
[27] *Id.*
[28] Gary Walk and Mark J. Wolfson, *An Analysis of the 1993 Mortgage Foreclosure Act*, 67 FLA. B.J. 68, 70 (Oct. 1993) (discussing the show cause mortgage foreclosure procedure under s. 702.10, F.S.).
[29] Section 78.067(2), F.S.
[30] Section 702.10(2), F.S.
[31] Section 702.10(2)(a), F.S.
[32] Section 702.10(2)(b), F.S.
[33] Section 702.10(2)(c), F.S.

- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.[34]

The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.[35]

III. Effect of Proposed Changes:

The Foreclosure Complaint: Requiring the Plaintiff to Establish Possession of a Valid Promissory Note or Authority to Enforce the Note

Section 7 creates s. 702.015, F.S., to require the plaintiff (i.e., the lender) to certify physical possession of the original promissory note or to provide sworn evidence to support a lost note. This new burden on the lender is intended to expedite the foreclosure process and avoid a repeat of some of the "robosigning," fraud and other problems of the past. A court may sanction the plaintiff for failure to comply with the requirements of this section. The section does not apply to foreclosure proceedings involving timeshare interests under part III of ch. 721, F.S.

The requirements must be met under this section to bring a complaint to foreclose a mortgage or other lien on residential real property designed principally for occupation by 1 to 4 families (including condominiums and cooperatives) which secure a promissory note.

Facts Regarding Plaintiff Holding Note or Entitlement to Enforce Note [s. 702.015(2) and (3), F.S.]

The complaint must establish that the plaintiff holds the original note or is entitled to enforce a promissory note by:

- Containing affirmative allegations made by the plaintiff at the time the proceeding is commenced that the plaintiff holds the original note secured by the notice; or
- Alleging with specificity the factual basis by which the plaintiff is a "person entitled to enforce" the promissory note under s. 673.3011, F.S.
    - Under s. 673.3011, a "person entitled to enforce" an instrument is the holder of the instrument, a nonholder in possession of the instrument with the rights of a holder, or a person not in possession of the instrument who may enforce it under s. 673.3091, F.S., (enforcement of a lost, destroyed or stolen instrument) or s. 673.4181(4), F.S., (mistaken payment or acceptance).

An "original note" or original promissory note" is defined as the signed or executed promissory note. It includes any renewal, replacement, consolidation, or amended and restated note or instrument that renews, replaces, or substitutes for a previous promissory note. The term also includes a transferrable record as provided in s. 668.50(16), F.S.

[34] Section 702.10(2)(d), F.S.
[35] *Id.*

Facts Regarding Delegation of Authority to Plaintiff to Institute a Foreclosure Action [s. 702.015(3), F.S.

If a plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint must describe with specificity:

- The authority of the plaintiff, and
- The document that grants such authority to the plaintiff.

These requirements are not intended to modify laws regarding standing or real parties in interest.

Plaintiff's Possession of Original Promissory Note [s. 702.015(4), F.S.]

A plaintiff in possession of the original promissory note must file with the court, under penalty of perjury, a certification that the plaintiff possesses the original promissory note. The filing must be made contemporaneously with the foreclosure complaint. The certification must set forth:

- The location of the note;
- The name and title of the individual giving the certification;
- The name of the person who personally verified such possession; and
- The time and date on which possession was certified.

The certification must also have attached to it correct copies of the note and all allonges. The original note and allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

Affidavit Required to Enforce a Lost, Destroyed, or Stolen Instrument [s. 702.015(5)]

A plaintiff seeking to enforce a lost, destroyed or stolen instrument must attach to the complaint an affidavit executed under penalty of perjury. The affidavit must:

- Detail a clear chain of all endorsements, transfers, or assignments of the promissory note;
- Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument. Adequate protection as required under s. 673.3091(2), F.S., must be provided before final judgment. Adequate protection refers to adequately protecting the party required to pay the instrument against loss that might occur caused by a claim by another person to enforce the instrument.
- Include as exhibits to the affidavit, copies of the note and the allonges to the note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the plaintiff.

Section 11 creates s. 702.11, F.S., to allow a court to find that the following constitute reasonable means for providing adequate protection under s. 673.3091, F.S.:

- A written indemnification agreement by a person reasonably believed sufficiently solvent to honor the obligation;
- A surety bond;

- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Other security the court deems appropriate under the circumstances.

The security must be on terms and in amounts set by the court. The security must run through the statute of limitations for the underlying note and indemnify and hold harmless the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note.

A person who wrongly claims to hold a note or to be entitled to enforce a lost, stolen, or destroyed note who causes the mortgage to be foreclosed is liable to the actual holder, without limitation to any adequate protections given, for actual damages plus attorney fees and costs. The actual holder may also pursue recovery directly against any adequate protections given. This section does not limit the ability of the actual holder of the note to pursue other claims or remedies it may have against the maker of the note, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement.

The "Show Cause" Foreclosure Procedure: Creating an Expedited Process

Order to Show Cause under s. 702.10(1), F.S.

Section 10 amends s. 702.10, F.S., to establish a "show cause" process that streamlines and expedites foreclosures. The "show cause" process preserves all appropriate due process rights protecting borrowers; it eliminates unnecessary court hearings; and it gives community associations standing to participate when delinquent assessments are due.

The streamlined show cause process is as follows. After filing a complaint, the plaintiff may request an order to show cause for the entry of final judgment. The court must immediately review the request and the court file in chambers without a hearing. The court must promptly issue an order to show cause why a final judgment of foreclosure should not be entered to the other parties named in the action if the complaint is verified, complies with the requirements in s. 702.015, F.S. (created by Section 10 of the bill), and alleges a cause of action to foreclose on real property.

The court must set a hearing, the date and time of which must not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. If service is by publication, the hearing date cannot be set sooner than 30 days after the first publication. The hearing is no longer required to be held within 60 days of the date of service.

The bill makes responses easier for homeowners once the foreclosure is filed by permitting the homeowner to file other documents in defense of the foreclosure. The bill specifies that the filing of defenses by motion, responsive pleading, affidavits, or other papers before the hearing may constitute cause for the court not to enter final judgment. Under current law, filing of defenses by motion or by a verified or sworn answer prior to the show cause hearing are needed to show cause for the court not to enter final judgment. Current law, however, states that such filings establish cause, while under the bill the expanded types of filings only "may" show cause.

If the defendant files defenses by motion, an answer, affidavits, other papers, and other evidence and argument or if the defendant or defendant's attorney appears at the hearing, the hearing time will be used to consider whether a genuine issue of material fact exists that precludes the entry of summary judgment or that constitutes a legal defense to foreclosure. The order to show cause must notify the defendant that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

The bill creates a higher standard for the defendant to show cause. Under the bill, the defendant shows cause (why the court should not grant final judgment of foreclosure) if the defendant raises a genuine issue of material fact which precludes entry of summary judgment. The defendant's showing or legal defenses may be raised in a motion, responsive pleading, affidavit, or other papers or in evidence presented at or before the hearing. Current law states that the defendant shows cause merely by filing defenses by a motion or by a verified or sworn answer at or before the hearing.

The court may enter a final judgment of foreclosure if the court finds that all defendants have waived the right to be heard. The court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff shows entitlement to final judgment and files the original note, establishes a lost note, or shows the court the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that any defendant has not waived the right to be heard on the order to show cause, the court must determine whether there is cause to enter a final judgment of foreclosure. If the hearing time is insufficient, the court may announce a continued hearing on the order to show cause. The court may enter a final judgment of foreclosure if the defendant does not show cause why a final judgment should not be entered.

The Legislature intends that alternative procedures may run simultaneously with other court procedures.

Order to Show Cause under s. 702.10(2), F.S.

The bill also exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter:

- An order to make payments during the pendency of the foreclosure proceedings, or
- An order to vacate the premises. Additionally, the bill makes it clear that the expedited show-cause proceedings for foreclosure of commercial real estate under s. 702.10(2), F.S., are cumulative to any other relief that a court may award.

Finality of Mortgage Foreclosure Judgment

Section 8 creates s. 702.036, F.S., to prevent a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final. The section provides that the former owner may continue to pursue money damages against the lender even after the trial and appeals have concluded, but the claims cannot impact the marketability of the property in the new owner.

An action to set aside, invalidate, or challenge the validity of a final judgment of mortgage foreclosure, or to establish or re-establish a lien or encumbrance of property in abrogation of a mortgage foreclosure final judgment is limited to monetary damages if the following apply:

- The party seeking relief from the final judgment of mortgage foreclosure was properly served in the foreclosure lawsuit.
- The final judgment of mortgage foreclosure was entered as to the property.
- All applicable appeals periods have run as to the final judgment with no appeals having been taken or any appeals having been finally resolved.
- The property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens regarding the suit to set aside, invalidate, or challenge the foreclosure appears in the official records of the county where the property was located.
    - Affiliates of the foreclosing lender include the foreclosing lender, any loan servicer for the loan being foreclosed, and any past or present owner or holder of the loan being foreclosed. It also includes:
        (a) A parent entity, subsidiary, or other person who directly or indirectly controls, is controlled by, or is under common control of such entities
        (b) A maintenance company, holding company, foreclosure services company or law firm under contract with such entities.

Once foreclosure of a mortgage occurs based upon enforcement of a lost, destroyed, or stolen note, a person who was not a party to the foreclosure action but claims entitlement to enforce the promissory note secured by the mortgage has no claim against the foreclosed property once it is conveyed to a person not affiliated with the foreclosing lender or the foreclosed owner. That person may still pursue recovery from any adequate protection given pursuant to s. 673.3091, F.S., or from the party who wrongfully claimed entitlement to enforce the promissory note, from the maker of the note, or any other person against whom a claim may be made.

Deficiency Judgments: Limiting the Amount of a Deficiency Decree

Section 9 amends s. 702.06, F.S., to limit the amount of a deficiency judgment on owner-occupied residential property to the difference between the judgment amount and the "fair market value" on the date of the foreclosure sale. Similarly, the deficiency for a short sale may not exceed the difference between the outstanding debt and the fair market value of the property on the date of the sale.

Actions to Enforce Deficiency Judgments: Reducing the Statute of Limitations on Certain Actions

Section 2 amends s. 95.11, F.S., to reduce the statute-of-limitations period for a lender to enforce a deficiency judgment following the foreclosure of an owner-occupied, one-family to four-family dwelling unit years from 5 years to 1 year. The statute-of-limitations period for an action for a deficiency judgment arising from a mortgage foreclosure commences to run on the day after the certificate of title is issued after the foreclosure sale.

Section 3 creates an undesignated section of law that applies the amendments to s. 95.11, F.S. The amendments to s. 95.11, F.S., reduce the statute of limitations to bring an action to enforce a deficiency judgment related to the foreclosure of an owner-occupied, one-family to four-family dwelling unit from 5 years to 1 year. This section applies the 1-year statute of limitations to any such deficiency action that commences on or after July 1, 2013, regardless of when the cause of action accrued. An exception is created for causes of action that accrue before the effective date of the bill and have not expired under the current 5-year statute of limitations. Such actions must be commenced within the 5-year statute of limitations or by July 1, 2014, whichever comes first. Pursuant to Section 19 of the bill, this section will not take effect unless the Legislature appropriates $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

Use of Retired Justices or Senior Judges to Assist with Foreclosure Proceedings

Sections 4-6 amend ss. 121.021, 121.091, and 121.591, F.S., to allow courts to employ retired justices and judges to assist with the foreclosure backlog. These sections provide that, effective July 1, 2013, through June 30, 2016, the act of termination for a justice or judge who has reached the later of his or her normal retirement age or the age when vested and subsequently returns to temporary employment as a judge in any court, occurs when the justice or judge has terminated all employment under the Florida Retirement System (FRS) for at least 1 calendar month prior to reemployment as a senior judge. Retired justices and judges who return to such temporary employment are exempt from the limitations on reemployment for purposes of the FRS in s. 121.091(2), F.S., and may continue receiving distributions from his or her FRS account under s. 121.591(1)(a)4., F.S.

Section 1 amends s. 25.073, F.S., to restrict chief judges of circuit courts from selecting retired judges from outside of the circuit to serve on a temporary judicial assignment. A chief judge may select a retired judge from outside of the circuit if the chief judge certifies to the Chief Justice of the Supreme Court that no qualified retired judges from the circuit are available.

Section 13 adjusts specified employer contributions rates for retired justices and senior judges who are reemployed to assist with foreclosure proceedings as authorized by the bill. The employer contribution changes are needed to fund the benefit changes required to allow retired justices and senior judges to participate in the program.

Section 14 provides a legislative finding that the act fulfills an important state interest and that a proper and legitimate state purpose is served if employees and retirees of the state and its political subdivisions, and their dependents, survivors and beneficiaries are extended basic protections afforded by governmental retirement systems. The Legislature further finds that the assignment of former justices and judges to temporary employment would assist the State Courts System in managing caseloads and providing individuals and businesses with access to courts. In particular, these assignments are critically important in assisting with the disposition of the current backlog in foreclosure cases. The section also provides a legislative finding that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as a judge in a timely manner.

Application and Implementation of Bill

Section 12 creates an undesignated section that provides that changes to the foreclosure process contained in the bill are remedial and not substantive in nature. The act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, regardless of when the instruments are executed. The following sections are exempt from this general rule of application:

- Section 702.015, F.S., only applies to cases filed on or after July 1, 2013.
- The amendments to s. 702.10, F.S., and the entirety of s. 702.11, F.S., apply to causes of action pending on the act's effective date.

Section 15 requests the Supreme Court to amend the Rules of Civil Procedure to implement the expedited foreclosure process.

Section 16 provides that sections 4, 5, 6, 13, and 14 of this act will take effect only if the Legislature appropriates funding during the 2013 Session the sum of $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

Section 17 provides the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 18 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Section 16 of the bill provides that provisions relating to the reemployment of retired justices and the increased employer contributions associated with the costs of the

retirement benefits authorized in the bill will not be implemented unless the Legislature appropriates funds and the Governor does not veto the appropriation.

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 streamlines the foreclosure litigation process, it may reduce costs and delays associated with bringing a foreclosure suit.

The expedited foreclosure of abandoned real property would allow such properties to be rehabilitated and sold on the marketplace in a timelier manner, thereby generating additional capital and employment in the local communities and increasing the appreciation of the fair market value of properties in a community.

C. Government Sector Impact:

Impact on State Courts[36]

State Courts Revenue: The fiscal impact of this legislation on revenues to the State Courts' trust funds from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from a spike in filings due to a shortened statute of limitations for bringing actions established in the bill.

Expenditures: The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

Judicial or Court Workload: The courts expect to experience a short-term increase in court workload in consequence of provisions permitting additional lienholders to seek show cause orders under modified procedures expediting the foreclosure process. A related longer-term increase in judicial time may be expected under show cause provisions requiring judges immediately review court files to ensure compliance with numerous additional criteria. A near-term increase in court workload may also be

[36] Office of the State Courts Administrator 2013 Judicial Impact Statement, SB 1666 (Jan. 8, 2013) (on file with the Senate Committee on Judiciary).

anticipated in light of a shortened statute of limitations for bringing actions to enforce claims of deficiency.

Court Rules/Jury Instructions: Newly created s. 702.10(3), F.S., requests the Supreme Court amend the Florida Rules of Civil Procedure to provide for expedited foreclosure proceedings and development of related forms. The bill's effective date, upon becoming law, will afford the Court little time to act upon the requested rule making.

***Judiciary*:** Provisions potentially expediting the foreclosure process and reducing related court workload over a period of years will require a corresponding near-term expenditure of court resources. Additional revenue may be anticipated, however, in consequence of an increase in near-term filings by lienholders initiating expedited foreclosure proceedings.

Impact on the Florida Retirement System (FRS)

The Department of Management Services provided an analysis[37] of the provision relating to the FRS Pension Plan, a defined benefit plan and the FRS Investment Plan, which is a defined contribution plan. The department administers the FRS Pension Plan and the State Board of Administration administers the FRS Investment Plan.

The costs in the bill are based on a 2012 actuarial special study conducted by Milliman, Inc.,[38] that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

The bill would increase the required employer contribution rates established in s. 121.71(4), F.S., as follows:

- The Elected Officers' Class – Justices, Judges, is increased by 0.45 percentage points.
- The Deferred Retirement Option Program is increased by 0.01 percentage points.

The bill would also increase the required employer contribution rate for the unfunded actuarial liability established in s. 121.71(5), Florida Statutes, for the Elected Officers' Class – Justices, Judges, by 0.91 percentage points.

The provisions of this act relating to senior justices or judges would take effect only if the Legislature appropriates the sum of at least $1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits granted in this act and the appropriations are not vetoed by the Governor. The changes in this bill relating to retired justices and judges shall stand repealed effective July 1, 2016.

[37] Department of Management Services Bill Analysis 2013 SB 1666 (Mar. 14, 2013) (on file with the Senate Committee on Judiciary).
[38] Milliman, *Study Reflecting the Impact to the Blended Rates of the Florida Retirement System of Exempting Retired Judges from Termination and Reemployment Limitations,* (Feb. 9, 2012) (on file with Senate Committee on Banking and Insurance).

Fiscal Impact on State Agencies
The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

A. Revenues: Not applicable.
B. Expenditures, Recurring:

7/2013-6/2014	7/2014-6/2015	7/2015-6/2016
$1,598,000	$1,662,000	$1,729,000

Fiscal Impact on Local Governments
The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study. The Division of Retirement of the Department of Management Services provided the following information concerning the impact on local governments, as depicted in the table. There are no associated revenues.

Recurring Expenditures for Local Governments		
7/2013 - 6/2014	7/2014 - 6/2015	7/2015 - 6/2016
$196,000	$204,000	$212,000

VI. Technical Deficiencies:

Due to the changes made by amendment 227122, the Legislature may wish to remove the following phrase from s. 702.10(2), F.S.: "Except as provided in paragraph (i),." As a result of the amendment, paragraph (i) appears to be consistent with subsection (2), rather than an exception to subsection (2).

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Judiciary on April 15, 2013:
The committee substitute:

- Corrects a technical error in the underlying bill by clarifying that the period of limitation for an action for a deficiency judgment arising from a mortgage foreclosure commences on the day after the certificate of title is issued after the foreclosure sale.
- Imposes additional criteria for the payment or selection of a retired judge.
- Clarifies that the expedited show-cause proceedings for foreclosure of commercial real estate under s. 702.10(2), F.S., are cumulative to any other relief that a court may award.
- Removes provisions in the bill that authorize publication of a notice of sale on a publicly accessible website.
- Specifies that a defendant to a foreclosure action must raise a genuine issue of material fact which would preclude the entry of a summary judgment or other legal defense to defeat an attempt to foreclose in an expedited manner.

CS by Banking and Insurance on March 20, 2013:
CS/SB 1666 provides technical, conforming changes relating to the temporary reemployment of retired justices and judges. The bill also provides a legislative finding that the act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as judges to assist with the disposition of the current backlog in foreclosure cases.

B. Amendments:

None.

102626

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 114 - 216.

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

And the title is amended as follows:

Delete lines 2 - 24

and insert:

An act relating to mortgage foreclosures; amending s.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
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The Committee on Judiciary (Latvala) recommended the following:

1 **Senate Amendment (with title amendment)**
2 Before line 114
3 insert:
4 Section 1. Section 25.073, Florida Statutes, is amended to
5 read:
6 25.073 Retired justices or judges assigned to temporary
7 duty; additional compensation; appropriation.—
8 (1) For purposes of this section, the term "retired
9 justice" or "retired judge" means any former justice or judge
10 who:
11 (a) Has not been defeated in seeking reelection to, or has
12 not failed to be retained in seeking retention in, his or her
13 last judicial office or was not defeated when last seeking

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14 election to judicial office; and
15 (b) Is not engaged in the practice of law.
16 (2) Any retired justice of the Supreme Court or retired
17 judge of a district court of appeal or circuit or county court
18 assigned to temporary duty in any of such courts, pursuant to
19 Art. V of the State Constitution, shall be compensated as
20 follows:
21 (a) Any such justice or judge shall be paid not less than
22 $200 for each day or portion of a day that such justice or judge
23 is assigned to temporary duty; however, no such justice or judge
24 may serve for more than 60 days in any year without the approval
25 of the Chief Justice.
26 (b) Necessary travel expense incident to the performance of
27 duties required by assignment of such justice or judge to
28 temporary duty shall be paid by the state in accordance with the
29 provisions of s. 112.061.
30 (3)(a) A payment to a retired circuit court or county court
31 judge may be made only to a retired judge who:
32 1. Serves in the same circuit court or county court in
33 which he or she last served in a permanent capacity; or
34 2. In a circuit court or county court in which the retired
35 judge previously served as a retired judge before July 1, 2013.
36 (b) Notwithstanding paragraph (a), a payment may be made to
37 a retired judge who did not previously serve in the particular
38 circuit court or county court, if the chief judge of the circuit
39 court certifies in writing to the Chief Justice of the Supreme
40 Court that the chief judge, after a reasonable search, was
41 unable to identify a qualified retired judge who previously
42 served in the circuit or county court who is available for the

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43 temporary duty.
44 (4) ~~(3)~~ Payments required under this section shall be made
45 from moneys to be appropriated for this purpose.
46
47 ========== T I T L E A M E N D M E N T ==========
48 And the title is amended as follows:
49 Delete line 2
50 and insert:
51 An act relating to mortgage foreclosures; amending s.
52 25.073, F.S.; limiting the eligibility of retired
53 judges to receive compensation and reimbursement under
54 certain circumstances; amending s.

494432

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

1 **Senate Amendment**
2
3 Delete line 234
4 and insert:
5
6 period shall commence on the day after the certificate of title
7 is issued

806030

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 671 - 717
4 and insert:
5
6 (a) Contain affirmative allegations expressly made by the
7 plaintiff at the time the proceeding is commenced that the
8 plaintiff is the owner and holder of the original note secured
9 by the mortgage; or
10 (b) Allege with specificity the factual basis by which the
11 plaintiff is a person entitled to enforce the note and mortgage
12 under s. 673.3011.
13 (3) If a plaintiff has been delegated the authority to

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14 institute a mortgage foreclosure action on behalf of the person
15 entitled to enforce the note and mortgage, the complaint shall
16 describe the authority of the plaintiff and identify, with
17 specificity, the document that grants the plaintiff the
18 authority to act on behalf of the person entitled to enforce the
19 note and mortgage. This subsection is intended to require
20 initial disclosure of status and pertinent facts and not to
21 modify law regarding standing or real parties in interest. The
22 term "original note" or "original promissory note" means the
23 signed or executed promissory note rather than a copy thereof.
24 The term includes any renewal, replacement, consolidation, or
25 amended and restated note or instrument given in renewal,
26 replacement, or substitution for a previous promissory note. The
27 term also includes a transferrable record, as defined by the
28 Uniform Electronic Transaction Act in s. 668.50(16).
29 (4) If the plaintiff is in possession of the original
30 promissory note, the plaintiff must file under penalty of
31 perjury a certification with the court, contemporaneously with
32 the filing of the complaint for foreclosure, that the plaintiff
33 is in possession of the original promissory note. The
34 certification must set forth the location of the note, the name
35 and title of the individual giving the certification, the name
36 of the person who personally verified such possession, and the
37 time and date on which the possession was verified. Correct
38 copies of the note and all allonges to the note must be attached
39 to the certification. The original note and the allonges must be
40 filed with the court before the entry of any judgment of
41 foreclosure or judgment on the note.
42 (5) If the plaintiff seeks to enforce a lost, destroyed, or

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43 stolen instrument, an affidavit executed under penalty of
44 perjury must be attached to the complaint. The affidavit must:
45 (a) Detail a clear chain of all endorsements, transfers, or
46 assignments of the promissory note that is the subject of the
47 action.
48 (b) Set forth facts showing that the plaintiff is entitled
49 to enforce a lost, destroyed, or stolen instrument pursuant to
50 s. 673.3091 or s. 71.011, whichever is applicable. Adequate
51 protection as required under s. 673.3091(2), shall be provided
52 before the entry of final judgment.

888240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
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	.	

The Committee on Judiciary (Richter) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 728 - 758.
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 51 - 57
8 and insert:
9
10 proceedings involving timeshare interests; creating s.

841006

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete line 766
4 and insert:
5
6 of the final judgment of foreclosure of a mortgage, except in
7 the case of fraud, misrepresentation, or other misconduct by the
8 party who obtained the judgment, the court

690342

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 882 - 886
and insert:
3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers ~~or by a verified or sworn answer at or~~ before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute ~~constitutes~~ cause for the court not to enter ~~the attached~~ final judgment.

322340

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete line 885
4 and insert:
5
6 constitutes cause for the court not to enter ~~the~~

392010

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete line 894
4 and insert:
5
6 the hearing, the hearing time may be used to hear and

335022

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete line 976
4 and insert:
5
6 evidenced by a promissory note or other negotiable or
7 nonnegotiable instrument.

440852

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 984 - 986
4 and insert:
5
6 time for the continued hearing.

768302

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 987 - 1090
and insert:

(2) As part of any ~~In an~~ action for foreclosure, other than residential real estate, and in addition to any other relief that the court may award, the plaintiff ~~the mortgagee~~ may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show

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14 cause. However, the date for the hearing may ~~shall~~ not be set
15 sooner than 20 days after the service of the order. If ~~Where~~
16 service is obtained by publication, the date for the hearing may
17 ~~shall~~ not be set sooner than 30 days after the first
18 publication.
19 2. Direct the time within which service of the order to
20 show cause and the complaint shall be made upon each ~~the~~
21 defendant.
22 3. State that a ~~the~~ defendant has the right to file
23 affidavits or other papers at the time of the hearing and may
24 appear personally or by way of an attorney at the hearing.
25 4. State that, if a ~~the~~ defendant fails to appear at the
26 hearing to show cause and fails to file defenses by a motion or
27 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
28 have waived the right to a hearing and in such case the court
29 may enter an order to make payment or vacate the premises.
30 5. Require the movant ~~mortgagee~~ to serve a copy of the
31 order to show cause on the defendant ~~mortgagor~~ in the following
32 manner:
33 a. If a defendant ~~the mortgagor~~ has been served with the
34 complaint and original process, service of the order may be made
35 in the manner provided in the Florida Rules of Civil Procedure.
36 b. If a defendant ~~the mortgagor~~ has not been served with
37 the complaint and original process, the order to show cause,
38 together with the summons and a copy of the complaint, shall be
39 served on the defendant ~~mortgagor~~ in the same manner as provided
40 by law for original process.
41 (b) The right of a defendant to be heard at the hearing to
42 show cause is waived if the defendant, after being served as

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43 provided by law with an order to show cause, engages in conduct
44 that clearly shows that the defendant has relinquished the right
45 to be heard on that order. A ~~The~~ defendant's failure to file
46 defenses by a motion or by a sworn or verified answer or to
47 appear at the hearing duly scheduled on the order to show cause
48 presumptively constitutes conduct that clearly shows that the
49 defendant has relinquished the right to be heard.
50 (c) If the court finds that a ~~the~~ defendant has waived the
51 right to be heard as provided in paragraph (b), the court may
52 promptly enter an order requiring payment in the amount provided
53 in paragraph (f) or an order to vacate.
54 (d) If the court finds that the mortgagor has not waived
55 the right to be heard on the order to show cause, the court
56 shall, at the hearing on the order to show cause, consider the
57 affidavits and other showings made by the parties appearing and
58 make a determination of the probable validity of the underlying
59 claim alleged against the mortgagor and the mortgagor's
60 defenses. If the court determines that the plaintiff ~~mortgagee~~
61 is likely to prevail in the foreclosure action, the court shall
62 enter an order requiring the mortgagor to make the payment
63 described in paragraph (e) to the plaintiff ~~mortgagee~~ and
64 provide for a remedy as described in paragraph (f). However, the
65 order shall be stayed pending final adjudication of the claims
66 of the parties if the mortgagor files with the court a written
67 undertaking executed by a surety approved by the court in an
68 amount equal to the unpaid balance of the lien being foreclosed
69 ~~the mortgage on the property~~, including all principal, interest,
70 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
71 ~~mortgagee~~.

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72 (e) If ~~In the event~~ the court enters an order requiring the
73 mortgagor to make payments to the plaintiff ~~mortgagee~~, payments
74 shall be payable at such intervals and in such amounts provided
75 for in the mortgage instrument before acceleration or maturity.
76 The obligation to make payments pursuant to any order entered
77 under this subsection shall commence from the date of the motion
78 filed under this section ~~hereunder~~. The order shall be served
79 upon the mortgagor no later than 20 days before the date
80 specified for the first payment. The order may allow ~~permit~~, but
81 may ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all
82 appropriate steps to secure the premises during the pendency of
83 the foreclosure action.
84 (f) If ~~In the event~~ the court enters an order requiring
85 payments, the order shall also provide that the plaintiff is
86 ~~mortgagee shall be~~ entitled to possession of the premises upon
87 the failure of the mortgagor to make the payment required in the
88 order unless at the hearing on the order to show cause the court
89 finds good cause to order some other method of enforcement of
90 its order.
91 (g) All amounts paid pursuant to this section shall be
92 credited against the mortgage obligation in accordance with the
93 terms of the loan documents;~~, provided,~~ however, ~~that any~~
94 payments made under this section do ~~shall~~ not constitute a cure
95 of any default or a waiver or any other defense to the mortgage
96 foreclosure action.
97 (h) Upon the filing of an affidavit with the clerk that the
98 premises have not been vacated pursuant to the court order, the
99 clerk shall issue to the sheriff a writ for possession which
100 shall be governed by ~~the provisions of~~ s. 83.62.

768302

101

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

103 And the title is amended as follows:

104 Delete lines 79 - 85

105 and insert:

106 circumstances;

227122

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 987 - 989
4 and insert:
5 (2) Except as provided in paragraph (i), in any ~~an~~ action for
6 foreclosure~~,~~ other than owner-occupied residential real estate,
7 in addition to any other relief that the court may award, the

By the Committee on Banking and Insurance; and Senator Latvala

A bill to be entitled

An act relating to mortgage foreclosures; amending s. 45.031, F.S.; providing that the second publication of the notice of sale may be published on a publicly accessible website of the clerk of the court in lieu of publication in any other form of media; revising the contents of the notice of sale; amending s. 50.011, F.S.; providing that certain legal notice requirements do not apply to an electronic publication of a notice of sale on a publicly accessible Internet website; creating s. 50.015, F.S.; requiring that a publicly accessible Internet website must be approved for legal publication, advertisement, and notice by the Florida Clerks of Court Operations Corporation; describing conditions and requirements for a publicly accessible Internet website; requiring 24-hour customer support; requiring that legal publication, advertisement, or notice of foreclosure action be posted within 3 business days, excluding court holidays, after the date for the foreclosure sale is set; authorizing a clerk of court to contract with a publicly accessible Internet website provider for legal publication of notice of foreclosure action; providing for maximum publication fees; amending s. 95.11, F.S.; revising the limitations period for commencing an action to enforce a claim of a deficiency judgment after a foreclosure action; providing for applicability to existing causes of action; providing that the amendments made by this act

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to s. 95.11, F.S., apply to any action commenced on or after July 1, 2013; amending s. 121.021, F.S.; defining terms; providing for the applicability of the term “termination”; amending s. 121.091, F.S.; providing that between two specified dates, a retired justice or retired judge is not subject to certain limitations otherwise applicable to retired employees; amending s. 121.591, F.S.; providing that, between two specified dates, a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; creating s. 702.015, F.S.; providing legislative intent; specifying required contents of a complaint seeking to foreclose on certain types of residential properties with respect to the authority of the plaintiff to foreclose on the note and the location of the note; authorizing sanctions against plaintiffs who fail to comply with complaint requirements; providing for non-applicability to proceedings involving timeshare interests; amending s. 702.035, F.S.; providing for the applicability of electronic publication if such publication effects advertisement, publication, or legal notice regarding a foreclosure proceeding; providing that only the costs charged by the host of the Internet website may be charged as costs in the action; creating s. 702.036, F.S.; requiring a court to treat a collateral

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59 attack on a final judgment of foreclosure on a
60 mortgage as a claim for monetary damages under certain
61 circumstances; prohibiting such court from granting
62 certain relief affecting title to the foreclosed
63 property; providing for construction relating to the
64 rights of certain persons to seek specified types of
65 relief or pursue claims against the foreclosed
66 property under certain circumstances; amending s.
67 702.06, F.S.; limiting the amount of a deficiency
68 judgment; amending s. 702.10, F.S.; revising the class
69 of persons authorized to move for expedited
70 foreclosure to include lienholders; defining the term
71 "lienholder"; providing requirements and procedures
72 with respect to an order directed to defendants to
73 show cause why a final judgment of foreclosure should
74 not be entered; providing that certain failures by a
75 defendant to make certain filings or to make certain
76 appearances may have specified legal consequences;
77 requiring the court to enter a final judgment of
78 foreclosure and order a foreclosure sale under certain
79 circumstances; revising a restriction on a mortgagee
80 to request a court to order a mortgagor defendant to
81 make payments or to vacate the premises during an
82 action to foreclose on residential real estate to
83 provide that the restriction applies to all but owner-
84 occupied residential property; providing a presumption
85 regarding owner-occupied residential property;
86 creating s. 702.11, F.S.; providing requirements for
87 reasonable means of providing adequate protection

88 under s. 673.3091, F.S., in mortgage foreclosures of
89 certain residential properties; providing for
90 liability of persons who wrongly claim to be holders
91 of or entitled to enforce a lost, stolen, or destroyed
92 note and cause the mortgage secured thereby to be
93 foreclosed in certain circumstances; providing for
94 construction and applicability; declaring that the act
95 is remedial in nature and applies to all mortgages
96 encumbering real property and all promissory notes
97 secured by a mortgage, whether executed before, on, or
98 after the effective date of this act; requiring that
99 employer contribution rates be adjusted; providing a
100 directive to the Division of Law Revision and
101 Information; providing legislature findings;
102 requesting the Florida Supreme Court to adopt rules
103 and forms to expedite foreclosure proceedings;
104 providing that certain specified provisions of the act
105 take effect only if the Legislature appropriates a
106 certain amount on a recurring basis to the judicial
107 system and if the Governor does not veto the
108 appropriation; providing that certain sections of the
109 act stand repealed on a stated date; providing an
110 effective date.
111
112 Be It Enacted by the Legislature of the State of Florida:
113
114 Section 1. Subsection (2) of section 45.031, Florida
115 Statutes, is amended to read:
116 45.031 Judicial sales procedure.—In any sale of real or

117 personal property under an order or judgment, the procedures
118 provided in this section and ss. 45.0315-45.035 may be followed
119 as an alternative to any other sale procedure if so ordered by
120 the court.
121 (2) PUBLICATION OF SALE.—Notice of sale shall be published
122 once a week for 2 consecutive weeks in a newspaper of general
123 circulation, as defined in chapter 50, published in the county
124 where the sale is to be held. The second publication shall be at
125 least 5 days before the sale or, in the alternative, may be
126 published on a publicly accessible website of the clerk of the
127 court authorized by s. 50.015 in lieu of publication in another
128 form of media. The notice of sale must ~~shall~~ contain:
129 (a) A description of the property to be sold.
130 (b) The time and place of sale.
131 (c) A statement that the sale will be made pursuant to the
132 order or final judgment.
133 (d) The caption of the action.
134 (e) The name of the clerk making the sale.
135 (f) A statement that any person claiming an interest in the
136 surplus from the sale, if any, other than the property owner as
137 of the date of the lis pendens must file a claim within 60 days
138 after the sale.
139 (g) A statement of the name of the newspaper or the website
140 home page address in, or on which, the notice will be published.
141
142 The court, in its discretion, may enlarge the time of the sale.
143 Notice of the changed time of sale shall be published as
144 provided herein.
145 Section 2. Section 50.011, Florida Statutes, is amended to

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146 read:
147 50.011 Where and in what language legal notices to be
148 published.—
149 (1) Whenever by statute an official or legal advertisement
150 or a publication, or notice in a newspaper has been or is
151 directed or permitted in the nature of or in lieu of process, or
152 for constructive service, or in initiating, assuming, reviewing,
153 exercising or enforcing jurisdiction or power, or for any
154 purpose, including all legal notices and advertisements of
155 sheriffs and tax collectors, the contemporaneous and continuous
156 intent and meaning of such legislation all and singular,
157 existing or repealed, is and has been and is hereby declared to
158 be and to have been, and the rule of interpretation is and has
159 been, a publication in a newspaper printed and published
160 periodically once a week or oftener, containing at least 25
161 percent of its words in the English language, entered or
162 qualified to be admitted and entered as periodicals matter at a
163 post office in the county where published, for sale to the
164 public generally, available to the public generally for the
165 publication of official or other notices and customarily
166 containing information of a public character or of interest or
167 of value to the residents or owners of property in the county
168 where published, or of interest or of value to the general
169 public.
170 (2) As allowed by s. 45.031(2), the requirements of
171 subsection (1) do not apply to any electronic publication of a
172 notice of sale on a publicly accessible Internet website meeting
173 the standards of s. 50.015.
174 Section 3. Section 50.015, Florida Statutes, is created to

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175 read:
176 50.015 Publicly accessible Internet website.—
177 (1) A publicly accessible Internet website must be approved
178 for legal publication, advertisement, and notice by the Florida
179 Clerks of Court Operations Corporation and must:
180 (a) Maintain a notice of foreclosure action for 90 days
181 following the first day of posting or for as long as provided in
182 subsection (3), and maintain publications of sales searchable
183 and accessible to users for 10 years following the first day of
184 posting.
185 (b) Receive at least 100,000 total impressions a month,
186 which must be certified by a recognized Internet search engine.
187 As used in this paragraph, the term "impression" means the time
188 at which a notice is viewed once by a visitor on an Internet web
189 page.
190 (c) Maintain 24-hour customer support, along with live
191 electronic communication and telephone support for a minimum of
192 12 hours a day during peak-time usage, and post online tutorials
193 for users.
194 (d) Be maintained on a data center that is compliant with
195 the Statement of Auditing Standards No. 70, and the website
196 provider shall provide the clerk of court with a certificate of
197 compliance with the Standards.
198 (e) Provide 24-hour access at no charge to the chief judge
199 of each judicial circuit and his or her designee, as well as to
200 each clerk of court and each deputy clerk. The website provider
201 must develop and maintain on file and provide to each clerk of
202 court and each chief judge a disaster recovery plan for the
203 website.

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204 (2) The website provider shall publish its affidavits
205 electronically in substantial conformity with ss. 50.041 and
206 50.051 and may use an electronic notary seal.
207 (3) Legal publication, advertisement, or notice of
208 foreclosure action shall be posted within 3 business days,
209 excluding court holidays, after the date for the foreclosure
210 sale is set and shall continue for 10 days after the foreclosure
211 sale, or for 90 consecutive days, whichever period is longer.
212 (4) Each clerk of court may contract with a publicly
213 accessible Internet website provider for legal publication of
214 notice of foreclosure action as required by s. 702.035.
215 (5) A publicly accessible Internet website may charge a fee
216 of up to $50 per notice.
217 Section 4. Paragraph (b) of subsection (2) of section
218 95.11, Florida Statutes, is amended, and paragraph (h) is added
219 to subsection (5) of that section, to read:
220 95.11 Limitations other than for the recovery of real
221 property.—Actions other than for recovery of real property shall
222 be commenced as follows:
223 (2) WITHIN FIVE YEARS.—
224 (b) A legal or equitable action on a contract, obligation,
225 or liability founded on a written instrument, except for an
226 action to enforce a claim against a payment bond, which shall be
227 governed by the applicable provisions of paragraph (5)(e), s.
228 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an
229 action for a deficiency judgment governed by paragraph (5)(h).
230 (5) WITHIN ONE YEAR.—
231 (h) An action to enforce a claim of a deficiency related to
232 a note secured by a mortgage against a residential property that

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233 is a one-family to four-family dwelling unit. The limitations
234 period shall commence on the day after the certificate is issued
235 by the clerk of court or the day after the mortgagee accepts a
236 deed in lieu of foreclosure.
237 Section 5. The amendments made by this act to s. 95.11,
238 Florida Statutes, apply to any action commenced on or after July
239 1, 2013, regardless of when the cause of action accrued.
240 However, any action that would not have been barred under s.
241 95.11(2)(b), Florida Statutes, before the effective date of this
242 act must be commenced within 5 years after the action accrued or
243 by July 1, 2014, whichever occurs first.
244 Section 6. Subsection (39) of section 121.021, Florida
245 Statutes, is amended to read:
246 121.021 Definitions.—The following words and phrases as
247 used in this chapter have the respective meanings set forth
248 unless a different meaning is plainly required by the context:
249 (39)(a) "Termination" occurs, except as provided in
250 paragraph (b), when a member ceases all employment relationships
251 with participating employers, however:
252 1. For retirements effective before July 1, 2010, if a
253 member is employed by any such employer within the next calendar
254 month, termination shall be deemed not to have occurred. A leave
255 of absence constitutes a continuation of the employment
256 relationship, except that a leave of absence without pay due to
257 disability may constitute termination if such member makes
258 application for and is approved for disability retirement in
259 accordance with s. 121.091(4). The department or state board may
260 require other evidence of termination as it deems necessary.
261 2. For retirements effective on or after July 1, 2010, if a

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262 member is employed by any such employer within the next 6
263 calendar months, termination shall be deemed not to have
264 occurred. A leave of absence constitutes a continuation of the
265 employment relationship, except that a leave of absence without
266 pay due to disability may constitute termination if such member
267 makes application for and is approved for disability retirement
268 in accordance with s. 121.091(4). The department or state board
269 may require other evidence of termination as it deems necessary.
270 (b) "Termination" for a member electing to participate in
271 the Deferred Retirement Option Program occurs when the program
272 participant ceases all employment relationships with
273 participating employers in accordance with s. 121.091(13),
274 however:
275 1. For termination dates occurring before July 1, 2010, if
276 the member is employed by any such employer within the next
277 calendar month, termination will be deemed not to have occurred,
278 except as provided in s. 121.091(13)(b)4.c. A leave of absence
279 shall constitute a continuation of the employment relationship.
280 2. For termination dates occurring on or after July 1,
281 2010, if the member becomes employed by any such employer within
282 the next 6 calendar months, termination will be deemed not to
283 have occurred, except as provided in s. 121.091(13)(b)4.c. A
284 leave of absence constitutes a continuation of the employment
285 relationship.
286 (c) Effective July 1, 2011, "termination" for a member
287 receiving a refund of employee contributions occurs when a
288 member ceases all employment relationships with participating
289 employers for 3 calendar months. A leave of absence constitutes
290 a continuation of the employment relationship.

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291 (d) Effective July 1, 2013, through June 30, 2016,
292 "termination" for a retired justice or judge who reached the
293 later of his or her normal retirement age or age when vested at
294 retirement and subsequently returns to temporary employment as a
295 judge in any court, as assigned by the Chief Justice of the
296 Supreme Court in accordance with s. 2, Art. V of the State
297 Constitution, occurs when the justice or judge has terminated
298 all employment relationships with employers under the Florida
299 Retirement System for at least 1 calendar month prior to
300 reemployment as a senior judge.
301 Section 7. Subsection (9) of section 121.091, Florida
302 Statutes, is amended to read:
303 121.091 Benefits payable under the system.—Benefits may not
304 be paid under this section unless the member has terminated
305 employment as provided in s. 121.021(39)(a) or begun
306 participation in the Deferred Retirement Option Program as
307 provided in subsection (13), and a proper application has been
308 filed in the manner prescribed by the department. The department
309 may cancel an application for retirement benefits when the
310 member or beneficiary fails to timely provide the information
311 and documents required by this chapter and the department's
312 rules. The department shall adopt rules establishing procedures
313 for application for retirement benefits and for the cancellation
314 of such application when the required information or documents
315 are not received.
316 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—
317 (a) Any person who is retired under this chapter, except
318 under the disability retirement provisions of subsection (4),
319 may be employed by an employer that does not participate in a

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320 state-administered retirement system and receive compensation
321 from that employment without limiting or restricting in any way
322 the retirement benefits payable to that person.
323 (b) Any person whose retirement is effective before July 1,
324 2010, or whose participation in the Deferred Retirement Option
325 Program terminates before July 1, 2010, except under the
326 disability retirement provisions of subsection (4) or as
327 provided in s. 121.053, may be reemployed by an employer that
328 participates in a state-administered retirement system and
329 receive retirement benefits and compensation from that employer,
330 except that the person may not be reemployed by an employer
331 participating in the Florida Retirement System before meeting
332 the definition of termination in s. 121.021 and may not receive
333 both a salary from the employer and retirement benefits for 12
334 calendar months immediately subsequent to the date of
335 retirement. However, a DROP participant shall continue
336 employment and receive a salary during the period of
337 participation in the Deferred Retirement Option Program, as
338 provided in subsection (13).
339 1. A retiree who violates such reemployment limitation
340 before completion of the 12-month limitation period must give
341 timely notice of this fact in writing to the employer and to the
342 Division of Retirement or the state board and shall have his or
343 her retirement benefits suspended for the months employed or the
344 balance of the 12-month limitation period as required in sub-
345 subparagraphs b. and c. A retiree employed in violation of this
346 paragraph and an employer who employs or appoints such person
347 are jointly and severally liable for reimbursement to the
348 retirement trust fund, including the Florida Retirement System

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349 Trust Fund and the Public Employee Optional Retirement Program
350 Trust Fund, from which the benefits were paid. The employer must
351 have a written statement from the retiree that he or she is not
352 retired from a state-administered retirement system. Retirement
353 benefits shall remain suspended until repayment has been made.
354 Benefits suspended beyond the reemployment limitation shall
355 apply toward repayment of benefits received in violation of the
356 reemployment limitation.
357 a. A district school board may reemploy a retiree as a
358 substitute or hourly teacher, education paraprofessional,
359 transportation assistant, bus driver, or food service worker on
360 a noncontractual basis after he or she has been retired for 1
361 calendar month. A district school board may reemploy a retiree
362 as instructional personnel, as defined in s. 1012.01(2)(a), on
363 an annual contractual basis after he or she has been retired for
364 1 calendar month. Any member who is reemployed within 1 calendar
365 month after retirement shall void his or her application for
366 retirement benefits. District school boards reemploying such
367 teachers, education paraprofessionals, transportation
368 assistants, bus drivers, or food service workers are subject to
369 the retirement contribution required by subparagraph 2.
370 b. A community college board of trustees may reemploy a
371 retiree as an adjunct instructor or as a participant in a phased
372 retirement program within the Florida Community College System,
373 after he or she has been retired for 1 calendar month. A member
374 who is reemployed within 1 calendar month after retirement shall
375 void his or her application for retirement benefits. Boards of
376 trustees reemploying such instructors are subject to the
377 retirement contribution required in subparagraph 2. A retiree

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378 may be reemployed as an adjunct instructor for no more than 780
379 hours during the first 12 months of retirement. A retiree
380 reemployed for more than 780 hours during the first 12 months of
381 retirement must give timely notice in writing to the employer
382 and to the Division of Retirement or the state board of the date
383 he or she will exceed the limitation. The division shall suspend
384 his or her retirement benefits for the remainder of the 12
385 months of retirement. Any retiree employed in violation of this
386 sub-subparagraph and any employer who employs or appoints such
387 person without notifying the division to suspend retirement
388 benefits are jointly and severally liable for any benefits paid
389 during the reemployment limitation period. The employer must
390 have a written statement from the retiree that he or she is not
391 retired from a state-administered retirement system. Any
392 retirement benefits received by the retiree while reemployed in
393 excess of 780 hours during the first 12 months of retirement
394 must be repaid to the Florida Retirement System Trust Fund, and
395 retirement benefits shall remain suspended until repayment is
396 made. Benefits suspended beyond the end of the retiree's first
397 12 months of retirement shall apply toward repayment of benefits
398 received in violation of the 780-hour reemployment limitation.
399 c. The State University System may reemploy a retiree as an
400 adjunct faculty member or as a participant in a phased
401 retirement program within the State University System after the
402 retiree has been retired for 1 calendar month. A member who is
403 reemployed within 1 calendar month after retirement shall void
404 his or her application for retirement benefits. The State
405 University System is subject to the retired contribution
406 required in subparagraph 2., as appropriate. A retiree may be

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407 reemployed as an adjunct faculty member or a participant in a
408 phased retirement program for no more than 780 hours during the
409 first 12 months of his or her retirement. A retiree reemployed
410 for more than 780 hours during the first 12 months of retirement
411 must give timely notice in writing to the employer and to the
412 Division of Retirement or the state board of the date he or she
413 will exceed the limitation. The division shall suspend his or
414 her retirement benefits for the remainder of the 12 months. Any
415 retiree employed in violation of this sub-subparagraph and any
416 employer who employs or appoints such person without notifying
417 the division to suspend retirement benefits are jointly and
418 severally liable for any benefits paid during the reemployment
419 limitation period. The employer must have a written statement
420 from the retiree that he or she is not retired from a state-
421 administered retirement system. Any retirement benefits received
422 by the retiree while reemployed in excess of 780 hours during
423 the first 12 months of retirement must be repaid to the Florida
424 Retirement System Trust Fund, and retirement benefits shall
425 remain suspended until repayment is made. Benefits suspended
426 beyond the end of the retiree's first 12 months of retirement
427 shall apply toward repayment of benefits received in violation
428 of the 780-hour reemployment limitation.
429 d. The Board of Trustees of the Florida School for the Deaf
430 and the Blind may reemploy a retiree as a substitute teacher,
431 substitute residential instructor, or substitute nurse on a
432 noncontractual basis after he or she has been retired for 1
433 calendar month. Any member who is reemployed within 1 calendar
434 month after retirement shall void his or her application for
435 retirement benefits. The Board of Trustees of the Florida School

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436 for the Deaf and the Blind reemploying such teachers,
437 residential instructors, or nurses is subject to the retirement
438 contribution required by subparagraph 2.
439 e. A developmental research school may reemploy a retiree
440 as a substitute or hourly teacher or an education
441 paraprofessional as defined in s. 1012.01(2) on a noncontractual
442 basis after he or she has been retired for 1 calendar month. A
443 developmental research school may reemploy a retiree as
444 instructional personnel, as defined in s. 1012.01(2)(a), on an
445 annual contractual basis after he or she has been retired for 1
446 calendar month after retirement. Any member who is reemployed
447 within 1 calendar month voids his or her application for
448 retirement benefits. A developmental research school that
449 reemploys retired teachers and education paraprofessionals is
450 subject to the retirement contribution required by subparagraph
451 2.
452 f. A charter school may reemploy a retiree as a substitute
453 or hourly teacher on a noncontractual basis after he or she has
454 been retired for 1 calendar month. A charter school may reemploy
455 a retired member as instructional personnel, as defined in s.
456 1012.01(2)(a), on an annual contractual basis after he or she
457 has been retired for 1 calendar month after retirement. Any
458 member who is reemployed within 1 calendar month voids his or
459 her application for retirement benefits. A charter school that
460 reemploys such teachers is subject to the retirement
461 contribution required by subparagraph 2.
462 2. The employment of a retiree or DROP participant of a
463 state-administered retirement system does not affect the average
464 final compensation or years of creditable service of the retiree

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465 or DROP participant. Before July 1, 1991, upon employment of any
466 person, other than an elected officer as provided in s. 121.053,
467 who is retired under a state-administered retirement program,
468 the employer shall pay retirement contributions in an amount
469 equal to the unfunded actuarial liability portion of the
470 employer contribution which would be required for regular
471 members of the Florida Retirement System. Effective July 1,
472 1991, contributions shall be made as provided in s. 121.122 for
473 retirees who have renewed membership or, as provided in
474 subsection (13), for DROP participants.
475 3. Any person who is holding an elective public office
476 which is covered by the Florida Retirement System and who is
477 concurrently employed in nonelected covered employment may elect
478 to retire while continuing employment in the elective public
479 office if he or she terminates his or her nonelected covered
480 employment. Such person shall receive his or her retirement
481 benefits in addition to the compensation of the elective office
482 without regard to the time limitations otherwise provided in
483 this subsection. A person who seeks to exercise the provisions
484 of this subparagraph as they existed before May 3, 1984, may not
485 be deemed to be retired under those provisions, unless such
486 person is eligible to retire under this subparagraph, as amended
487 by chapter 84-11, Laws of Florida.
488 (c) Any person whose retirement is effective on or after
489 July 1, 2010, or whose participation in the Deferred Retirement
490 Option Program terminates on or after July 1, 2010, who is
491 retired under this chapter, except under the disability
492 retirement provisions of subsection (4) or as provided in s.
493 121.053, may be reemployed by an employer that participates in a

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494 state-administered retirement system and receive retirement
495 benefits and compensation from that employer. However, a person
496 may not be reemployed by an employer participating in the
497 Florida Retirement System before meeting the definition of
498 termination in s. 121.021 and may not receive both a salary from
499 the employer and retirement benefits for 6 calendar months after
500 meeting the definition of termination, except as provided in
501 paragraph (f). However, a DROP participant shall continue
502 employment and receive a salary during the period of
503 participation in the Deferred Retirement Option Program, as
504 provided in subsection (13).
505 1. The reemployed retiree may not renew membership in the
506 Florida Retirement System.
507 2. The employer shall pay retirement contributions in an
508 amount equal to the unfunded actuarial liability portion of the
509 employer contribution that would be required for active members
510 of the Florida Retirement System in addition to the
511 contributions required by s. 121.76.
512 3. A retiree initially reemployed in violation of this
513 paragraph and an employer that employs or appoints such person
514 are jointly and severally liable for reimbursement of any
515 retirement benefits paid to the retirement trust fund from which
516 the benefits were paid, including the Florida Retirement System
517 Trust Fund and the Public Employee Optional Retirement Program
518 Trust Fund, as appropriate. The employer must have a written
519 statement from the employee that he or she is not retired from a
520 state-administered retirement system. Retirement benefits shall
521 remain suspended until repayment is made. Benefits suspended
522 beyond the end of the retiree's 6-month reemployment limitation

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523 period shall apply toward the repayment of benefits received in
524 violation of this paragraph.
525 (d) Except as provided in paragraph (f), this subsection
526 applies to retirees, as defined in s. 121.4501(2), of the
527 Florida Retirement System Investment Plan, subject to the
528 following conditions:
529 1. A retiree may not be reemployed with an employer
530 participating in the Florida Retirement System until such person
531 has been retired for 6 calendar months.
532 2. A retiree employed in violation of this subsection and
533 an employer that employs or appoints such person are jointly and
534 severally liable for reimbursement of any benefits paid to the
535 retirement trust fund from which the benefits were paid. The
536 employer must have a written statement from the retiree that he
537 or she is not retired from a state-administered retirement
538 system.
539 (e) The limitations of this subsection apply to
540 reemployment in any capacity irrespective of the category of
541 funds from which the person is compensated except as provided in
542 paragraph (f).
543 (f) Effective July 1, 2013, through June 30, 2016, a
544 retired justice or retired judge who has reached the later of
545 his or her normal retirement age or the age when vested, who has
546 terminated all employment with employers participating under the
547 Florida Retirement System for at least 1 calendar month, and who
548 subsequently returns to temporary employment as a senior judge
549 in any court, as assigned by the Chief Justice of the Supreme
550 Court in accordance with s. 2, Art. V of the State Constitution,
551 is not subject to paragraph (c), paragraph (d), or paragraph (e)

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552 while reemployed as a senior judge.
553 Section 8. Paragraph (a) of subsection (1) of section
554 121.591, Florida Statutes, is amended to read:
555 121.591 Payment of benefits.—Benefits may not be paid under
556 the Florida Retirement System Investment Plan unless the member
557 has terminated employment as provided in s. 121.021(39)(a) or is
558 deceased and a proper application has been filed as prescribed
559 by the state board or the department. Benefits, including
560 employee contributions, are not payable under the investment
561 plan for employee hardships, unforeseeable emergencies, loans,
562 medical expenses, educational expenses, purchase of a principal
563 residence, payments necessary to prevent eviction or foreclosure
564 on an employee's principal residence, or any other reason except
565 a requested distribution for retirement, a mandatory de minimis
566 distribution authorized by the administrator, or a required
567 minimum distribution provided pursuant to the Internal Revenue
568 Code. The state board or department, as appropriate, may cancel
569 an application for retirement benefits if the member or
570 beneficiary fails to timely provide the information and
571 documents required by this chapter and the rules of the state
572 board and department. In accordance with their respective
573 responsibilities, the state board and the department shall adopt
574 rules establishing procedures for application for retirement
575 benefits and for the cancellation of such application if the
576 required information or documents are not received. The state
577 board and the department, as appropriate, are authorized to cash
578 out a de minimis account of a member who has been terminated
579 from Florida Retirement System covered employment for a minimum
580 of 6 calendar months. A de minimis account is an account

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581 containing employer and employee contributions and accumulated
582 earnings of not more than $5,000 made under the provisions of
583 this chapter. Such cash-out must be a complete lump-sum
584 liquidation of the account balance, subject to the provisions of
585 the Internal Revenue Code, or a lump-sum direct rollover
586 distribution paid directly to the custodian of an eligible
587 retirement plan, as defined by the Internal Revenue Code, on
588 behalf of the member. Any nonvested accumulations and associated
589 service credit, including amounts transferred to the suspense
590 account of the Florida Retirement System Investment Plan Trust
591 Fund authorized under s. 121.4501(6), shall be forfeited upon
592 payment of any vested benefit to a member or beneficiary, except
593 for de minimis distributions or minimum required distributions
594 as provided under this section. If any financial instrument
595 issued for the payment of retirement benefits under this section
596 is not presented for payment within 180 days after the last day
597 of the month in which it was originally issued, the third-party
598 administrator or other duly authorized agent of the state board
599 shall cancel the instrument and credit the amount of the
600 instrument to the suspense account of the Florida Retirement
601 System Investment Plan Trust Fund authorized under s.
602 121.4501(6). Any amounts transferred to the suspense account are
603 payable upon a proper application, not to include earnings
604 thereon, as provided in this section, within 10 years after the
605 last day of the month in which the instrument was originally
606 issued, after which time such amounts and any earnings
607 attributable to employer contributions shall be forfeited. Any
608 forfeited amounts are assets of the trust fund and are not
609 subject to chapter 717.

610 (1) NORMAL BENEFITS.—Under the investment plan:
611 (a) Benefits in the form of vested accumulations as
612 described in s. 121.4501(6) are payable under this subsection in
613 accordance with the following terms and conditions:
614 1. Benefits are payable only to a member, an alternate
615 payee of a qualified domestic relations order, or a beneficiary.
616 2. Benefits shall be paid by the third-party administrator
617 or designated approved providers in accordance with the law, the
618 contracts, and any applicable board rule or policy.
619 3. The member must be terminated from all employment with
620 all Florida Retirement System employers, as provided in s.
621 121.021(39).
622 4. Benefit payments may not be made until the member has
623 been terminated for 3 calendar months, except that the state
624 board may authorize by rule for the distribution of up to 10
625 percent of the member's account after being terminated for 1
626 calendar month if the member has reached the normal retirement
627 date as defined in s. 121.021. Effective July 1, 2013, through
628 June 30, 2016, a retired justice or retired judge who returns to
629 temporary employment as a senior judge in any court pursuant to
630 s. 2, Art. V of the State Constitution and meets the definition
631 of termination in s. 121.021(39)(d) may continue to receive a
632 distribution of his or her account as provided under this
633 paragraph after providing proof of assignment as a senior judge.
634 5. If a member or former member of the Florida Retirement
635 System receives an invalid distribution, such person must either
636 repay the full amount within 90 days after receipt of final
637 notification by the state board or the third-party administrator
638 that the distribution was invalid, or, in lieu of repayment, the

639 member must terminate employment from all participating
640 employers. If such person fails to repay the full invalid
641 distribution within 90 days after receipt of final notification,
642 the person may be deemed retired from the investment plan by the
643 state board and is subject to s. 121.122. If such person is
644 deemed retired, any joint and several liability set out in s.
645 121.091(9)(d)2. is void, and the state board, the department, or
646 the employing agency is not liable for gains on payroll
647 contributions that have not been deposited to the person's
648 account in the investment plan, pending resolution of the
649 invalid distribution. The member or former member who has been
650 deemed retired or who has been determined by the state board to
651 have taken an invalid distribution may appeal the agency
652 decision through the complaint process as provided under s.
653 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
654 distribution" means any distribution from an account in the
655 investment plan which is taken in violation of this section, s.
656 121.091(9), or s. 121.4501.
657 Section 9. Section 702.015, Florida Statutes, is created to
658 read:
659 702.015 Elements of complaint; lost, destroyed, or stolen
660 note affidavit.—
661 (1) The Legislature intends that this section expedite the
662 foreclosure process by ensuring initial disclosure of a
663 plaintiff's status and the facts supporting that status, thereby
664 ensuring the availability of documents necessary to the
665 prosecution of the case.
666 (2) A complaint that seeks to foreclose a mortgage or other
667 lien on residential real property, including individual units of

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668 condominiums and cooperatives, designed principally for
669 occupation by from one to four families which secures a
670 promissory note must:
671 (a) Contain affirmative allegations expressly made by the
672 plaintiff at the time the proceeding is commenced that the
673 plaintiff is the holder of the original note secured by the
674 mortgage; or
675 (b) Allege with specificity the factual basis by which the
676 plaintiff is a person entitled to enforce the note under s.
677 673.3011.
678 (3) If a plaintiff has been delegated the authority to
679 institute a mortgage foreclosure action on behalf of the person
680 entitled to enforce the note, the complaint shall describe the
681 authority of the plaintiff and identify, with specificity, the
682 document that grants the plaintiff the authority to act on
683 behalf of the person entitled to enforce the note. This
684 subsection is intended to require initial disclosure of status
685 and pertinent facts and not to modify law regarding standing or
686 real parties in interest. The term "original note" or "original
687 promissory note" means the signed or executed promissory note
688 rather than a copy thereof. The term includes any renewal,
689 replacement, consolidation, or amended and restated note or
690 instrument given in renewal, replacement, or substitution for a
691 previous promissory note. The term also includes a transferrable
692 record, as defined by the Uniform Electronic Transaction Act in
693 s. 668.50(16).
694 (4) If the plaintiff is in possession of the original
695 promissory note, the plaintiff must file under penalty of
696 perjury a certification with the court, contemporaneously with

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697 the filing of the complaint for foreclosure, that the plaintiff
698 is in possession of the original promissory note. The
699 certification must set forth the location of the note, the name
700 and title of the individual giving the certification, the name
701 of the person who personally verified such possession, and the
702 time and date on which the possession was verified. Correct
703 copies of the note and all allonges to the note must be attached
704 to the certification. The original note and the allonges must be
705 filed with the court before the entry of any judgment of
706 foreclosure or judgment on the note.
707 (5) If the plaintiff seeks to enforce a lost, destroyed, or
708 stolen instrument, an affidavit executed under penalty of
709 perjury must be attached to the complaint. The affidavit must:
710 (a) Detail a clear chain of all endorsements, transfers, or
711 assignments of the promissory note that is the subject of the
712 action.
713 (b) Set forth facts showing that the plaintiff is entitled
714 to enforce a lost, destroyed, or stolen instrument pursuant to
715 s. 673.3091. Adequate protection as required under s.
716 673.3091(2) shall be provided before the entry of final
717 judgment.
718 (c) Include as exhibits to the affidavit such copies of the
719 note and the allonges to the note, audit reports showing receipt
720 of the original note, or other evidence of the acquisition,
721 ownership, and possession of the note as may be available to the
722 plaintiff.
723 (6) The court may sanction the plaintiff for failure to
724 comply with this section.
725 (7) This section does not apply to any foreclosure

726 proceeding involving timeshare interests under part III of
727 chapter 721.
728 Section 10. Section 702.035, Florida Statutes, is amended
729 to read:
730 702.035 Legal notice concerning foreclosure proceedings.—
731 Whenever a legal advertisement, publication, or notice relating
732 to a foreclosure proceeding is required to be placed in a
733 newspaper or posted on an online website, it is the
734 responsibility of the petitioner or petitioner's attorney to
735 place such advertisement, publication, or notice. For counties
736 with more than 1 million total population as reflected in the
737 2000 Official Decennial Census of the United States Census
738 Bureau as shown on the official website of the United States
739 Census Bureau, any notice of publication required by this
740 section shall be deemed to have been published in accordance
741 with the law if the notice is published in a newspaper that has
742 been entered as a periodical matter at a post office in the
743 county in which the newspaper is published, is published a
744 minimum of 5 days a week, exclusive of legal holidays, and has
745 been in existence and published a minimum of 5 days a week,
746 exclusive of legal holidays, for 1 year or is a direct successor
747 to a newspaper that has been in existence for 1 year that has
748 been published a minimum of 5 days a week, exclusive of legal
749 holidays. If the advertisement, publication, or notice is
750 effected by an electronic publication, it shall be deemed to
751 have been published in accordance with the law if the
752 requirements of s. 50.011(2) have been met. The advertisement,
753 publication, or notice shall be placed directly by the attorney
754 for the petitioner, by the petitioner if acting pro se, or by

755 the clerk of the court. Only the actual costs charged by the
756 newspaper or by the host of the Internet website for the
757 advertisement, publication, or notice may be charged as costs in
758 the action.
759 Section 11. Section 702.036, Florida Statutes, is created
760 to read:
761 702.036 Finality of mortgage foreclosure judgment.—
762 (1)(a) In any action or proceeding in which a party seeks
763 to set aside, invalidate, or challenge the validity of a final
764 judgment of foreclosure of a mortgage or to establish or
765 reestablish a lien or encumbrance on the property in abrogation
766 of the final judgment of foreclosure of a mortgage, the court
767 shall treat such request solely as a claim for monetary damages
768 and may not grant relief that adversely affects the quality or
769 character of the title to the property, if:
770 1. The party seeking relief from the final judgment of
771 foreclosure of the mortgage was properly served in the
772 foreclosure lawsuit as provided in chapter 48 or chapter 49.
773 2. The final judgment of foreclosure of the mortgage was
774 entered as to the property.
775 3. All applicable appeals periods have run as to the final
776 judgment of foreclosure of the mortgage with no appeals having
777 been taken or any appeals having been finally resolved.
778 4. The property has been acquired for value, by a person
779 not affiliated with the foreclosing lender or the foreclosed
780 owner, at a time in which no lis pendens regarding the suit to
781 set aside, invalidate, or challenge the foreclosure appears in
782 the official records of the county where the property was
783 located.

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784 (b) This subsection does not limit the right to pursue any
785 other relief to which a person may be entitled, including, but
786 not limited to, compensatory damages, punitive damages,
787 statutory damages, consequential damages, injunctive relief, or
788 fees and costs, which does not adversely affect the ownership of
789 the title to the property as vested in the unaffiliated
790 purchaser for value.
791 (2) For purposes of this section, the following, without
792 limitation, shall be considered persons affiliated with the
793 foreclosing lender:
794 (a) The foreclosing lender or any loan servicer for the
795 loan being foreclosed;
796 (b) Any past or present owner or holder of the loan being
797 foreclosed;
798 (c) Any maintenance company, holding company, foreclosure
799 services company, or law firm under contract to any entity
800 listed in paragraph (a), paragraph (b), or this paragraph, with
801 regard to the loan being foreclosed; or
802 (d) Any parent entity, subsidiary, or other person who
803 directly, or indirectly through one or more intermediaries,
804 controls or is controlled by, or is under common control with,
805 any entity listed in paragraph (a), paragraph (b), or paragraph
806 (c).
807 (3) After foreclosure of a mortgage based upon the
808 enforcement of a lost, destroyed, or stolen note, a person who
809 is not a party to the underlying foreclosure action but who
810 claims to be the person entitled to enforce the promissory note
811 secured by the foreclosed mortgage has no claim against the
812 foreclosed property after it is conveyed for valuable

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813 consideration to a person not affiliated with the foreclosing
814 lender or the foreclosed owner. This section does not preclude
815 the person entitled to enforce the promissory note from pursuing
816 recovery from any adequate protection given pursuant to s.
817 673.3091 or from the party who wrongfully claimed to be the
818 person entitled to enforce the promissory note under s.
819 702.11(2) or otherwise, from the maker of the note, or from any
820 other person against whom it may have a claim relating to the
821 note.
822 Section 12. Section 702.06, Florida Statutes, is amended to
823 read:
824 702.06 Deficiency decree; common-law suit to recover
825 deficiency.—In all suits for the foreclosure of mortgages
826 heretofore or hereafter executed the entry of a deficiency
827 decree for any portion of a deficiency, should one exist, shall
828 be within the sound discretion of the court; however, in the
829 case of an owner-occupied residential property, the amount of
830 the deficiency may not exceed the difference between the
831 judgment amount, or in the case of a short sale, the outstanding
832 debt, and the fair market value of the property on the date of
833 sale. For purposes of this section, there is a rebuttable
834 presumption that a residential property for which a homestead
835 exemption for taxation was granted according to the certified
836 rolls of the latest assessment by the county property appraiser,
837 before the filing of the foreclosure action, is an owner-
838 occupied residential property. ~~shall be within the sound~~
839 ~~judicial discretion of the court, but~~ The complainant shall also
840 have the right to sue at common law to recover such deficiency,
841 unless the court in the foreclosure action has granted or denied

842 a claim for a deficiency judgment ~~provided no suit at law to~~
843 ~~recover such deficiency shall be maintained against the original~~
844 ~~mortgagor in cases where the mortgage is for the purchase price~~
845 ~~of the property involved and where the original mortgagee~~
846 ~~becomes the purchaser thereof at foreclosure sale and also is~~
847 ~~granted a deficiency decree against the original mortgagor~~.
848 Section 13. Section 702.10, Florida Statutes, is amended to
849 read:
850 702.10 Order to show cause; entry of final judgment of
851 foreclosure; payment during foreclosure.—
852 (1) A lienholder ~~After a complaint in a foreclosure~~
853 ~~proceeding has been filed, the mortgagee~~ may request an order to
854 show cause for the entry of final judgment in a foreclosure
855 action. For purposes of this section, the term "lienholder"
856 includes the plaintiff and a defendant to the action who holds a
857 lien encumbering the property or a defendant who, by virtue of
858 its status as a condominium association, cooperative
859 association, or homeowners' association, may file a lien against
860 the real property subject to foreclosure. Upon filing, ~~and~~ the
861 court shall immediately review the request and the court file in
862 chambers and without a hearing ~~complaint~~. If, upon examination
863 of the court file ~~complaint~~, the court finds that the complaint
864 is verified, complies with s. 702.015, and alleges a cause of
865 action to foreclose on real property, the court shall promptly
866 issue an order directed to the other parties named in the action
867 ~~defendant~~ to show cause why a final judgment of foreclosure
868 should not be entered.
869 (a) The order shall:
870 1. Set the date and time for a hearing ~~on the order~~ to show

871 cause. ~~However,~~ The date for the hearing may not occur ~~be set~~
872 sooner than the later of 20 days after ~~the~~ service of the order
873 to show cause or 45 days after service of the initial complaint.
874 When service is obtained by publication, the date for the
875 hearing may not be set sooner than 30 days after the first
876 publication. ~~The hearing must be held within 60 days after the~~
877 ~~date of service. Failure to hold the hearing within such time~~
878 ~~does not affect the validity of the order to show cause or the~~
879 ~~jurisdiction of the court to issue subsequent orders.~~
880 2. Direct the time within which service of the order to
881 show cause and the complaint must be made upon the defendant.
882 3. State that the filing of defenses by a motion,
883 responsive pleading, affidavits, or other papers ~~or by a~~
884 ~~verified or sworn answer at or~~ before the hearing to show cause
885 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
886 ~~attached~~ final judgment.
887 4. State that a ~~the~~ defendant has the right to file
888 affidavits or other papers before ~~at~~ the time of the hearing to
889 show cause and may appear personally or by way of an attorney at
890 the hearing.
891 5. State that, if a ~~the~~ defendant files defenses by a
892 motion, a verified or sworn answer, affidavits, or other papers
893 or appears personally or by way of an attorney at the time of
894 the hearing, the hearing time will ~~may~~ be used to hear and
895 consider whether the defendant's motion, answer, affidavits,
896 other papers, and other evidence and argument as may be
897 presented by the defendant or the defendant's attorney raise a
898 genuine issue of material fact which would preclude the entry of
899 summary judgment or otherwise constitute a legal defense to

900 foreclosure. The order shall also state that the court may enter
901 an order of final judgment of foreclosure at the hearing and
902 order the clerk of the court to conduct a foreclosure sale.
903 6. State that, if a ~~the~~ defendant fails to appear at the
904 hearing to show cause or fails to file defenses by a motion or
905 by a verified or sworn answer or files an answer not contesting
906 the foreclosure, such ~~the~~ defendant may be considered to have
907 waived the right to a hearing, and in such case, the court may
908 enter a default against such defendant and, if appropriate, a
909 final judgment of foreclosure ordering the clerk of the court to
910 conduct a foreclosure sale.
911 7. State that if the mortgage provides for reasonable
912 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
913 fees do not exceed 3 percent of the principal amount owed at the
914 time of filing the complaint, it is unnecessary for the court to
915 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
916 to be reasonable.
917 8. Attach the form of the proposed final judgment of
918 foreclosure which the movant requests the court to ~~will~~ enter~~,~~
919 ~~if the defendant waives the right to be heard~~ at the hearing on
920 the order to show cause.
921 9. Require the party seeking final judgment ~~mortgagee~~ to
922 serve a copy of the order to show cause on the other parties ~~the~~
923 ~~mortgagor~~ in the following manner:
924 a. If a party ~~the mortgagor~~ has been served pursuant to
925 chapter 48 with the complaint and original process, or the other
926 party is the plaintiff in the action, service of the order to
927 show cause on that party ~~order~~ may be made in the manner
928 provided in the Florida Rules of Civil Procedure.

929 b. If a defendant ~~the mortgagor~~ has not been served
930 pursuant to chapter 48 with the complaint and original process,
931 the order to show cause, together with the summons and a copy of
932 the complaint, shall be served on the party ~~mortgagor~~ in the
933 same manner as provided by law for original process.
934
935 Any final judgment of foreclosure entered under this subsection
936 is for in rem relief only. ~~Nothing in~~ This subsection does not
937 ~~shall~~ preclude the entry of a deficiency judgment where
938 otherwise allowed by law. The Legislature intends that this
939 alternative procedure may run simultaneously with other court
940 procedures.
941 (b) The right to be heard at the hearing to show cause is
942 waived if a ~~the~~ defendant, after being served as provided by law
943 with an order to show cause, engages in conduct that clearly
944 shows that the defendant has relinquished the right to be heard
945 on that order. The defendant's failure to file defenses by a
946 motion or by a sworn or verified answer, affidavits, or other
947 papers or to appear personally or by way of an attorney at the
948 hearing duly scheduled on the order to show cause presumptively
949 constitutes conduct that clearly shows that the defendant has
950 relinquished the right to be heard. If a defendant files
951 defenses by a motion, ~~or by~~ a verified ~~or sworn~~ answer,
952 affidavits, or other papers or presents evidence at or before
953 the hearing which raise a genuine issue of material fact which
954 would preclude entry of summary judgment or otherwise constitute
955 a legal defense to foreclosure, such action constitutes cause
956 and precludes the entry of a final judgment at the hearing to
957 show cause.

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958 (c) In a mortgage foreclosure proceeding, when a final
959 ~~default~~ judgment of foreclosure has been entered against the
960 mortgagor and the note or mortgage provides for the award of
961 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
962 court to hold a hearing or adjudge the requested attorney
963 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
964 percent of the principal amount owed on the note or mortgage at
965 the time of filing, even if the note or mortgage does not
966 specify the percentage of the original amount that would be paid
967 as liquidated damages.
968 (d) If the court finds that all defendants have ~~the~~
969 ~~defendant has~~ waived the right to be heard as provided in
970 paragraph (b), the court shall promptly enter a final judgment
971 of foreclosure without the need for further hearing if the
972 plaintiff has shown entitlement to a final judgment and upon the
973 filing with the court of the original note, satisfaction of the
974 conditions for establishment of a lost note, or upon a showing
975 to the court that the obligation to be foreclosed is not
976 evidenced by a promissory note or other negotiable instrument.
977 If the court finds that a ~~the~~ defendant has not waived the right
978 to be heard on the order to show cause, the court shall ~~then~~
979 determine whether there is cause not to enter a final judgment
980 of foreclosure. If the court finds that the defendant has not
981 shown cause, the court shall promptly enter a judgment of
982 foreclosure. If the time allotted for the hearing is
983 insufficient, the court may announce at the hearing a date and
984 time for the continued hearing. Only the parties who appear,
985 individually or through an attorney, at the initial hearing must
986 be notified of the date and time of the continued hearing.

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987 (2) Except as provided in paragraph (i), as part of any ~~In~~
988 ~~an~~ action for foreclosure, and in addition to any other relief
989 that the court may award ~~other than residential real estate~~, the
990 plaintiff ~~the mortgagee~~ may request that the court enter an
991 order directing the mortgagor defendant to show cause why an
992 order to make payments during the pendency of the foreclosure
993 proceedings or an order to vacate the premises should not be
994 entered.
995 (a) The order shall:
996 1. Set the date and time for hearing on the order to show
997 cause. However, the date for the hearing may ~~shall~~ not be set
998 sooner than 20 days after the service of the order. If ~~Where~~
999 service is obtained by publication, the date for the hearing may
1000 ~~shall~~ not be set sooner than 30 days after the first
1001 publication.
1002 2. Direct the time within which service of the order to
1003 show cause and the complaint shall be made upon each ~~the~~
1004 defendant.
1005 3. State that a ~~the~~ defendant has the right to file
1006 affidavits or other papers at the time of the hearing and may
1007 appear personally or by way of an attorney at the hearing.
1008 4. State that, if a ~~the~~ defendant fails to appear at the
1009 hearing to show cause and fails to file defenses by a motion or
1010 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
1011 have waived the right to a hearing and in such case the court
1012 may enter an order to make payment or vacate the premises.
1013 5. Require the movant ~~mortgagee~~ to serve a copy of the
1014 order to show cause on the defendant ~~mortgagor~~ in the following
1015 manner:

1016 a. If a defendant ~~the mortgagor~~ has been served with the
1017 complaint and original process, service of the order may be made
1018 in the manner provided in the Florida Rules of Civil Procedure.
1019 b. If a defendant ~~the mortgagor~~ has not been served with
1020 the complaint and original process, the order to show cause,
1021 together with the summons and a copy of the complaint, shall be
1022 served on the defendant ~~mortgagor~~ in the same manner as provided
1023 by law for original process.
1024 (b) The right of a defendant to be heard at the hearing to
1025 show cause is waived if the defendant, after being served as
1026 provided by law with an order to show cause, engages in conduct
1027 that clearly shows that the defendant has relinquished the right
1028 to be heard on that order. A ~~The~~ defendant's failure to file
1029 defenses by a motion or by a sworn or verified answer or to
1030 appear at the hearing duly scheduled on the order to show cause
1031 presumptively constitutes conduct that clearly shows that the
1032 defendant has relinquished the right to be heard.
1033 (c) If the court finds that a ~~the~~ defendant has waived the
1034 right to be heard as provided in paragraph (b), the court may
1035 promptly enter an order requiring payment in the amount provided
1036 in paragraph (f) or an order to vacate.
1037 (d) If the court finds that the mortgagor has not waived
1038 the right to be heard on the order to show cause, the court
1039 shall, at the hearing on the order to show cause, consider the
1040 affidavits and other showings made by the parties appearing and
1041 make a determination of the probable validity of the underlying
1042 claim alleged against the mortgagor and the mortgagor's
1043 defenses. If the court determines that the plaintiff ~~mortgagee~~
1044 is likely to prevail in the foreclosure action, the court shall

1045 enter an order requiring the mortgagor to make the payment
1046 described in paragraph (e) to the plaintiff ~~mortgagee~~ and
1047 provide for a remedy as described in paragraph (f). However, the
1048 order shall be stayed pending final adjudication of the claims
1049 of the parties if the mortgagor files with the court a written
1050 undertaking executed by a surety approved by the court in an
1051 amount equal to the unpaid balance of the lien being foreclosed
1052 ~~the mortgage on the property~~, including all principal, interest,
1053 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
1054 ~~mortgagee~~.
1055 (e) If ~~In the event~~ the court enters an order requiring the
1056 mortgagor to make payments to the plaintiff ~~mortgagee~~, payments
1057 shall be payable at such intervals and in such amounts provided
1058 for in the mortgage instrument before acceleration or maturity.
1059 The obligation to make payments pursuant to any order entered
1060 under this subsection shall commence from the date of the motion
1061 filed under this section ~~hereunder~~. The order shall be served
1062 upon the mortgagor no later than 20 days before the date
1063 specified for the first payment. The order may permit, but may
1064 ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all
1065 appropriate steps to secure the premises during the pendency of
1066 the foreclosure action.
1067 (f) If ~~In the event~~ the court enters an order requiring
1068 payments, the order shall also provide that the plaintiff is
1069 ~~mortgagee shall be~~ entitled to possession of the premises upon
1070 the failure of the mortgagor to make the payment required in the
1071 order unless at the hearing on the order to show cause the court
1072 finds good cause to order some other method of enforcement of
1073 its order.

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1074 (g) All amounts paid pursuant to this section shall be
1075 credited against the mortgage obligation in accordance with the
1076 terms of the loan documents;~~, provided,~~ however, ~~that any~~
1077 payments made under this section do ~~shall~~ not constitute a cure
1078 of any default or a waiver or any other defense to the mortgage
1079 foreclosure action.
1080 (h) Upon the filing of an affidavit with the clerk that the
1081 premises have not been vacated pursuant to the court order, the
1082 clerk shall issue to the sheriff a writ for possession which
1083 shall be governed by ~~the provisions of~~ s. 83.62.
1084 (i) This subsection does not apply to foreclosure of an
1085 owner-occupied residence. For purposes of this paragraph, there
1086 is a rebuttable presumption that a residential property for
1087 which a homestead exemption for taxation was granted according
1088 to the certified rolls of the latest assessment by the county
1089 property appraiser, before the filing of the foreclosure action,
1090 is an owner-occupied residential property.
1091 Section 14. Section 702.11, Florida Statutes, is created to
1092 read:
1093 702.11 Adequate protections for lost, destroyed, or stolen
1094 notes in mortgage foreclosure.—
1095 (1) In connection with a mortgage foreclosure, the
1096 following constitute reasonable means of providing adequate
1097 protection under s. 673.3091, if so found by the court:
1098 (a) A written indemnification agreement by a person
1099 reasonably believed sufficiently solvent to honor such an
1100 obligation;
1101 (b) A surety bond;
1102 (c) A letter of credit issued by a financial institution;

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

1103 (d) A deposit of cash collateral with the clerk of the
1104 court; or
1105 (e) Such other security as the court may deem appropriate
1106 under the circumstances.
1107
1108 Any security given shall be on terms and in amounts set by the
1109 court, for a time period through the running of the statute of
1110 limitations for enforcement of the underlying note, and
1111 conditioned to indemnify and hold harmless the maker of the note
1112 against any loss or damage, including principal, interest, and
1113 attorney fees and costs, that might occur by reason of a claim
1114 by another person to enforce the note.
1115 (2) Any person who wrongly claims to be the holder of or
1116 pursuant to s. 673.3011 to be entitled to enforce a lost,
1117 stolen, or destroyed note and causes the mortgage secured
1118 thereby to be foreclosed is liable to the actual holder of the
1119 note, without limitation to any adequate protections given, for
1120 actual damages suffered together with attorney fees and costs of
1121 the actual holder of the note in enforcing rights under this
1122 subsection. In addition, the actual holder of the note may
1123 pursue recovery directly against any adequate protections given.
1124 (a) The actual holder of the note is not required to pursue
1125 recovery against the maker of the note or any guarantor thereof
1126 as a condition precedent to pursuing remedies under this
1127 section.
1128 (b) This section does not limit or restrict the ability of
1129 the actual holder of the note to pursue any other claims or
1130 remedies it may have against the maker, the person who wrongly
1131 claimed to be the holder, or any person who facilitated or

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1132 participated in the claim to the note or enforcement thereof.
1133 Section 15. The Legislature finds that this act is remedial
1134 in nature and applies to all mortgages encumbering real property
1135 and all promissory notes secured by a mortgage, whether executed
1136 before, on, or after the effective date of this act. In
1137 addition, the Legislature finds that s. 702.015, Florida
1138 Statutes, as created by this act, applies to cases filed on or
1139 after July 1, 2013; however, the amendments to s. 702.10,
1140 Florida Statutes, and the creation of s. 702.11, Florida
1141 Statutes, by this act, apply to causes of action pending on the
1142 effective date of this act.
1143 Section 16. (1) Effective July 1, 2013, in order to fund
1144 the benefit changes provided in this act, the required employer
1145 contribution rates for members of the Florida Retirement System
1146 established in s. 121.71(4), Florida Statutes, must be adjusted
1147 as follows:
1148 (a) Elected Officers' Class for Justices and Judges shall
1149 be increased by 0.45 percentage points; and
1150 (b) Deferred Retirement Option Program shall be increased
1151 by 0.01 percentage points.
1152 (2) Effective July 1, 2013, in order to fund the benefit
1153 changes provided in this act, the required employer contribution
1154 rates for the unfunded actuarial liability of the Florida
1155 Retirement System established in s. 121.71(5), Florida Statutes,
1156 for the Elected Officers' Class for Justices and Judges shall be
1157 increased by 0.91 percentage points.
1158 (3) The adjustments provided in subsections (1) and (2)
1159 shall be in addition to all other changes to such contribution
1160 rates which may be enacted into law to take effect on July 1,

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1161 2013, and July 1, 2014. The Division of Law Revision and
1162 Information is requested to adjust accordingly the contribution
1163 rates provided in s. 121.71, Florida Statutes.
1164 Section 17. (1) The Legislature finds that a proper and
1165 legitimate state purpose is served if employees and retirees of
1166 the state and its political subdivisions, and the dependents,
1167 survivors, and beneficiaries of such employees and retirees, are
1168 extended the basic protections afforded by governmental
1169 retirement systems which provide fair and adequate benefits and
1170 which are managed, administered, and funded in an actuarially
1171 sound manner as required by s. 14, Article X of the State
1172 Constitution and part VII of chapter 112, Florida Statutes.
1173 Therefore, the Legislature determines and declares that this act
1174 fulfills an important state interest.
1175 (2) The Legislature further finds that the assignment of
1176 former justices and judges to temporary employment as a judge in
1177 any court, by the Chief Justice of the Supreme Court in
1178 accordance with s. 2, Art. V of the State Constitution, assists
1179 the State Courts System in managing caseloads and providing
1180 individuals and businesses with access to courts. In particular,
1181 these assignments are critically important in assisting with the
1182 disposition of the current backlog in foreclosure cases in this
1183 state. Therefore, the Legislature further determines and
1184 declares that this act fulfills an important state interest by
1185 facilitating the ability of justices and judges who retire under
1186 the Florida Retirement System to return to temporary employment
1187 as a judge in a timely manner.
1188 Section 18. The Supreme Court is requested to amend the
1189 Florida Rules of Civil Procedures to provide expedited

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1190 foreclosure proceedings in conformity with this act and is
1191 requested to develop and publish forms for use in such expedited
1192 proceedings.
1193 Section 19. Sections 6 through 8, 16, and 17 of this act
1194 shall take effect only if the Legislature appropriates during
1195 the 2013 Legislative Session the sum of at least $1.6 million
1196 from the General Revenue Fund on a recurring basis to the
1197 judicial branch in order to fund the increased employer
1198 contributions associated with the costs of the retirement
1199 benefits granted in this act and the Governor does not veto the
1200 appropriation.
1201 Section 20. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Public Notice

Bill Number: 1666 *(if applicable)*

Name: Jeff Kottkamp

Amendment Barcode: 102626 + 888240 *(if applicable)*

Job Title:

Address:
Street

City *State* *Zip*

Phone:

E-mail:

Speaking: [✓] For AMENDMENTS [ ] Against [ ] Information

Representing: Keep The Public Notice Coalition

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15, 2013
Meeting Date

Topic: Mortgage Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Sam Morley

Amendment Barcode: (Richter)888240, [redacted] *(if applicable)*

and 102626

Job Title: Gen. Counsel

Address: 336 E.College Ave.
Street

Tallahassee, Florida, 32301-1[redacted]
City, State, Zip

Phone: 850 2124395

E-mail: smorley@flpress.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Press Association

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Lynn Drysdale

Amendment Barcode: 806030 *(if applicable)*

Job Title: Senior Attorney

Address: 126 West Adams Street
Street

Jacksonville, FL 32202
City *State* *Zip*

Phone: (904) 356-8371 x36

E-mail: lynn.drysdale@jacksonvillelegalaid.org

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

Representing:

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: FORECLOSURES

Bill Number: SB 1666 *(if applicable)*

Name: DARIN LENTNER

Amendment Barcode: 841006 *(if applicable)*

Job Title: Attorney

Address: 1217 TANGELO ISLE
Street

FORT LAUDERDALE, FL 33315
City, State, Zip

Phone: 954-296-6191

E-mail: dlentner@fflawcenter.com

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

Representing: SELF

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Fore closure

Bill Number: 1666 (if applicable)

Name: Lynn Drysdale

Amendment Barcode: 690342 (if applicable)

Job Title: Senior Attorney

Address: 126 W. Adams St.
Street

Jacksonville, FL 32203
City State Zip

Phone: 904 356 8371

E-mail: lynn.drysdale@jaxlegalaid.org

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

Representing: Jax Area Legal Aid

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Lynn Drysdale

Amendment Barcode: 322340 *(if applicable)*

Job Title: Senior Attorney

Address: 126 West Adam Street
Street

Jacksonville, FL 32202
City *State* *Zip*

Phone: (904) 356-8371 x306

E-mail: lynn.drysdale@jacksonvillelegalaid.org

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

Representing: Jacksonville Area Legal Aid, Inc

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Lynn Drysdale

Amendment Barcode: 335022 *(if applicable)*

Job Title: Senior Attorney

Address: 126 West Adams Street
Street

Jacksonville, FL 32202
City *State* *Zip*

Phone: 904 356-8371 x 306

E-mail: lynn.drysdale@jacksonlegalaid.org

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

Representing: Jacksonville Area Legal Aid

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.15.13
Meeting Date

Topic: Judicial Foreclosure

Bill Number: SB 1666 *(if applicable)*

Name: Trey Goldman

Amendment Barcode: *(if applicable)*

Job Title: Legislative Counsel

Address: 200 S. Monroe
Street

TLH, FL 32301
City, State, Zip

Phone: 850/224-1400

E-mail: treyg@floridarealtors.org

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Realtors

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Mortgage Foreclosure Proceedings

Bill Number: 1666 *(if applicable)*

Name: TRAVIS Moore

Amendment Barcode: *(if applicable)*

Job Title:

Address: P.O. Box 781
Street

Largo, FL 33779
City, State, Zip

Phone: 727.421.6902

E-mail: mooreT@Tampabay.rr.com

Speaking: [✓] For [ ] Against [✓] Information

Representing: Community Associations Institute - FLA

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic _____

Bill Number Noice *(if applicable)*

Name Diana Ferguson

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202
Street

Tall FL 32301
City *State* *Zip*

Phone 850-681-4788

E-mail dferguson@rlegalaw.com

Speaking: [✓] For [ ] Against [ ] Information

Representing Community Advocacy Network

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Mortgage Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Leticia Adams

Amendment Barcode: *(if applicable)*

Job Title: Director of Infrastructure Policy

Address: 136 S. Bronough St.
Street

Tall FL 32301
City *State* *Zip*

Phone: 850 544 6866

E-mail: ladams@flchamber.com

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

Representing: Florida Chamber of Commerce

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic _____

Bill Number 1666 *(if applicable)*

Name Pete Dunbar

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 215 S. Monroe St
Street

Tallahassee 32302
City *State* *Zip*

Phone 222-3533

E-mail pete@penningtonlaw.com

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

Representing Real Property Section of the Fla. Bar

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: Mortgage Foreclosures (ye-lee-nee)

Bill Number: SB 1666 *(if applicable)*

Name: Yelline Goin

Amendment Barcode: *(if applicable)*

Job Title: Executive Directors

Address: 204 S. Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-284-2460

E-mail: ygoin@becker-poliakoff.com

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

Representing: CALL - Community Association Leadership Lobby

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: ~~SB1666~~ Foreclosure

Bill Number: SB1666 *(if applicable)*

Name: Ronald Gillis

Amendment Barcode: *(if applicable)*

Job Title: —

Address: P O Box 380842
Street

Murdock, FL 33938
City *State* *Zip*

Phone: 941-613-9895

E-mail: gillisron123@hotmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: MORTGAGE FORECLOSURE

Bill Number: SB 1666 (if applicable)

Name: Robert Sublett

Amendment Barcode: _____ (if applicable)

Job Title: Citizen Advocate

Address: 2319 Oak Terrace (Street)

Sarasota (City) FL (State) 34231 (Zip)

Phone: 941.921.0802

E-mail: bobs@robertsublett.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Mortgage Justice Group

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: FORECLOSURE

Bill Number: 1666 *(if applicable)*

Name: GREG CLARK

Amendment Barcode: *(if applicable)*

Job Title: TITLE AGENT - ATTORNEY AT LAW

Address: 1201 S. HIGHLAND AVE #9
Street

CLEARWATER FL 33756
City *State* *Zip*

Phone: 727-446-1200

E-mail: gclark560@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-2013
Meeting Date

Topic ~~Pico United Florida~~ Foreclosure

Bill Number SB 1666 (if applicable)

Name Rev. John LEE SR.

Amendment Barcode _____ (if applicable)

Job Title _____

Address 2849 Harson Way
Street

Ft. Pierce FL 34946
City State Zip

Phone 772-577-08

E-mail johnleeSR32@Aol.com

Speaking: [✓] For [ ] Against [ ] Information

Representing Pico united Florida

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15, 13
Meeting Date

Topic: Fore closures

Bill Number: SB 1666 *(if applicable)*

Name: Pastor Norman Wilson, Sr

Amendment Barcode: *(if applicable)*

Job Title: Pastor

Address: 224 Sweetbay Ln
Street

Orlando FL 32835
City *State* *Zip*

Phone: 386-344-1949

E-mail: Freedomhallchurch56@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: PICO United FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-2013
Meeting Date

Topic: Foreclosure

Bill Number: 1666 *(if applicable)*

Name: Roger Mills

Amendment Barcode: *(if applicable)*

Job Title: ATTORNEY

Address: 12438 Midpointe DR.
Street

Riverview FL. 33578
City *State* *Zip*

Phone: 813-254-0130

E-mail: rogeromills@msn.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/15/13
Meeting Date

Topic: FORCLOSURE

Bill Number: SB 1666 (if applicable)

Name: RICHARD FRARY

Amendment Barcode: (if applicable)

Job Title: RETIRED

Address: 3649 ASTER DR.
Street

SARASOTA, FL. 34233
City, State, Zip

Phone: 941-400-7530

E-mail: RICARDOSUAVE@AOL.C

Speaking: ☐ For ☒ Against ☐ Information

Representing: MORTGAGE JUSTICE GROUP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Expedited Foreclosure

Bill Number: 1666 (if applicable)

Name: Booker T. Perry

Amendment Barcode: — (if applicable)

Job Title: Volunteer Community Organizer

Address: FL Fire Fighter Exempt
Street

City / State / Zip

Phone: 321 263-6984

E-mail: bookrperry@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: PIEO Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: FORECLOSURES

Bill Number: SB 1666 (if applicable)

Name: WESLY LAMOUR

Amendment Barcode: (if applicable)

Job Title: LAWN

Address: 6346 HILL RD
Street

ORLANDO, FL. 32810
City, State, Zip

Phone: (407) 494-3050

E-mail: dalamours@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: PICO United FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: SB 1666 (if applicable)

Name: Alice Vickers

Amendment Barcode: (if applicable)

Job Title: Attorney

Address: 623 Beard St.
Street

Tallahassee, FL 32303
City State Zip

Phone: 850 576-3121

E-mail: alice@fcan.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Consumer Action Network

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: 1666

Name: Lynn Drysdale

Amendment Barcode (if applicable): ~~630312~~

Job Title: Senior Attorney

~~335022~~ (if applicable)

Address: 126 West Adams Street
Street

Jacksonville, FL 32202
City, State, Zip

Phone: 904356-8371 x306

~~372340~~

~~606030~~

E-mail: lynn.drysdale@jaxlegalaid.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Jacksonville Area Legal Aid

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosures

Bill Number: SB 1666 (if applicable)

Name: Darin LeNTner

Amendment Barcode: (if applicable)

Job Title: Attorney

Address: 1217 Tangelo Isle
Street

Ft. Lauderdale, FL 33315
City State Zip

Phone: 954 296 6191

E-mail: dlentner@ffbawconta.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic: Expedited foreclosure

Bill Number: SB 1666 (if applicable)

Name: JAMES A. EDWARDS

Amendment Barcode: (if applicable)

Job Title:

Address: 1900 Valencia Ave
Street

Ft. Pierce, FL 34946
City, State, Zip

Phone: 772-480-3565

E-mail: JE101344@AOL.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: PICO United FCA & Mt. Olive Missionary Baptist Church

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

[illegible] this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Foreclosure

Bill Number: SR 1666 *(if applicable)*

Name: Joseph Stephens

Amendment Barcode: *(if applicable)*

Job Title: Fraud Examiner

Address: 3817 Robbins Ave
Street

Orlando, FL 32808
City, State, Zip

Phone: 407-393-7831

E-mail: J.Stephens38@comcast.net

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 /15 /201
Meeting Date

Topic _____

Bill Number 1666 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 634

INTRODUCER: Judiciary Committee and Senator Simpson

SUBJECT: Motor Vehicles

DATE: April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Favorable**
2.	Clodfelter	Cannon	CJ	**Favorable**
3.	Munroe	Cibula	JU	**Fav/CS**
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 634 removes a provision of s. 316.3045, F.S., that exempts motor vehicles used for business or political purposes from the prohibition against amplifying sound from within a motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the motor vehicle. The Florida Supreme Court recently found the whole statute to be unconstitutional as the result of this provision.

The bill also removes a provision of the statute that prohibits amplifying sound from within a motor vehicle so that it is louder than necessary for convenient hearing by the vehicle's occupants in areas adjoining churches, schools, or hospitals. The constitutionality of this provision has been called into question by courts because of its subjective nature.

This bill amends section 316.3045, Florida Statutes.

II. Present Situation:

Richard T. Catalano and another man were cited in 2007 and 2008, respectively, in separate incidents in Pinellas County, Florida, for violating the sound standards of s. 316.3045, F.S.

(playing music too loudly in their vehicles), and both men challenged the constitutionality of the law, arguing that the statute is facially unconstitutional. The circuit court agreed and invalidated the law, and the Second District Court of Appeal upheld that decision.[1] In December 2012, the Florida Supreme Court issued an opinion affirming the lower court decisions holding that the statute is unconstitutional.[2]

Section 316.3045, F.S., provides:

> 316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—
> (1) It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is:
> (a) Plainly audible at a distance of 25 feet or more from the motor vehicle; or
> (b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals.
> (2) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.
> (3) The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.
> (4) The provisions of this section do not apply to the noise made by a horn or other warning device required or permitted by s. 316.271, F.S. The Department of Highway Safety and Motor Vehicles shall promulgate rules defining "plainly audible" and establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.
> (5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.

In considering the constitutionality of the statute, the Supreme Court first determined that the "plainly audible at a distance of 25 feet or more" standard:

> provides fair warning of the prohibited conduct and provides an objective guideline – distance – to prevent arbitrary and discriminatory enforcement so that basic policy matters are not delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis. . . . This is not a standard that calls for police officers to judge whether sound is excessive, raucous, disturbing, or

[1] *State v. Catalano,* 60 So. 3d 1139 (Fla. 2d DCA 2011).
[2] *State v. Catalano,* 104 So. 3d 1069 (Fla. 2012)

> offensive; if the officer can hear the amplified sound more than twenty-five feet from its source, the individual has violated the statute.[3]

The court then held that the "plainly audible" standard is not unconstitutionally vague.[4]

Next turning to whether the statute is unconstitutionally overbroad or an unreasonable restriction on the freedom of expression, the court noted that:

> "the right to play music, including amplified music, in public fora is protected under the First Amendment. . . . Limitations are reasonable if they are "justified without reference to the content of the regulated speech, . . . narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." . . . If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.[5]

With respect to s. 316.3045, F.S., the court noted:

> Initially, it would appear that section 316.3045(1)(a), F.S., does not regulate expression based on the content of the message as it bans all amplified sound coming from within the interior of a motor vehicle that is "plainly audible" beyond twenty-five feet from the source. In short, the statute proscribes excessive sound emanating from vehicles on public thoroughfares. Subsection (3), however, excepts "motor vehicles used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices" from this broad proscription.
>
> The regulation, however, treats commercial and political speech more favorably than noncommercial speech. . . . Regardless of the intent of the Legislature, section 316.3045, F.S., is a sweeping ban on amplified sound that can be heard beyond twenty-five feet of a motor vehicle, unless that sound comes from a business or political vehicle, which presumably uses sound-making devices for the purpose of expressing commercial and political viewpoints. . . . . Thus, this statute is content based because it does not apply equally to music, political speech, and advertising. *See Discovery Network*, 507 U.S. at 428–29, 113 S.Ct. 1505 (stating that a sound ordinance is permissible if it applies equally to music, political speech, and advertising).[6]

Pointing to the State's argument that the statute serves the State's interest in traffic safety and protecting the public from excessively loud noise, the court agreed that protecting the public from excessively loud noise is a compelling state interest, but that traffic safety generally is not a compelling state interest.

> Even assuming the asserted interests are compelling, it is unclear how the statute advances those interests by allowing commercial and political speech at a volume

[3] *Id.*; *Catalano*, 104 So. 3d at 1076 (internal citation omitted).
[4] *Id*. at 1075-1077.
[5] *Id.* at 1078 (citations omitted).
[6] *Id.* at 1078-1079.

> "plainly audible" beyond twenty-five feet, but not allowing noncommercial speech to be heard at the same distance. . . . The State simply argues that noncommercial vehicles are more dangerous to the public because they are ubiquitous. This argument, however, fails to explain how a commercial or political vehicle amplifying commercial or political messages audible a mile away is less dangerous or more tolerable than a noncommercial vehicle amplifying a religious message audible just over twenty-five feet away from the vehicle. Further, the statute protects commercial speech to a greater degree than noncommercial speech; commercial speech, however, is generally afforded less protection.[7]

The court then held:

> Accordingly, we find that the statute is an unreasonable restriction on First Amendment rights. Likewise, the restriction of the constitutionally protected right to amplify sound, despite the State's acknowledgement that this level of noise is tolerable and safe if the source is a commercial or political vehicle, is not narrowly tailored to achieve the government's interests in improving traffic safety and protecting the citizenry from excessive noise. Thus, we also find that the statute is unconstitutionally overbroad because it restricts the freedom of expression in a manner more intrusive than necessary"[8]

The Supreme Court also noted the comment by one of the lower court judges in a concurring opinion that s. 316.3045(1)(b), F.S., is also "constitutionally infirm" because it "permits citations, at least 'in areas adjoining churches, schools, or hospitals,' for sound that is 'louder than necessary for the convenient hearing by persons inside the vehicle.'"[9] The court did not consider the constitutionality of paragraph (1)(b) because it was not at issue in the appeal, but the lower court judge questioned the subjectivity required to enforce the provision.

III. Effect of Proposed Changes:

The bill amends s. 316.3045, F.S., to:

- Repeal current paragraph (b) of subsection (1), which prohibits sound from a soundmaking device or instrument from within a motor vehicle so that the sound is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals;
- Repeal the exclusion in subsection (3) of motor vehicles used for business or political purposes, which in the normal course of conducting business use soundmaking devices;
- Amend the remaining portion of subsection (3) to permit local authorities to regulate the place where a device or instrument described in subsection (1) can be operated (regulation of time and manner are already permitted); and
- Make editorial and clarifying changes.

---

[7] *Id*. at 1080 (citation omitted).
[8] *Id*. at 1080.
[9] *Id*. at 1074.

Removal of the language that was found by the Court to make the whole statute unconstitutional, as well as the language that is constitutionally suspect, will presumably make the statute constitutional. The statute, as amended, will prohibit the operator of a motor vehicle from amplifying sound from within the motor vehicle to a level that it is plainly audible at a distance of 25 feet or more from the vehicle. This will reestablish existing law that has not been enforceable throughout the state since the Supreme Court found the entire statute to be unconstitutional due to other provisions.

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:

A citizen found to have violated the sound standard of s. 316.3045, F.S., for sound which is plainly audible at a distance of 25 feet or more from the citizen's motor vehicle, is subject to a $30 penalty for a nonmoving traffic violation.[10] This is not a new provision, but reestablishes existing law that was not enforceable due to the unconstitutionality of other provisions in the statute.

C. Government Sector Impact:

The bill removes portions of existing law so the law enforcement officers will be equipped with a constitutional traffic law that serves the State's interest in traffic safety and in protecting the public from excessively loud noise on public streets. There appears to be no fiscal impact on the governmental sector because this was existing law that was temporarily unenforceable.

[10] The penalty is set forth in s. 318.18(2), F.S.

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 15, 2013
The committee substitute corrects a cross-reference in the underlying bill.

B. Amendments:

None.

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

363622

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

1 **Senate Amendment**
2
3 Delete line 37
4 and insert:
5 ~~devices. The provisions of~~ This section ~~subsection~~ does ~~shall~~
6 not ~~be~~

544536

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 50
4 and insert:
5 (5) When a law enforcement officer issues a citation for a
6 violation of this section, the law enforcement officer must
7 record the race and ethnicity of the violator. All law
8 enforcement agencies must maintain such information and forward
9 the information to the department in a form and manner
10 determined by the department. The department shall collect this
11 information by jurisdiction and annually report the data to the
12 Governor, the President of the Senate, and the Speaker of the
13 House of Representatives. The report must show separate

544536

14 statewide totals for the state's county sheriffs and municipal
15 law enforcement agencies, state law enforcement agencies, and
16 state university law enforcement agencies.
17 (6) ~~(5)~~ A violation of this section is a noncriminal traffic
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 9
22 and insert:
23 where such soundmaking devices may be operated;
24 requiring law enforcement officers to record the race
25 and ethnicity of violators and forward the information
26 to the Department Of Highway Safety And Motor
27 Vehicles; requiring the department to annually report
28 such information to the Governor, the President of the
29 Senate, and the Speaker of the House of
30 Representatives;

By Senator Simpson

18-01010A-13 2013634__

A bill to be entitled

An act relating to motor vehicles; amending s. 316.3045, F.S.; revising provisions relating to the operation of radios or other soundmaking devices in vehicles; deleting a standard for determining prohibited sound levels; deleting an exception for vehicles operated for business or political purposes; authorizing local authorities to regulate the place where such soundmaking devices may be operated; providing an effective date.

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

Section 1. Section 316.3045, Florida Statutes, is amended to read:

316.3045 Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions.—

(1) A ~~It is unlawful for any~~ person who operates or occupies ~~operating or occupying~~ a motor vehicle on a street or highway may not ~~to~~ operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is~~:~~

~~(a)~~ plainly audible at a distance of 25 feet or more from the motor vehicle~~; or~~

~~(b) Louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals~~.

(2) ~~The provisions of~~ This section does ~~shall~~ not apply to any law enforcement motor vehicle equipped with any

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

18-01010A-13 2013634__

communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(3) ~~The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices. The provisions of~~ This subsection does ~~shall~~ not ~~be deemed to~~ prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time, place, and manner in which a device or instrument described in subsection (1) ~~such business~~ may be operated.

(4) ~~The provisions of~~ This section does ~~do~~ not apply to the noise made by a horn or other warning device required or permitted by s. 316.271. The Department of Highway Safety and Motor Vehicles shall adopt ~~promulgate~~ rules defining "plainly audible" and shall establish standards regarding how sound should be measured by law enforcement personnel who enforce the provisions of this section.

(5) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____

Bill Number 634 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode 554536 *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

APRIL 15, 2013
Meeting Date

Topic: MOTOR VEHICLES

Bill Number: SB 0634 *(if applicable)*

Name: STEPHEN DEMBINSKY

Amendment Barcode: *(if applicable)*

Job Title: CHIEF OF POLICE (DAYTONA BEACH SHORES)

Address: 3050 SOUTH ATLANTIC AVE
Street

DAYTONA BEACH SHORES FLA. 32118
City *State* *Zip*

Phone: 386-763-5333

E-mail:

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

Representing: THE FLORIDA POLICE CHIEFS ASSOCIATION

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: RELATING TO MOTOR VEHICLES

Bill Number: 634 *(if applicable)*

Name: MIKE FEWLESS

Amendment Barcode: _____ *(if applicable)*

Job Title: CAPTAIN

Address: 2500 W. COLONIAL DR
Street

ORLANDO FL 32804
City *State* *Zip*

Phone: 407-858-3889

E-mail: Mike.Fewless@ccfl.net

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

Representing: FSA

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: 634

Bill Number: 634 (if applicable)

Name: Casey Cook

Amendment Barcode: _____ (if applicable)

Job Title: Legislative Advocate

Address: PO Box 1757
Street

Tallahassee, Fl 32302
City State Zip

Phone: 701 3701

E-mail: ccook@flcities.com

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

Representing: Florida League of Cities

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 626

INTRODUCER: Education Committee and Senator Bullard

SUBJECT: Bullying in the Public School System

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
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 626 broadens the authority of a public K-12 school to discipline students for cyberbullying activities. Under existing law, a school may discipline a student for cyberbullying if the student uses a school computer, computer system, or computer network. Under the bill, a school may discipline a student for cyberbullying activities through the use of any computer located:

- On school grounds;
- At the site of a school-related or sponsored program or activity; or
- On a school bus.

The bill further provides that bullying or cyberbullying is prohibited if it is reasonably foreseeable that it could materially and substantially interfere with school operation, an educational program, or a school-related function, including field trips, or a student's safety and security.

Additionally, the bill defines and redefines several terms. The term "bullying" is redefined to include conduct that involves emotional pain and discomfort. The bill defines "cyberbullying" as

bullying or harassment through the use of computers, technology, or electronic communication. The definition of "harassment" is expanded to include conduct that has no legitimate purpose and which causes substantial emotional distress to a student or school employee.

By October 1, 2013, the Department of Education (DOE) is required to incorporate cyberbullying into its existing anti-bullying model policy.

The bill requires school districts to incorporate the DOE's provisions on cyberbullying from its model policy into the district's anti-bullying policy by December 1, 2013. Distribution of safe school funds provided in the 2014-2015 General Appropriations Act is contingent upon DOE approval of a district's bullying, cyberbullying, and harassment policy.

This bill substantially amends section 1006.147, Florida Statutes.

II. Present Situation:

School Districts Regulating Student Speech

Courts have long established the axiom that students do not leave their constitutional rights to freedom of speech and expression at the schoolhouse gate. [1] Still, First Amendment rights of students are not coextensive to that of adults. The watershed case in this area, *Tinker v. Des Moines Independent Community School District*, involved a group of students who intended to protest the Vietnam War by wearing black armbands to class. Hearing of the plan, school administrators quickly adopted a policy to prevent the students from wearing the armbands on school grounds.[2] Subsequently, students who wore armbands were suspended pursuant to school policy, and affected students and parent filed legal action against the school district.[3] The case ultimately ended up in the U.S. Supreme Court. Pointing out that the wearing of the armbands constituted silent, passive expression; the Court noted that "this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students."[4]

> [C]onduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior – materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.[5]

In upholding the right of the students to wear the armbands to school, the Court established the threshold test of constitutionality in expression cases in the school

[1] *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).
[2] *Id*. at 504. The policy provided for teachers or administrators to ask a student wearing a black armband to remove it. If the student refused, he or she would be suspended.
[3] *Id*.
[4] *Id*. at 508.
[5] *Id.* at 512-513.The Court also held that in order for "school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was cause by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Id.* at 509. The Court also stated that "[t]he principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is the personal intercommunication among the students. This is not only an inevitable part of the process of attending schools; it is also an important part of the educational process. *Id*. at 512.

environment. For a school to infringe the First Amendment rights of students, the student's activities must "materially and substantially disrupt the work and discipline of the school."[6]

Subsequent courts have handily applied the *Tinker* standard to cases involving First Amendment rights of students to the school ground context. Less certain, however, is the extent to which laws and courts can sanction the behavior of a student off campus, when the impact of the behavior spreads into the school or the classroom. Still, some courts have relied on *Tinker* as precedent in First Amendment challenges in cyberbullying cases.

By way of example, in 2008 the Third Circuit Court of Appeal reviewed a case in which a student created a fake webpage of a school principal on the popular social networking site MySpace.[7] The website made various disparaging attacks on the principal. The principal suspended the student for 10 days, placed him in alternative education for the remainder of the school year, and prohibited the student from participating in extracurricular activities and the school graduation ceremony.[8] In applying *Tinker*, the Court upheld the district court's finding that the school district failed to establish a sufficient nexus between the student's speech and a substantial disruption of the school environment.[9]

Other courts have ruled differently on the application of *Tinker* and the greater question of whether First Amendment rights apply to online student speech.[10] The Second Circuit Court of Appeals reviewed a challenge involving a sanction against a student for posting a blog off-campus about a school event.[11] The post contained vulgar and misleading language directed at school administrators. Although the court mentioned *Tinker*, it applied the holding in *Fraser*.[12] In *Fraser*, the court did not require proof of a substantial disruption, just that the speech is lewd or vulgar enough to rise to the level of impeding a school's mission in furthering civility amongst its student population.[13]

Therefore, the federal courts have not reached consensus on how to address the rights and responsibilities of individuals and public school settings with the advent of online student speech.[14] In 2011 alone, the U.S. Supreme Court received writs for certiorari from four

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[6] *Id*. at 513.
[7] *Layshock v. Hermitage School District*, 650 F.3d 205, 208-209 (3d Cir. 2011).
[8] *Id*. at 210.
[9] *Id*. at 216.
[10] In the context of challenges of student speech in the social media age, "the circuit courts have reached inconsistent holdings, and some of those results deviate from the core First Amendment principles that the Court articulated in Tinker." Aaron J. Hersh, *Rehabilitating Tinker: A Modest Proposal to Protect Public-school Students' First Amendment Free Expression Rights in the Digital Age*, 98 Iowa L. Rev. 1309, 1312 (March 2013).
[11] *Doninger v. Niehoff*, 527 F. 3d 41, 43 (2d Cir. 2008).
[12] *Id*. at 49. *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).
[13] *Fraser*, 478 U.S., at 683. "The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order."
[14] See Maryclaire Dale, *Online Student Speech Appeals Rejected by Supreme Court*, Huffington Post, January 17, 2012, at http://www.huffingtonpost.com/2012/01/17/court-rejects-appeals-in-_0_n_1210399.html (last visited on Apr. 11, 2012). See e.g., *Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F. 3d 771 (8th Cir. 2012); *Kowalski v. Berkley Cnty. Schs*., 652F.3d 565 (4th Cir. 2011); and *Doniger v. Niehoff*, 642 F. 3d 334 (2nd Cir. 2011).

student-speech cases, from various circuit courts of appeal. The Court denied certiorari in each of the cases.[15]

Bullying and Harassment

The 2008, Florida Legislature enacted s. 1006.147, F.S., which prohibits bullying and harassment in the school environment.[16]

Bullying means systemically and chronically inflicting physical hurt or psychological distress on one or more students and may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.[17]

Harassment is defined as any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.[18]

Bullying and harassment includes:

- Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment; and
- Perpetuation of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion, accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the

[15] Rory Allen Weeks, *The First Amendment, Public School Students, and the Need for Clear Limits on School Officials' Authority over Off-campus Student Speech*, 46 Ga. L. Rev. 1157, 1163(Summer 2012).
[16] Chapter 2008-123, L.O.F., provides the Jeffrey Johnston Stand Up for All Students Act.
[17] Section 1006.147(3)(a), F.S.
[18] Section 1006.147(3)(b), F.S.

scope of the district school system, or acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

Bullying or harassment of any student or employee of a public K-12 educational institution is specifically prohibited:

- During education programs and activities;
- During school-related and school-sponsored activities, including on a school bus; and
- Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 institution.[19]

School districts are required to have a policy that prohibits bullying and harassment of students and employees of public K-12 educational institutions, and that is integrated with a school's curriculum, discipline policies, and other violence prevention efforts.[20]

Cyberbullying

Section 1006.147, F.S., does not define or specifically prohibit cyberbullying, except to:

- Prohibit bullying or harassment of any student or employee of a public K-12 educational instruction through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution;[21] and
- Include as bullying the perpetuation of specific behaviors that includes teasing, social exclusion, and threats by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system.[22]

In a 2010 random sample of 4,400 students, from ages 11 through 18:

- Approximately 20 percent said they had been a victim of cyberbullying;
- Approximately 20 percent said they had committed cyberbullying; and
- About 10 percent indicated that they had been both victim and offender.[23]

Subsequently, in a 2012 random sample of 4,441 students in grades 9-12, students who reported that many of their friends had bullied others (at school, using a computer, and using a cell phone) were significantly more likely to also report that they too had cyberbullied others.[24]

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[19] Section 1006.147(2), F.S.
[20] Section 1006.147(4), F.S.
[21] Section 1006.147(2)(c), F.S.
[22] Section 1006.147(3)(d)2.b., F.S.
[23] Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying: Identification, Prevention, and Response* (2010) at http://www.cyberbullying.us/Cyberbullying_Identification_Prevention_Response_Fact_Sheet.pdf . (last visited on Apr. 11, 2013).
[24] Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbulling Research Summary: The Influence of Parent, Educators, and Peers* (January 2013) at: http://cyberbullying.us/Social_Influences_on_Cyberbullying.pdf (last visited on Apr. 11, 2013).

Research also revealed a link between cyberbullying and low self-esteem, family problems, academic problems, school violence and delinquent behavior.[25] Forty-nine states have adopted anti-bullying legislation, with 16 of these states specifically including anti-cyberbullying legislation.[26]

III. Effect of Proposed Changes:

This bill broadens the authority of a public K-12 school to discipline students for cyberbullying activities. Under existing law, a school may discipline a student for cyberbullying if the student uses a school computer, computer system, or computer network. Under the bill, a school may discipline a student for cyberbullying activities through the use of any computer located:

- On school grounds;
- At the site of a school-related or sponsored program or activity; or
- On a school bus.

The bill further provides that bullying or cyberbullying is prohibited if it is reasonably foreseeable that it could materially and substantially interfere with school operation, an educational program, or a school-related function, including field trips, or a student's safety and security.

Additionally, the bill defines and redefines several terms. The term "bullying" is redefined to include conduct that involves emotional pain and discomfort. The current definition of bullying mainly focuses on a person's acts toward another person. This revised definition allows conduct to be defined as bullying by its effect on another person.

The bill defines "cyberbullying" as bullying or harassment through the use of computers, technology, or electronic communication, including transfer of signs, signals, writing, images, sounds, data, or other intelligence transmitted through email, text, instant messaging, social media, the Internet, or fax.

Examples of cyberbullying include:

- Harassment and cyberstalking;
- Creating a web page in which the creator assumes a false identity, or knowingly impersonates another person.
- Electronically sharing or distributing material and communications to more than one person or posting material accessible by others.

The definition of harassment is expanded to include conduct that has no legitimate purpose and which causes substantial emotional distress to a student or school employee.

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[25] Sameer Hinduja, PhD and Justin W. Patchin, PhD, at note 16.

[26] Sameer Hinduja, PhD and Justin W. Patchin, PhD, *State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies* (January 2013) at http://cyberbullying.us/Bullying_and_Cyberbullying_Laws.pdf (last visited on Apr. 11, 2013).

The bill directs schools to use computers with disabled, or without web-filtering software to investigate alleged cyberbullying.

By October 1, 2013, the Department of Education (DOE) is required to incorporate cyberbullying into its existing anti-bullying model policy.

The bill requires school districts to incorporate the DOE's provisions on cyberbullying from its model policy into the district's anti-bullying policy by December 1, 2013.

The bill takes effect July 1, 2013. Consideration of DOE approval of a district's safe school policy that includes cyberbullying takes effect with funds provided in the 2014-2015 General Appropriations Act.

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 Department of Education (DOE) reports that the requirement to investigate cyberbullying through the use of computers that are not web-disabled may result in a fiscal impact for school districts.[27] Some districts may need to purchase new software, or new computers altogether. The cost is indeterminate.

According to a representative of the Panhandle Area Educational Consortium (PAEC):

[27] DOE 2013 Agency Legislative Bill Analysis, SB 626 (March 7, 2013) (on file with the Senate Judiciary Committee).

- To the extent that this bill creates an affirmative obligation on the school or district to act, this bill may result in increased litigation in instances where a school imposes sanctions against a student, or, in its discretion, does not sanction a student for alleged cyberbullying. For this reason, the PAEC suggested that an immunity clause be included in the bill.
- The bill appears to create a new standard for these types of cases, the "student's ability to be safe and secure during school." This language is different from that upheld in the *Tinker* case, which may also result in increased litigation.
- To the extent that schools are subject to increased vigilance under this bill, greater investigation of off-campus activity will be required.[28]

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 Committee on Education on March 12, 2013:
The committee substitute:

- Names the act the "Imagine Sheterria Elliot Act;"
- Establishes cyberbullying as a stand-alone prohibited action;
- Prohibits bullying, cyberbullying, and harassment through the use of data or computer software that is accessed through a computer, computer system, or computer network which is on a public school bus;
- Codifies recent court decisions use of the *Tinker* test in the context of prohibiting bullying, cyberbullying, and harassment off school property;
- Clarifies the definition of bullying by including school employees;
- Clarifies the definition of cyberbullying by specifically including text messages and social media, and incorporating the definitions of harassment and cyberstalking in s 784.048, F.S.;
- Clarifies the definition of harassment by incorporating the definition of harassment in s. 784.048(1)(a), F.S., and by incorporating the *Tinker* test;
- Requires the Department of Education to incorporate cyberbullying into its model policy on bullying and harassment. The model policy must include factors a school district must consider when responding to an incident of bullying, cyberbullying, or harassment which occurs off school grounds, and must provide clear notice to a student and parent that the district will discipline a person who violates this section;

[28] Email from Bob Harris, Panhandle Educational Educational Consortium (April 11, 2013) (on file with the Senate Judiciary Committee).

- Requires a school district to incorporate cyberbullying into its policy on bulling and harassment; and
- Makes distribution of safe school funds to a school district provided in the 2014-2015 General Appropriations Act contingent and payable to the school district upon the Department of Education's approval of the school district's bullying, cyberbullying, and harassment policy.

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 Education; and Senator Bullard

581-02285-13 2013626c1

A bill to be entitled

An act relating to bullying in the public school system; providing a short title; amending s. 1006.147, F.S.; prohibiting cyberbullying in schools and during school-related activities; expanding the circumstances under which bullying or harassment of any student or employee of a public K-12 institution is prohibited; revising the definition of the term "bullying" to include emotional pain or discomfort; defining the term "cyberbullying"; revising the definition of the term "harassment"; requiring each school district to incorporate a prohibition on cyberbullying into its policy on bullying and harassment; requiring that such policy mandate that computers without web-filtering software or computers with web-filtering software disabled be used when investigating complaints of cyberbullying; requiring that school district policies prohibiting bullying, cyberbullying, and harassment address how to identify and respond to behavior that leads to such conduct; requiring that the model policy of the Department of Education include a prohibition on cyberbullying by a certain date and that such policy be included in the code of student conduct; updating fiscal years regarding the distribution of safe school funds; providing an effective date.

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

Section 1. SHORT TITLE.—This act may be cited as the

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581-02285-13 2013626c1

"Imagine Sheterria Elliot Act."

Section 2. Section 1006.147, Florida Statutes, is amended to read:

1006.147 Bullying and harassment prohibited.—

(1) This section may be cited as the "Jeffrey Johnston Stand Up for All Students Act."

(2) Bullying, cyberbullying, or harassment of any student or employee of a public K-12 educational institution is prohibited:

(a) During any education program or activity conducted by a public K-12 educational institution;

(b) During any school-related or school-sponsored program or activity or on a school bus of a public K-12 educational institution; ~~or~~

(c) Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution which is physically located on the property of the educational institution, at the site of any school-related or school-sponsored program or activity conducted by the educational institution, or on a school bus of a public K-12 educational institution; or

(d) If the bullying, cyberbullying, or harassment creates, or if it is reasonably foreseeable that it could create, material and substantial interference with or disruption of:

1. The operation of a school, an education program or activity conducted by a public K-12 educational institution, or a school-related or school-sponsored program or activity, including, but not limited to, field trips, extracurricular

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59 activities, or transit on a school bus of a public K-12
60 educational institution for any of the actions under this
61 subparagraph; or
62 2. A student's ability to be safe and secure during school,
63 an education program or activity conducted by a public K-12
64 educational institution, or a school-related or school-sponsored
65 program or activity, including, but not limited to, field trips,
66 extracurricular activities, or transit on a school bus of a
67 public K-12 educational institution for any of the actions under
68 this subparagraph.
69 (3) For purposes of this section:
70 (a) "Bullying" means systematically and chronically
71 inflicting physical hurt or psychological distress on one or
72 more students or school employees. Incidents of bullying ~~and~~ may
73 involve, but are not limited to:
74 1. Teasing;
75 2. Social exclusion;
76 3. Threat;
77 4. Intimidation;
78 5. Stalking;
79 6. Physical violence;
80 7. Theft;
81 8. Sexual, religious, or racial harassment;
82 9. ~~Public~~ Humiliation; ~~or~~
83 10. Emotional pain or discomfort; or
84 11.~~10.~~ Destruction of property.
85 (b) "Cyberbullying" means bullying or harassment that is
86 related to computers, as described in s. 815.03, or that
87 otherwise occurs through the use of technology or electronic

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88 communications, including, but not limited to, any transfer of
89 signs, signals, writing, images, sounds, data, or intelligence
90 of any nature transmitted in whole or in part by a wire, radio,
91 electromagnetic system, photoelectronic system, or photooptical
92 system, or other transmission or medium such as electronic mail,
93 text messaging, instant messaging, social media, Internet
94 communications, or facsimile communications. Cyberbullying may
95 involve, but is not limited to:
96 1. Harassment and cyberstalking, as defined in s. 784.048.
97 2. Creating a web page on which, or a weblog in which, the
98 creator assumes the identity of another person, or knowingly
99 impersonates another person, while posting content or sending
100 messages.
101 3. Electronically sharing or distributing material and
102 communications to more than one person or posting material on
103 one or more electronic media that may be accessed by one or more
104 persons.
105 (c)~~(b)~~ "Harassment" means any threatening, insulting, or
106 dehumanizing gesture, use of data or computer software, or
107 written, verbal, or physical conduct directed against a student
108 or school employee which ~~that~~:
109 1. Places a student or school employee in reasonable fear
110 of harm to his or her person or damage to his or her property;
111 2. Has the effect of substantially interfering with a
112 student's educational performance, opportunities, or benefits;
113 ~~or~~
114 3. As provided in s. 784.048(1)(a), serves no legitimate
115 purpose and causes substantial emotional distress to a student
116 or a school employee; or

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4.~~3.~~ Has the effect of materially and substantially disrupting or interfering with the orderly operation of a school or the ability of a student to be safe and secure at a school or at a school-sponsored event.

~~(c) Definitions in s. 815.03 and the definition in s. 784.048(1)(d) relating to stalking are applicable to this section.~~

(d) The definitions of "bullying," "cyberbullying," ~~"bullying"~~ and "harassment" include:

1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying, cyberbullying, or harassment. Reporting an act of bullying, cyberbullying, or harassment that is not made in good faith is considered retaliation.

2. Perpetuation of bullying, cyberbullying, or harassment ~~conduct listed in paragraph (a) or paragraph (b)~~ by an individual or group of individuals with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by:

a. Incitement or coercion;

b. Accessing or knowingly causing or providing access to data or computer software through a computer, computer system, ~~or~~ computer network, or other computer-related means described in s. 815.03 ~~within the scope of the district school system~~; or

c. Acting in a manner that has an effect substantially similar to the effect of bullying, cyberbullying, or harassment.

(4) By December 1, 2008, each school district shall adopt a policy prohibiting bullying and harassment of any student or employee of a public K-12 educational institution. By December

1, 2013, each school district shall incorporate into such policy a prohibition on cyberbullying of any student or employee of a public K-12 educational institution. Each school district's policy must substantially conform ~~shall be in substantial conformity~~ with the Department of Education's model policy mandated in subsection (5). The school district bullying, cyberbullying, and harassment policy must provide ~~shall afford~~ all students the same protection regardless of their status under the law. The school district may establish separate discrimination policies that include categories of students. The school district shall involve students, parents, teachers, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting the policy. The school district policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:

(a) A statement prohibiting bullying, cyberbullying, and harassment.

(b) Definitions ~~A definition~~ of bullying, cyberbullying, and ~~a definition of~~ harassment which ~~that~~ include the definitions listed in this section.

(c) A description of the type of behavior expected from each student and employee of a public K-12 educational institution.

(d) The consequences for a student or employee of a public K-12 educational institution who commits an act of bullying,

175 cyberbullying, or harassment.
176 (e) The consequences for a student or employee of a public
177 K-12 educational institution who is found to have wrongfully and
178 intentionally accused another of an act of bullying,
179 cyberbullying, or harassment.
180 (f) A procedure for reporting an act of bullying,
181 cyberbullying, or harassment, including provisions that
182 authorize ~~permit~~ a person to anonymously report such an act.
183 However, this paragraph does not authorize ~~permit~~ formal
184 disciplinary action to be based solely on an anonymous report.
185 (g) A procedure for the prompt investigation of a report of
186 bullying, cyberbullying, or harassment and the persons
187 responsible for the investigation. The investigation of a
188 reported act of bullying, cyberbullying, or harassment is deemed
189 to be a school-related activity and begins with a report of such
190 an act. Incidents that require a reasonable investigation when
191 reported to appropriate school authorities must ~~shall~~ include
192 alleged incidents of bullying, cyberbullying, or harassment
193 allegedly committed against a child while the child is en route
194 to school aboard a school bus or at a school bus stop.
195 (h) A process to investigate whether a reported act of
196 bullying, cyberbullying, or harassment is within the scope of
197 the district school system and, if not, a process for referral
198 of such an act to the appropriate jurisdiction. Computers
199 without web-filtering software, or computers with web-filtering
200 software that is disabled, shall be used when complaints of
201 cyberbullying are investigated.
202 (i) A procedure for providing immediate notification to the
203 parents of a victim of bullying, cyberbullying, or harassment

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204 and the parents of the perpetrator of an act of bullying,
205 cyberbullying, or harassment, as well as notification to all
206 local agencies where criminal charges may be pursued against the
207 perpetrator.
208 (j) A procedure to refer victims and perpetrators of
209 bullying, cyberbullying, or harassment for counseling.
210 (k) A procedure for including incidents of bullying,
211 cyberbullying, or harassment in the school's report of data
212 concerning school safety and discipline required under s.
213 1006.09(6). The report must include each incident of bullying,
214 cyberbullying, or harassment and the resulting consequences,
215 including discipline and referrals. The report must include in a
216 separate section each reported incident of bullying,
217 cyberbullying, or harassment that does not meet the criteria of
218 a prohibited act under this section with recommendations
219 regarding such incidents. The Department of Education shall
220 aggregate information contained in the reports.
221 (l) A procedure for providing instruction to students,
222 parents, teachers, school administrators, counseling staff, and
223 school volunteers on identifying, preventing, and responding to
224 bullying, cyberbullying, ~~or~~ harassment, and behavior that leads
225 to bullying, cyberbullying, or harassment.
226 (m) A procedure for regularly reporting to a victim's
227 parents the actions taken to protect the victim.
228 (n) A procedure for publicizing the policy, which must
229 include its publication in the code of student conduct required
230 under s. 1006.07(2) and in all employee handbooks.
231 (5) To assist school districts in developing policies
232 prohibiting bullying and harassment, the Department of Education

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233 shall provide ~~develop~~ a model policy ~~that shall be provided~~ to
234 school districts no later than October 1, 2008. The Department
235 of Education shall incorporate into such model policy a
236 prohibition on cyberbullying no later than October 1, 2013. The
237 department's model policy must include factors that school
238 officials must consider when responding to an incident of
239 bullying, cyberbullying, or harassment which occurs off school
240 grounds or outside a school-sponsored activity or event. The
241 model policy must be included in the code of student conduct and
242 must provide clear notice to a student and his or her parent
243 that the district will discipline a person who violates this
244 section.
245 (6) A school employee, school volunteer, student, or parent
246 who promptly reports in good faith an act of bullying,
247 cyberbullying, or harassment to the appropriate school official
248 designated in the school district's policy and who makes this
249 report in compliance with the procedures set forth in the policy
250 is immune from a cause of action for damages arising out of the
251 reporting itself or any failure to remedy the reported incident.
252 (7)(a) The physical location or time of an ~~access of a~~
253 ~~computer-related~~ incident or situation cannot be raised as a
254 defense in any disciplinary action initiated under this section.
255 (b) This section does not apply to any person who uses data
256 or computer software that is accessed through a computer,
257 computer system, or computer network when acting within the
258 scope of his or her lawful employment or investigating a
259 violation of this section in accordance with school district
260 policy. The definitions in s. 815.03 apply to this section.
261 (8) Distribution of safe schools funds to a school district

262 provided in the 2014-2015 ~~2009-2010~~ General Appropriations Act
263 is contingent upon and payable to the school district upon the
264 Department of Education's approval of the school district's
265 bullying, cyberbullying, and harassment policy. The department's
266 approval of each school district's bullying, cyberbullying, and
267 harassment policy shall be granted upon certification by the
268 department that the school district's policy has been submitted
269 to the department and is in substantial conformity with the
270 department's model bullying, cyberbullying, and harassment
271 policy as mandated in subsection (5). Distribution of safe
272 schools funds provided to a school district in fiscal year 2014-
273 2015 ~~2010-2011~~ and thereafter shall be contingent upon and
274 payable to the school district upon the school district's
275 compliance with all reporting procedures contained in this
276 section.
277 (9) On or before January 1 of each year, the Commissioner
278 of Education shall report to the Governor, the President of the
279 Senate, and the Speaker of the House of Representatives on the
280 implementation of this section. The report shall include data
281 collected pursuant to paragraph (4)(k).
282 (10) ~~Nothing in~~ This section does not ~~shall be construed to~~
283 abridge the rights of students or school employees which ~~that~~
284 are protected by the First Amendment to the Constitution of the
285 United States.
286 Section 3. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15, 2013
Meeting Date

Topic: Cyberbullying

Bill Number: SB626 *(if applicable)*

Name: Barbra A. Stern

Amendment Barcode: *(if applicable)*

Job Title: Attorney

Address: 1929 NE 15th Ave
Street

Fort Lauderdale, FL 33305
City, State, Zip

Phone: 954-612-3988

E-mail: basternesq@aol.com
barbra@livefreebestrong.org

Speaking: [✓] For [ ] Against [ ] Information

Representing: Live Free Be Strong - not for profit organization in support of anti-bullying initiatives - Board member

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Bullying in Public Schools

Bill Number: 626 (if applicable)

Name: Linda Kearschner

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: _____ (Street)

Safety Harbor, FL (City, State, Zip)

Phone: 727.422.9910

E-mail: LSK.PTA@gmail.com

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

Representing: Florida PTA

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 716

INTRODUCER: Children, Families, and Elder Affairs Committee; Senator Simpson and others

SUBJECT: Deceptive and Unfair Trade Practices

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon	MS	**Favorable**
2.	Peterson	Hendon	CF	**Fav/CS**
3.	Shankle	Cibula	JU	**Favorable**
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 716 provides military service members and their families the same protections senior citizens and persons with a disability have against deceptive or unfair trade practices. The bill provides that a person who willfully uses a method, act, or practice to victimize or attempt to victimize a military service member or the spouse or child of a military service member is liable for a civil penalty of not more than $15,000 for each violation.

This bill also replaces the term “handicapped person” in section 501.2077 Florida Statutes, with the currently accepted term “person who has a disability.”

This bill substantially amends section 501.2077, Florida Statutes.

II. Present Situation:

Financial Exploitation of the Elderly and Persons with Disabilities

Senior citizens and persons with disabilities are frequently targets of deceptive or unfair trade practices. Perpetrators often view these vulnerable populations as easy targets. Older individuals

may be targeted merely because they possess more assets (i.e., savings, annuities and retirement accounts, stocks and bonds, insurance policies, and property) than younger individuals. Those with cognitive impairments, mental health conditions, or physical disabilities may be dependent upon others (family members, friends, formal and informal caregivers, or court appointed representatives) for assistance in making financial decisions or carrying out daily transactions, and therefore may be vulnerable to theft, exploitation, or undue influence.[1]

Florida law provides explicit protection to senior citizens and persons with disabilities against deceptive or unfair trade acts or practices. Section 501.2077, F.S., provides that any person who willfully uses, a method, act, or practice to victimize or attempt to victimize a senior citizen or person with a disability is liable for a civil penalty of not more than $15,000 for each violation. It is a violation when a perpetrator knew or should have known that his or her conduct was unfair or deceptive.[2] The law further provides that restitution or reimbursement to the senior citizen or person with a disability has priority over the imposition of civil penalties.[3] Civil penalties collected pursuant to this law are deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs.[4]

Financial Exploitation of Military Service Members

Increasingly, military service members and their families are becoming the victims of predatory behavior much like senior citizens and persons with disabilities. In 2006, Congress enacted the Military Personnel Financial Services Protection Act (Act) to protect military service members from unscrupulous practices regarding financial and investment products.[5] In the Act, Congress found that "military service members [were] being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices."[6]

The Act provides no restitution for the victims or civil penalties for perpetrators, but aims to regulate the marketing and sale of securities and life insurance products on military bases. Among other things, the Act:

- Bans the sale of securities products called periodic payment plans;
- Requires insurers and producers of life insurance products to make certain disclosures when selling or soliciting securities or life insurance products on military bases;
- Requires insurance companies to inform military personnel about subsidized life insurance offered by the federal government when marketing and selling insurance policies to them; and
- Requires the Department of Defense to maintain a list of brokers and agents barred from doing business on military bases or who have engaged in prohibited acts.[7]

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[1] Lisa Nerenberg, *Forgotten Victims of Elder Financial Crime and Abuse: A Report and Recommendations,* The National Center on Elder Abuse, http://www.ncea.aoa.gov/Resources/Publication/docs/fvefca.pdf (last visited April 9, 2013).
[2] Section 501.2077(2), F.S.
[3] Section 501.2077(3), F.S.
[4] Section 501.2077(4), F.S.
[5] Public Law No. 109-290, S. 418, 109th Cong (Sept. 29, 2006).
[6] *Id.*
[7] *Id.*

The Federal Trade Commission (FTC) has also taken steps to protect military service members from deceptive trade acts or practices. The FTC expanded its Consumer Sentinel online database[8] to provide the military community a unique and exclusive forum to submit consumer complaints to the FTC, which are then made available to law enforcement agencies.[9] The complaints cover topics like identity theft, deceptive lending or mortgage practices, debt collection, phone fraud, or other scams. The FTC does not resolve individual disputes, but service members' complaints help the FTC and its partners target cases for prosecution, shut down scammers, spot patterns of fraud before they become widespread, and alert the military community to scams.[10]

The Use of the Terms "Handicapped Person" and "Person Who Has a Disability"

As society has continued to evolve and become more inclusive of individuals with physical and cognitive disabilities, the nomenclature used to describe these conditions has also evolved. "Disability is a general term used for a functional limitation that interferes with a person's ability, for example, to walk, lift, heal, or learn. It may refer to a physical, sensory, or mental condition.[11] According to the Associated Press *Stylebook and Briefing on Media Law*, "handicap" should be avoided in describing a disability.[12] The Americans with Disabilities Act uses the term "disability," as opposed to the term "handicap."[13] Both of the terms – "handicapped person" and "person who has a disability" – are used throughout the Florida Statutes.[14] Generally, both terms have been used interchangeably.

III. Effect of Proposed Changes:

The bill amends s. 501.2077, F.S., to provide military service members the same protections senior citizens and persons with a disability have against deceptive or unfair trade practices. The bill provides that a person who willfully uses a method, act, or practice to victimize or attempt to victimize a military service member or the spouse or child of a military service member is liable for a civil penalty of not more than $15,000 for each violation. An order of restitution or reimbursement based on a violation against a military service member has priority over the imposition of civil penalties. The bill defines "military service member" as a person who is on active duty in or a veteran of the U.S. Armed Forces.

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[8] Fed. Trade Commission, *Consumer Sentinel*, http://www.ftc.gov/sentinel/ (last visited April 9, 2013). The FTC Consumer Sentinel is a unique investigative cyber tool that provides law enforcement access to millions of consumer complaints.
[9] Fed. Trade Commission, *Consumer Military Sentinel*, http://www.ftc.gov/sentinel/military/index.shtml (last visited April 9, 2013).
[10] *Id*.
[11] Univ. of Kansas Research and Training Center on Independent Living, *Guidelines for Reporting and Writing about People with Disabilities*, p. 4, http://www.rtcil.org/products/RTCIL%20publications/Media/Guidelines%20for%20Reporting%20and%20Writing%20about%20People%20with%20Disabilities.pdf (last visited April 9, 2013).
[12] 2005 Associated Press, *Stylebook and Briefing on Media Law*, p. 74, (2005) *available at* http://www.quarterboundpress.com/qbp/frequently_asked_questions_files/AP%20StyleGuide%202005.pdf.
[13] 42 U.S.C. s. 12102.
[14] *See* Sections 193.623, 196.101, 286.26, and 320.0848, F.S.

The bill also replaces the term "handicapped person" in s. 501.2077, F.S., with the currently accepted term "person who has a disability."

This bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on March 18, 2013:
The bill not only changed the term "handicapped person" to "person who has a disability," but it also expanded the definition to include a person with a physical disability. Currently, the term (and the scope of the deceptive or unfair trade protection in

the law) includes a person who has a mental or educational impairment. The CS restored the original definition by removing the reference to physical impairment.

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 Children, Families, and Elder Affairs; and Senators Simpson, Abruzzo, Bradley, Hays, Ring, Evers, Benacquisto, Dean, Gibson, Detert, Richter, and Soto

586-02616-13 2013716c1

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.2077, F.S.; providing definitions; authorizing a civil penalty for a person who willfully uses a deceptive or unfair trade act or practice against a military service member or the member's spouse or child in certain circumstances; providing an effective date.

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

Section 1. Section 501.2077, Florida Statutes, is reordered and amended to read:

501.2077 Violations involving senior citizen, ~~or handicapped~~ person who has a disability, or military service member; civil penalties; presumption.—

(1) As used in this section:

(e) ~~(a)~~ "Senior citizen" means a person who is 60 years of age or older.

(d) ~~(b)~~ "~~Handicapped~~ Person who has a disability" means a ~~any~~ person who has a mental or educational impairment that ~~which~~ substantially limits one or more major life activities.

(b) ~~(c)~~ "Mental or educational impairment" means:

1. A ~~Any~~ mental or psychological disorder or specific learning disability.

2. An ~~Any~~ educational deficiency that ~~which~~ substantially affects a person's ability to read and comprehend the terms of any contractual agreement entered into.

(a) ~~(d)~~ "Major life activities" means functions associated

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

586-02616-13 2013716c1

with the normal activities of independent daily living, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Military service member" means a person who is on active duty in or a veteran of the United States Armed Forces.

1. "Active duty" has the same meaning as in s. 250.01.

2. "Veteran" has the same meaning as in s. 1.01.

(2) A ~~Any~~ person who is willfully using, or has willfully used, a method, act, or practice in violation of this part~~,~~ which ~~method, act, or practice~~ victimizes or attempts to victimize a senior citizen ~~citizens~~ or a person who has a disability ~~handicapped persons, and commits such violation when she or he knew or should have known that her or his conduct was unfair or deceptive,~~ is liable for a civil penalty of not more than $15,000 for each such violation if she or he knew or should have known that her or his conduct was unfair or deceptive.

(3) A person who willfully uses a method, act, or practice in violation of this part directed at a military service member or the spouse or child of a military service member is liable for a civil penalty of not more than $15,000 for each violation if she or he should have known that her or his conduct was unfair or deceptive.

(4) ~~(3)~~ An ~~Any~~ order of restitution or reimbursement based on a violation of this part committed against a senior citizen, a ~~or handicapped~~ person who has a disability, or a military service member has priority over the imposition of civil penalties for such violations pursuant to this section.

(5) ~~(4)~~ Civil penalties collected pursuant to this section shall be deposited into the Legal Affairs Revolving Trust Fund

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59 of the Department of Legal Affairs and allocated solely to the
60 Department of Legal Affairs for the purpose of preparing and
61 distributing consumer education materials, programs, and
62 seminars to benefit senior citizens, ~~and handicapped~~ persons who
63 have a disability, and military service members or to further
64 enforcement efforts.
65 Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: Deceptive Trade Practices

Bill Number: CS SB 716 *(if applicable)*

Name: Ed Brodsky

Amendment Barcode: *(if applicable)*

Job Title: State Attorney

Address: 2071 Ringling Blvd
Street

Sarasota, FL
City, State, Zip

Phone: 941-861-4460

E-mail: ebrodsky@sc.gov.net

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

Representing: Fl Prosecuting Atty's Assoc

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 15 /2013
Meeting Date

Topic _____

Bill Number 716 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

The Florida Senate

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/SB 874

INTRODUCER: Criminal Justice Committee; Regulated Industries Committee; and Senator Galvano

SUBJECT: Open Parties

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.	Dugger	Cannon	CJ	**Fav/CS**
3.	Shankle	Cibula	JU	**Favorable**
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/CS/SB 874 amends s. 856.015, F.S., relating to open house parties. The bill expands the places at which a person has duty to take reasonable steps to prevent minors from possessing or consuming drugs or alcoholic beverages. Under existing law, the duty exists at a person's residence. Under the bill, the duty exists at a person's "property," which is defined as "a residence, structure, or open acreage with or without a structure."

The bill provides that a person violates s. 856.015, F.S., if he or she has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property. As under existing law, the requirements of the bill apply only if a person has actual knowledge that a minor possesses or is consuming the alcoholic beverages or drugs.

The bill maintains the current penalty for violation of the section as a second degree misdemeanor for a first offense. A second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding $500. A subsequent violation is a first degree misdemeanor, punishable by up to 1 year in jail and a fine not exceeding $1,000.

The bill substantially amends section 856.015, Florida Statutes.

II. Present Situation:

Section 856.015, F.S., addresses social gatherings at a residence, defined as "open house parties" at a residence A person 18 years of age or older having control of any residence may not allow an open house party to take place if he or she knows that any alcoholic beverage or drug is possessed or consumed at the residence by a minor.

"Residence" is defined as a home, apartment, condominium, or other dwelling unit. This definition does not include structures that are not dwelling units or open areas that do not include a structure, such as a field. This has resulted in a loophole whereby the person in control of a property does not technically violate the law if a minor consumes alcohol at a party that takes place in a field, park, or other open area.[1]

Failure to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug constitutes a second degree misdemeanor, with any subsequent violation treated more severely as a first degree misdemeanor. A conviction for a second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding $500. A first degree misdemeanor is punishable by up to one year in jail and a fine not exceeding $1,000.[2]

In upholding the statute against a constitutional challenge for vagueness, the Florida Supreme Court held that the statute:

> "prohibits an adult, who is in control of the premises, from having a party and knowingly permitting a minor to continue to consume or possess alcoholic beverages or drugs on the premises. That adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof."[3]

Section 856.015, F.S., does not apply to the use of alcoholic beverages at legally protected religious observances or activities.

A prior version of the open house party law was challenged in 1995 on the basis that the phrase "reasonable steps" to be taken by the person in control of the residence was ambiguous. The Florida Supreme Court held that the Legislature has indirectly ceded discretion to the courts by employing language in legislation that commonly requires judicial construction.[4]

III. Effect of Proposed Changes:

The bill deletes the definitions of "open house party" and "residence" in s. 856.015, F.S. The bill creates the term "property," which includes "a residence, structure, or open acreage with or

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[1] Rachel Leigh, *Major Loophole with Minors Drinking Alcohol*, WFLX Fox 29, Feb 13, 2013 *availible at* http://www.treasurecoast.com/index.cfm/news/major-loophole-with-minors-drinking-alcohol.
[2] *See* s. 775.082 and s. 775.083, F.S.
[3] *See State v. Manfredonia*, 649 So. 2d 1388, 1391 (Fla. 1995).
[4] *See Bunkley v. State*, 882 So. 2d 890, 915 (Fla. 2004)

without a structure." The bill replaces "residence" as used in s. 856.015, F.S., with "property," expanding the locations covered by the section.

The bill provides that a person in control of property violates s. 856.015, F.S., if he or she fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor who is lawfully on the property. Consistent with existing law, a person does not appear to have a duty to prevent the possession or consumption of drugs by a minor who is a trespasser.

Under the bill, a person has a duty to act only if the person has "actual knowledge" that a minor possesses or is consuming drugs or alcoholic beverages. Actual knowledge is defined in Black's Law Dictionary as "direct and clear knowledge."[5] Under existing law, a person has a duty to act only if the person "knows" about the possession or consumption.

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 bill may have an indeterminate fiscal impact on jails as a result of the expanded locations where a violation of s. 856.015, F.S., may occur.

[5] BLACK'S LAW DICTIONARY (9th ed. 2009), knowledge (actual knowledge).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may give prosecutors clarification of the conduct being regulated, by imposing the standard of "actual knowledge" by the person who has control of a property.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Criminal Justice on April 1, 2013:
Deletes "vacant" from the definition of "property."

CS by Regulated Industries on March 7, 2013:
The committee substitute provides that a property owner is subject to criminal penalties only when the owner has actual knowledge that a minor is in possession of or consuming alcoholic beverages or drugs on the property, and the minor is lawfully on the property.

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 Committees on Criminal Justice; and Regulated Industries; and Senator Galvano

591-03338-13 2013874c2

A bill to be entitled

An act relating to open parties; amending s. 856.015, F.S.; revising definitions; prohibiting a person from allowing a party to take place if a minor is in possession of or consuming alcohol or drugs; revising an exemption; providing criminal penalties; conforming provisions; providing an effective date.

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

Section 1. Section 856.015, Florida Statutes, is amended to read:

856.015 Open ~~house~~ parties.—

(1) Definitions.—As used in this section:

(a) "Alcoholic beverage" means distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume is ~~shall be~~ determined in accordance with ~~the provisions of~~ s. 561.01(4)(b).

(b) "Control" means the authority or ability to regulate, direct, or dominate.

(c) "Drug" means a controlled substance, as that term is defined in ss. 893.02(4) and 893.03.

(d) "Minor" means an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.

~~(e) "Open house party" means a social gathering at a residence.~~

(e) ~~(f)~~ "Person" means an individual 18 years of age or older.

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

591-03338-13 2013874c2

(f) "Property" means a residence, structure, or open acreage with or without a structure.

~~(g) "Residence" means a home, apartment, condominium, or other dwelling unit.~~

(2) A person who has ~~having~~ control of any property and who has actual knowledge ~~residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows~~ that an alcoholic beverage or drug is in the possession of or being consumed by a minor lawfully at the property, ~~residence~~ and ~~where~~ the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug commits a violation of this section.

(3) ~~The provisions of~~ This section does ~~shall~~ not apply to the use of alcoholic beverages at legally protected religious observances or activities.

(4) A ~~Any~~ person who violates ~~any of the provisions of~~ subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subsection (2) a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If a violation of subsection (2) causes or contributes to causing serious bodily injury, as defined in s. 316.1933, or death to the minor, or if the minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open ~~house~~ party, the violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

15 April 2013
Meeting Date

Topic: Open Parties

Bill Number: 874 *(if applicable)*

Name: Jill Gran - waives in support

Amendment Barcode: *(if applicable)*

Job Title:

Address: 2868 Mahan Dr
Street

Tallahassee, FL 32308
City, State, Zip

Phone:

E-mail: jill@fadaa.org

Speaking: ☐ For ☐ Against ☐ Information

Representing: FL Alcohol + Drug Abuse Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: open party

Bill Number: CS SB 874 (CS) *(if applicable)*

Name: Ed Brodsky

Amendment Barcode: _____ *(if applicable)*

Job Title: State Atty 12th Circuit

Address: 2071 Ringling Blvd
Street

Sarasota FL
City *State* *Zip*

Phone: 941 - 861 - 4460

E-mail: ebrodsky@scgov.net

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

Representing: Fl Prosecutors Assoc

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Open Parties

Bill Number: 874 (if applicable)

Name: Linda Kearschner

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: _____ (Street)

Safety Harbor, FL (City, State, Zip)

Phone: _____

E-mail: LJK.PTA@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 836

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Insurer Solvency

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Favorable**
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 836 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts and regulations that have been adopted by the National Association of Insurance Commissioners (NAIC).[1] Some of these provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups. The bill provides the following changes:

- Requires acquirers of controlling interests to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR that identifies material risk within the insurance company holding company system that could pose a risk or have a material adverse effect upon the insurer;

[1] The NAIC is a voluntary association of insurance regulators from all 50 states. The NAIC was created to coordinate regulation and examination of multistate insurers, provide a forum for addressing major insurance issues, and promote uniform model laws among the states.

- Requires insurance holding companies to file an annual registration statement, including disclosure of material risks between affiliates;
- Allows the OIR to examine an insurer and its affiliates to assess enterprise risk;
- Incorporates a risk-based capital trend test for life and health and property and casualty insurers;
- Requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports;
- Requires insurers to file actuarial opinion summaries and supporting workpapers annually;
- Provides a privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information and provides for confidentiality of enterprise risk reports and actuarial opinion summaries;
- Authorizes the OIR to impose sanctions for noncompliance with the requirements of s. 628.461, F.S., and s. 628.801, F.S.; and
- Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system with international operations.

As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. For purposes of the NAIC Fall Accreditation Review, the OIR has identified model provisions or updates that are not found in the current Insurance Code that must be implemented or updated for the OIR to maintain accreditation.[2] The adoption of the Property and Casualty Trend Test of the Risk-Based Capital Model Act and the Property and Casualty Actuarial Opinion Model Law are necessary for purposes of accreditation in the fall 2013 since the accreditation effective dates for these provisions were January 1, 2012, and January 1, 2010, respectively. In addition, two other NAIC model acts, Risk-Based Capital for Health Organizations and the Life Trend Test of the Risk Based Capital Model Act are necessary for accreditation effective January 1, 2015, and January 1, 2017, respectively. The accreditation effective date for amendments to the Insurance Holding Company System Regulatory Act is tentatively set for January 1, 2016.

This bill substantially amends the following sections of the Florida Statutes: 624.4085, 624.424, 625.121, 628.461, 628.801, 628.803, 628.461, 636.045, 641.225, and 641.255. This bill creates the following sections of the Florida Statutes: 624.085 and 628.805.

II. Present Situation:

Insurance companies are regulated primarily by the states. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR[3] is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,[4] monitoring the financial condition of insurers through examinations and audits, and procedures

[2] OIR NAIC Model Act Accreditation Effective Date Chart. On file with Banking and Insurance Committee Staff.
[3] Section 20.121(3)(a), F.S.
[4] Sections 624.411 - 624.414, F.S.

for the administrative supervision,[5] rehabilitation,[6] or liquidation[7] of an insurance company if it is in unsound financial condition or insolvent.

NAIC Solvency-Related Model Acts

The NAIC accreditation is a certification that legal, financial, and organizational standards are being fulfilled by the OIR. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review.

Model Holding Company Act and Regulations

The NAIC has adopted amendments to its Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions. In light of the recent financial crisis, the NAIC, insurance regulators, and other stakeholders reviewed the potential impact of non-insurance operations on insurance companies in the same group to determine the best methods to evaluate the risks and activities of entities within a holding company system. The amendments to these model acts are tentatively scheduled to be effective for purposes of accreditation on January 1, 2016. The revised model act adds the concept of "enterprise risk" and requires controlled insurers to file a new annual form (Form F) detailing specified matters relating to the holding company group. The NAIC model act defines "enterprise risk" as:

[A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[8]

Amendments to the model act also address divestitures. Prior to the amendments to the model act, a person could divest control of an insurer without prior regulatory review as long as no single acquirer obtained control of 10 percent or more of the outstanding voting shares. Amendments to the model act generally require a person divesting control over an insurer to provide 30 days' prior notice to the regulator.

The revised model act also provides insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the

[5] Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.
[6] In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
[7] In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, and distribute them to various claimants, and shut down the company.
[8] Section 1F of the NAIC Insurance Holding Company System Regulatory Act.

explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[9]

The amendments to the model acts also authorize a regulator to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance. Insurers would pay for expenses associated with the insurance regulator's participation in a supervisory college. State, federal, and international regulators may participate in the supervision of the insurer or its affiliates.[10] According to the NAIC Center for Insurance Policy & Research, "a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions."[11] Supervisory colleges facilitate oversight of internationally active insurance companies at the group level and promote regulatory information sharing, subject to applicable confidentiality agreements.[12]

Risk-Based Capital for Insurers & Health Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). The RBC provides a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.[13] The NAIC's *Risk-Based Capital for Insurers Model Act* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is incorporated in the Insurance Code; however, it does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.[14] Prepaid limited health service organizations provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,[15] and HMOs generally provide a range of health coverage with contracted providers.[16] The NAIC Risk-Based Capital Health Organizations Model Act will be effective as an accreditation standard beginning January 1, 2015, and applies to health maintenance organizations and prepaid limited health service organization.

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[9] Section 6B of the NAIC Insurance Holding Company System Regulatory Act.
[10] Section 7 of the NAIC Insurance Holding Company System Regulatory Act.
[11] "Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination," at http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last visited on Apr. 10, 2013).
[12] NAIC on Supervisory Colleges at http://www.naic.org/cipr_topics/topic_supervisory_college.htm. (last visited on Apr. 10, 2013). Additionally, the linked/public records bill, SB 834, provides for confidential treatment of regulatory information, including within the context of a supervisory college that is shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.
[13] NAIC on Risk-Based Capital at http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last visited on Apr. 10, 2013).
[14] Section 624.4085, F.S.
[15] Section 636.003(7), F.S.
[16] Section 641.19(12), F.S.

In March 2006, the NAIC adopted revisions to the Risk-Based Capital for Insurers Model Act. The revisions were made to incorporate a new Property and Casualty Trend Test for property and casualty companies. The accreditation effective date for property and casualty trend test was January 1, 2012. A statutory provision relating to a life trend test was already included in the RBC for Insurers Model Act; but the changes equalize the trigger between life and health, property, and casualty companies that prompt the need for a trend test calculation. The model was amended to cite the Property & Casualty Trend Test as a means for the company action level to be triggered. The accreditation effective date for these changes is January 1, 2017.

Property and Casualty Actuarial Opinion Model Law

The NAIC Property and Casualty Actuarial Opinion Model Law specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report, and workpapers to support each actuarial opinion, which must be treated as confidential and privileged document. The accreditation effective date for the adoption of this model act was January 1, 2010.

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists. These insurers are also required to provide supporting work papers upon the OIR's request.[17] Currently, these materials are not exempt from ch. 119, F.S., relating to public records.

III. Effect of Proposed Changes:

Model Insurance Holding Company Act and Regulations

Section 1 creates s. 624.085, F.S., which establishes definitions of affiliate, affiliated person, and control. The definition of the term, "affiliated person," currently defined in s. 628.461(12)(a), F.S., is modified and transferred to this section.

Section 5 amends s. 628.461, F.S., relating to acquisition of controlling stock. The section deletes the provision in "lieu of filing an acquisition statement, a party acquiring less than 10 percent of the outstanding voting securities of an insurer, may file a disclaimer of affiliation and control."

The section specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in section 6 of the bill. The bill adds language that states the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. A provision is added that the presumption of control may be rebutted by filing a disclaimer of control, which will be in effect unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

[17] Section 624.424, F.S.

Currently, an individual or company must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus

Section 6 amends s. 628.801, F.S., relating to the regulation of insurance holding companies, to amend and update the provisions of the NAIC Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company System Model Regulation by incorporating reference to the 2010 version. The section requires insurers to file an annual holding company registration statement, including disclosure of material transaction between affiliates. Currently, authorized insurers are required to register with the OIR and be subject to regulation with respect to the relationship with the holding company.

Additionally, the ultimate controlling person in an insurer's holding company must identify and report material risk within the system that could pose enterprise risk to the insurer in an annual enterprise risk report filed with the OIR. The enterprise risk report will contain detailed information including the holding company's business plan, material developments concerning risk management, and rating agency information. Information contained in the enterprise risk report filed with OIR is confidential and exempt as provided in s. 624.4212, F.S. The bill also adds a provision that prohibits the waiver of any applicable privilege or claim of confidentiality in the enterprise risk report because of disclosures to the OIR.

Pursuant to its authority under ch. 624, F.S., the OIR is authorized to examine any insurer and its affiliates registered under this section to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party.

If an insurer fails to file a registration statement, a summary of the registration statement, or enterprise risk filing report within the specified time, it is a violation of this section.

The section also provides criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

Section 7 amends s. 628.803, F.S., relating to sanctions against an insurance holding company, to provide that a violation of s. 628.461, F.S., (i.e., the filing requirements for acquisition of controlling stock) or s. 628.801, F.S., (i.e., filing requirements for insurance holding companies) may serve as an independent basis for the OIR to disapprove dividends and distributions and place the insurer under an order of supervision pursuant to part VI of ch. 624, F.S.

Currently, the Insurance Code states that noncompliant insurance holding companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions that include:

- A penalty, not to exceed $10,000, for failing to file registration statements or certificate of exemption;
- Civil forfeitures, not to exceed $5,000 per violation, for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule; or
- A cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.

Additionally, an officer, director, or employee of an insurance holding company willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a felony of the third degree.

Section 8 creates s. 628.805, F.S., which provides for the creation and participation by the OIR in a Supervisory College with other state, federal, and international regulators charged with supervising an insurer or its affiliates. The section provides for the terms and conditions of participation. In accordance with s. 624.4212, F.S., regarding confidential information sharing, the OIR is authorized to enter into cooperative agreements with other regulators. Expenses associated with a supervisory college would be liable for the payment of reasonable expenses for the OIR's participation.

Risk-Based Capital for Insurers and Health Organizations

Section 2 amends 624.4085, F.S., to revise the definition of the term, "life and health insurer," for purposes of risk-based capital (RBC) requirements to include HMOs and prepaid limited health service organizations that are authorized in Florida and one or more other states, jurisdictions, or countries. The section also clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.

The section also defines the RBC requirements for a life and health, as well as property and casualty, insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation. An insurer that fails the Trend Test would be subject to filing a corrective action plan with the OIR.

Section 9 amends s. 636.045, F.S., relating to minimum surplus requirements, to provide that prepaid limited health service organizations authorized in Florida are subject to the RBC requirements and confidentially requirements pursuant to s. 624.4085, F.S., and s. 624.40851, F.S., respectively.

Section 10 amends s. 641.225, F.S., relating to surplus requirements, to provide that an HMO that is authorized in one or more other states, jurisdictions, or countries is subject to the risk-based capital requirements for insurers as well as the confidentiality protections of risk-based capital information provided in ss. 624.4085, F.S., and s. 624.4615, F.S., respectively.

Section 11 amends s. 641.255, F.S., provides that an HMO that is a member of a holding company system is subject to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S.

Property and Casualty Actuarial Opinion Model Law

Section 3 amends s. 624.424, F.S., to require property and casualty insurers to file an annual Statement of Actuarial Opinion and Actuarial Opinion Summary in accordance with the NAIC annual statement instructions. Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, F.S. This section also protects the summary and related information from subpoena, discovery, or admissibility in any private civil action. The section also updates the Financial Services Commission's rulemaking authority under this section to specify that rule must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC.

Standard Valuation Law for Life Insurers

Section 4 amends s. 625.121, F.S., relating to the Standard Valuation Law for life insurance, to provide that any memorandum or other material in support of the actuarial opinion that is currently confidential and exempt from s. 119.07(1), F.S., is not subject to subpoena or discovery, or admissible in evidence in any private civil action. Currently, authorized life insurance companies are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities.[18] This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared to testify in any private civil action concerning confidential information. These changes incorporate a provision of the NAIC Standard Valuation Law that provides that this information should not be subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form.

Effective Date

Section 12 provides that the bill takes effect October 1, 2013, if SB 834 or similar legislation is adopted in the same legislative session or an extension thereof, and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[18] Section 625.121(3)(a)1., F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers may incur an indeterminate amount of administrative costs in complying with the additional reporting requirements and costs associated with the OIR's participation in the supervisory colleges.

C. Government Sector Impact:

The bill provides greater solvency tools and regulatory authority for the OIR.

Greater coordination of efforts in the examination of multistate insurers will reduce regulatory redundancies and expenses among the state regulators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Incorporation by reference and delegation of legislative authority

Currently, s. 628.801, F.S. gives rulemaking authority to the Financial Services Commission to adopt rules regarding annual registration statements to be filed by insurers within a holding company. Lines 560-562 of the bill specify that the rules must be in accordance with the most recent NAIC Holding Company Model Act (adopted December 2010).The bill also requires the commission to "adopt subsequent amendments thereto *if the methodology remains substantially consistent"* (emphasis added).[19]

Generally, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.[20] The legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body "that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the

[19] It is noted that other provisions in the current Insurance Code gives the Financial Services authority to adopt subsequent amendments to a NAIC model rule. See ss. 624.424(8)(e), F.S. and 625.121(3)(a)4., F.S.
[20] *See Overstreet v. Blum,* 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw,* 151 So. 333 (1933).

ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."[21]

A court would likely apply this same principle in reviewing a statute that incorporates a model act promulgated by an organization, although it is uncertain whether the qualifying language "if the methodology remains substantially consistent" would change a court's conclusion. Accordingly, while the bill may adopt the current NAIC model act in effect, it is possible that a reviewing court would not uphold that part of a statute that adopts any future amendments to that model act.[22]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on April 2, 2013
CS/SB 836 provides the following changes:

- Clarifies the applicability of civil process exemptions to confidential information provided to the OIR pertain to the life and health actuarial memorandum and other supporting documents and the filings made pursuant to the NAIC Insurance Holding Company System Regulatory Act.
- Clarifies the OIR's authority to impose sanctions if an insurer violates s. 628.461, F.S., or s. 628.801, F.S.
- Authorizes the OIR to participate in a supervisory college for any domestic insurer that is part of insurance company system with international operations in order to determine an insurer's compliance with ch. 628, F.S.
- Provides technical and conforming 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.

[21] *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). *See also Freimuth v. State*, 272 So. 2d 473 (Fla.1972); *State v. Camil*, 279 So. 2d 832 (Fla.1973).

[22] Courts may sever a valid portion of laws from the remainder and continue to enforce the valid portion. *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008); *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999); *Wright v. State*, 351 So. 2d 708 (Fla. 1977).

By the Committee on Banking and Insurance; and Senator Simmons

A bill to be entitled

An act relating to insurer solvency; creating s. 624.085, F.S.; providing definitions applicable to the Florida Insurance Code; amending s. 624.4085, F.S.; revising a definition; providing additional calculations for determining whether an insurer has a company action level event; revising provisions relating to mandatory control level events; amending s. 624.424, F.S.; requiring an insurer's annual statement to include an actuarial opinion summary; providing criteria for such summary; providing an exception for life and health insurers; updating provisions; amending s. 625.121, F.S.; protecting material supporting an insurer's annual actuarial opinion from subpoena, discovery, or admissibility in a civil action; amending s. 628.461, F.S.; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met; deleting a provision authorizing an insurer to file a disclaimer of affiliation and control in lieu of a letter notifying the Office of Insurance Regulation of the Financial Services Commission of the acquisition of the voting securities of a domestic stock company under certain circumstances; requiring the statement notifying the office to include additional information; conforming a provision to changes made by the act; providing that control is presumed to exist under certain conditions;

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

specifying how control may be rebutted and how a controlling interest may be divested; deleting definitions; amending s. 628.801, F.S.; requiring an insurer to file annually by a specified date a registration statement; revising the requirements and standards for the rules establishing the information and statement form for the registration; requiring an insurer to file an annual enterprise risk report; authorizing the office to conduct examinations to determine the financial condition of registrants; providing that failure to file a registration or report is a violation of the section; providing additional grounds, requirements, and conditions with respect to a waiver from the registration requirements; amending s. 628.803, F.S.; providing for sanctions for persons who violate s. 628.461, F.S., relating to the acquisition of controlling stock; creating s. 628.805, F.S.; authorizing the office to participate in supervisory colleges; authorizing the office to assess fees on insurers for participation; amending ss. 636.045 and 641.225, F.S.; applying certain statutes related to solvency to prepaid limited health service organizations and health maintenance organizations; amending s. 641.255, F.S.; providing for applicability of specified provisions to a health maintenance organization that is a member of a holding company; providing a contingent effective date.

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

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

Section 1. Section 624.085, Florida Statutes, is created to read:

624.085 Other definitions.—As used in the Florida Insurance Code, the term:

(1) "Affiliate" means any entity that exercises control over or is controlled by the insurer, directly or indirectly, through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

(2) "Affiliated person" of another person means:

(a) The spouse of such other person;

(b) The parents of such other person and their lineal descendants, or the parents of such other person's spouse and their lineal descendants;

(c) Any person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of such other person;

(d) Any person 10 percent or more of whose outstanding voting securities are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(e) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;

(f) Any officer, director, partner, copartner, or employee

of such other person;

(g) If such other person is an investment company, any investment adviser of such company, or any member of an advisory board of such company;

(h) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(i) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person.

Section 2. Paragraph (g) of subsection (1), paragraph (a) of subsection (3), and paragraph (b) of subsection (6) of section 624.4085, Florida Statutes, are amended to read:

624.4085 Risk-based capital requirements for insurers.—

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

(g) "Life and health insurer" means any insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term includes a property and casualty

117 insurer that writes accident and health insurance only; a health
118 maintenance organization that is authorized in this state and
119 one or more other states, jurisdictions, or countries; and a
120 prepaid health service organization that is authorized in this
121 state and one or more other states, jurisdictions, or countries.
122 (3)(a) A company action level event includes:
123 1. The filing of a risk-based capital report by an insurer
124 which indicates that:
125 a. The insurer's total adjusted capital is greater than or
126 equal to its regulatory action level risk-based capital but less
127 than its company action level risk-based capital; ~~or~~
128 b. If a life and health insurer that reports using the life
129 and health annual statement instructions, the insurer has total
130 adjusted capital that is greater than or equal to its company
131 action level risk-based capital, but is less than the product of
132 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
133 has a negative trend;
134 c. If a life and health or property and casualty insurer
135 that reports using the health annual statement instructions, the
136 insurer or organization has total adjusted capital that is
137 greater than or equal to its company action level risk-based
138 capital, but is less than the product of its authorized control
139 level risk-based capital and 3.0, and triggers the trend test
140 determined in accordance with the trend test calculation
141 included in the Risk-Based Capital Forecasting and Instructions,
142 Health, updated annually by the National Association of
143 Insurance Commissioners; or
144 d. If a property and casualty insurer that reports using
145 the property and casualty annual statement instructions, the

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146 insurer has total adjusted capital that is greater than or equal
147 to its company action level risk-based capital, but is less than
148 the product of its authorized control level risk-based capital
149 and 3.0, and triggers the trend test determined in accordance
150 with the trend test calculation included in the Risk-Based
151 Capital Forecasting and Instructions, Property/Casualty, updated
152 annually by the National Association of Insurance Commissioners;
153 2. The notification by the office to the insurer of an
154 adjusted risk-based capital report that indicates an event in
155 subparagraph 1., unless the insurer challenges the adjusted
156 risk-based capital report under subsection (7); or
157 3. If, under subsection (7), an insurer challenges an
158 adjusted risk-based capital report that indicates an event in
159 subparagraph 1., the notification by the office to the insurer
160 that the office has, after a hearing, rejected the insurer's
161 challenge.
162 (6)
163 (b) If a mandatory control level event occurs:
164 1. With respect to a life and health insurer, the office
165 shall, after due consideration of s. 624.408, take any action
166 necessary to place the insurer under regulatory control,
167 including any remedy available under chapter 631. A mandatory
168 control level event is sufficient ground for the department to
169 be appointed as receiver as provided in chapter 631. The office
170 may forego taking action for up to 90 days after the mandatory
171 control level event if the office finds there is a reasonable
172 expectation that the ~~mandatory control level~~ event may be
173 eliminated within the 90-day period.
174 2. With respect to a property and casualty insurer, the

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175 office shall, after due consideration of s. 624.408, s. 641.225
176 for a health maintenance organization, or s. 636.045 for a
177 prepaid limited health service organization, take any action
178 necessary to place the insurer under regulatory control,
179 including any remedy available under chapter 631, or, in the
180 case of an insurer that is not writing new business, may allow
181 the insurer to continue to operate under the supervision of the
182 office. In either case, the mandatory control level event is
183 sufficient ground for the department to be appointed as receiver
184 as provided in chapter 631. The office may forego taking action
185 for up to 90 days after the mandatory control level event if the
186 office finds there is a reasonable expectation that the
187 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
188 90-day period.
189 Section 3. Subsection (1) and paragraph (e) of subsection
190 (8) of section 624.424, Florida Statutes, are amended to read:
191 624.424 Annual statement and other information.—
192 (1)(a) Each authorized insurer shall file with the office
193 full and true statements of its financial condition,
194 transactions, and affairs. An annual statement covering the
195 preceding calendar year shall be filed on or before March 1, and
196 quarterly statements covering the periods ending on March 31,
197 June 30, and September 30 shall be filed within 45 days after
198 each such date. The office may, for good cause, grant an
199 extension of time for filing ~~of~~ an annual or quarterly
200 statement. The statements must ~~shall~~ contain information
201 generally included in insurers' financial statements prepared in
202 accordance with generally accepted insurance accounting
203 principles and practices and in a form generally used ~~utilized~~

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204 by insurers for financial statements, sworn to by at least two
205 executive officers of the insurer or, if a reciprocal insurer,
206 by ~~the~~ oath of the attorney in fact or its like officer if a
207 corporation. To facilitate uniformity in financial statements
208 and to facilitate office analysis, the commission may by rule
209 adopt the form for financial statements approved by the National
210 Association of Insurance Commissioners in 2002, and ~~may adopt~~
211 subsequent amendments thereto if the methodology remains
212 substantially consistent, and may by rule require each insurer
213 to submit to the office, or such organization as the office may
214 designate, all or part of the information contained in the
215 financial statement in a computer-readable form compatible with
216 the electronic data processing system specified by the office.
217 (b) Each insurer's annual statement must contain:
218 1. A statement of opinion on loss and loss adjustment
219 expense reserves made by a member of the American Academy of
220 Actuaries or by a qualified loss reserve specialist, pursuant to
221 ~~under~~ criteria established by rule of the commission. In
222 adopting the rule, the commission shall ~~must~~ consider any
223 criteria established by the National Association of Insurance
224 Commissioners. The office may require semiannual updates of the
225 annual statement of opinion for ~~as to~~ a particular insurer if
226 the office has reasonable cause to believe that such reserves
227 are understated to the extent of materially misstating the
228 financial position of the insurer. Workpapers in support of the
229 statement of opinion must be provided to the office upon
230 request. This paragraph does not apply to life insurance, health
231 insurance, or title insurance.
232 2. An actuarial opinion summary written by the insurer's

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233 appointed actuary. The summary must be filed in accordance with
234 the appropriate National Association of Insurance Commissioners
235 property and casualty annual statement instructions. Proprietary
236 business information contained in the summary is confidential
237 and exempt under s. 624.4212, and the summary and related
238 information are not subject to subpoena or discovery or
239 admissible in evidence in any private civil action. Neither the
240 office nor any person who received documents, materials, or any
241 other information while acting under the authority of the office
242 or with whom such information is shared pursuant to s. 624.4212
243 may testify in a private civil action concerning such
244 confidential information. A waiver of any other applicable claim
245 of confidentiality or privilege may not occur as a result of a
246 disclosure to the office under this section or any other section
247 of the insurance code. This paragraph does not apply to life and
248 health insurers subject to s. 625.121(3).
249 (c) The commission may by rule require reports or filings
250 required under the insurance code to be submitted by electronic
251 means in a computer-readable form compatible with the electronic
252 data processing equipment specified by the commission.
253 (8)
254 (e) The commission shall adopt rules to administer
255 ~~implement~~ this subsection, which rules must be in substantial
256 conformity with the 2006 Annual Financial Reporting Model
257 Regulation ~~1998 Model Rule requiring annual audited financial~~
258 ~~reports~~ adopted by the National Association of Insurance
259 Commissioners or subsequent amendments, except where
260 inconsistent with the requirements of this subsection. Any
261 exception to, waiver of, or interpretation of accounting

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262 requirements of the commission must be in writing and signed by
263 an authorized representative of the office. An ~~No~~ insurer may
264 not raise ~~as a defense in any action,~~ any exception to, waiver
265 of, or interpretation of accounting requirements as a defense in
266 an action, unless previously issued in writing by an authorized
267 representative of the office.
268 Section 4. Paragraphs (a) and (b) of subsection (3) of
269 section 625.121, Florida Statutes, are amended to read:
270 625.121 Standard Valuation Law; life insurance.—
271 (3) ACTUARIAL OPINION OF RESERVES.—
272 (a)~~1.~~ Each life insurance company doing business in this
273 state shall annually submit the opinion of a qualified actuary
274 as to whether the reserves and related actuarial items held in
275 support of the policies and contracts specified by the
276 commission by rule are computed appropriately, are based on
277 assumptions that ~~which~~ satisfy contractual provisions, are
278 consistent with prior reported amounts, and comply with
279 applicable laws of this state. The commission by rule shall
280 define the specifics of this opinion and add any other items
281 determined to be necessary to its scope.
282 1.~~2.~~ The opinion shall be submitted with the annual
283 statement reflecting the valuation of such reserve liabilities
284 ~~for each year ending on or after December 31, 1992~~.
285 2.~~3.~~ The opinion applies ~~shall apply~~ to all business in
286 force, including individual and group health insurance plans, in
287 the form and substance acceptable to the office as specified by
288 rule of the commission.
289 3.~~4.~~ The commission may adopt rules providing the standards
290 of the actuarial opinion consistent with standards adopted by

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291 the Actuarial Standards Board on December 31, 2002, and
292 subsequent revisions thereto, if ~~provided that~~ the standards
293 remain substantially consistent.
294 4.~~5. In the case of an opinion required to be submitted by~~
295 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion
296 filed by a foreign or alien ~~that~~ company with the insurance
297 supervisory official of another state if the office determines
298 that the opinion reasonably meets the requirements applicable to
299 a company domiciled in this state.
300 5.~~6.~~ As used in ~~For the purposes of~~ this subsection, the
301 term "qualified actuary" means a member in good standing of the
302 American Academy of Actuaries who also meets the requirements
303 specified by rule of the commission.
304 6.~~7.~~ Disciplinary action by the office against the company
305 or the qualified actuary shall be in accordance with the
306 insurance code and related rules adopted by the commission.
307 7.~~8.~~ A memorandum in the form and substance specified by
308 rule shall be prepared to support each actuarial opinion.
309 8.~~9.~~ If the insurance company fails to provide a supporting
310 memorandum at the request of the office within a period
311 specified by rule of the commission, or if the office determines
312 that the supporting memorandum provided by the insurance company
313 fails to meet the standards prescribed by rule of the
314 commission, the office may engage a qualified actuary at the
315 expense of the company to review the opinion and the basis for
316 the opinion and prepare such supporting memorandum as ~~is~~
317 required by the office.
318 9.~~10.~~ Except as otherwise provided in this paragraph, any
319 memorandum or other material in support of the opinion is

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320 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
321 is not subject to subpoena or discovery or admissible in
322 evidence in any private civil action; however, the memorandum or
323 other material may be released by the office with the written
324 consent of the company, or to the American Academy of Actuaries
325 upon request stating that the memorandum or other material is
326 required for the purpose of professional disciplinary
327 proceedings and setting forth procedures satisfactory to the
328 office for preserving the confidentiality of the memorandum or
329 other material. If any portion of the confidential memorandum is
330 cited by the company in its marketing, ~~or~~ is cited before any
331 governmental agency other than a state insurance department, or
332 is released by the company to the news media, no portion of the
333 memorandum is confidential. Neither the office nor any person
334 who received documents, materials, or any other information
335 while acting under the authority of the office or with whom such
336 information is shared pursuant to this paragraph may testify in
337 any private civil action concerning the confidential documents,
338 materials, or information. A waiver of any applicable privilege
339 or claim of confidentiality in the documents, materials, or
340 information may not occur as a result of disclosure to the
341 office under this section or any other section of the insurance
342 code, or as a result of sharing as authorized under s. 624.4212.
343 (b) In addition to the opinion required by paragraph (a)
344 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,
345 require an opinion of the same qualified actuary as to whether
346 the reserves and related actuarial items held in support of the
347 policies and contracts specified by the commission by rule, when
348 considered in light of the assets held by the company with

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respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts.

Section 5. Subsections (1), (3), (10), (12), and (13) of section 628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or of a controlling company, unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed, or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office the ~~a~~ statement as specified in subsection (3). The

statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities, if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing ~~as~~ required under this subsection must be made for ~~as to~~ any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling

407 company must ~~shall~~ contain all the following information and any
408 additional information that ~~as~~ the office deems necessary to
409 determine the character, experience, ability, and other
410 qualifications of the person or affiliated person of such person
411 for the protection of the policyholders and shareholders of the
412 insurer and the public:
413 (a) The identity of, and the background information
414 specified in subsection (4) on, each natural person by whom, or
415 on whose behalf, the acquisition is to be made; and, if the
416 acquisition is to be made by, or on behalf of, a corporation,
417 association, or trust, as to the corporation, association, or
418 trust and as to any person who controls, ~~either~~ directly or
419 indirectly, the corporation, association, or trust, the identity
420 of, and the background information specified in subsection (4)
421 on, each director, officer, trustee, or other natural person
422 performing duties similar to those of a director, officer, or
423 trustee for the corporation, association, or trust.~~;~~
424 (b) The source and amount of the funds or other
425 consideration used, or to be used, in making the acquisition.~~;~~
426 (c) Any plans or proposals that ~~which~~ such persons may have
427 made to liquidate such insurer, to sell any of its assets or
428 merge or consolidate it with any person, or to make any other
429 major change in its business or corporate structure or
430 management; and any plans or proposals that ~~which~~ such persons
431 may have made to liquidate any controlling company of such
432 insurer, to sell any of its assets or merge or consolidate it
433 with any person, or to make any other major change in its
434 business or corporate structure or management.~~;~~
435 (d) The number of shares or other securities that ~~which~~ the

436 person or affiliated person of such person proposes to acquire,
437 the terms of the proposed acquisition, and the manner in which
438 the securities are to be acquired.~~; and~~
439 (e) Information as to any contract, arrangement, or
440 understanding with any party with respect to any of the
441 securities of the insurer or controlling company, including, but
442 not limited to, information relating to the transfer of any of
443 the securities, option arrangements, puts or calls, or the
444 giving or withholding of proxies, which information names the
445 party with whom the contract, arrangement, or understanding has
446 been entered into and gives the details thereof.
447 (f) An agreement by the person required to file the
448 statement that the person will provide the annual report
449 specified in s. 628.801(2) if control exists.
450 (g) An acknowledgement by the person required to file the
451 statement that the person and all subsidiaries within the
452 person's control in the insurance holding company system will
453 provide, as necessary, information to the office upon request to
454 evaluate enterprise risk to the insurer.
455 (10) Upon notification to the office by the domestic stock
456 insurer or a controlling company that any person or any
457 affiliated person of such person has acquired 10 ~~5~~ percent or
458 more of the outstanding voting securities of the domestic stock
459 insurer or controlling company without complying with the
460 provisions of this section, the office shall order that the
461 person and any affiliated person of such person cease
462 acquisition of any further securities of the domestic stock
463 insurer or controlling company; however, the person or any
464 affiliated person of such person may request a proceeding, which

465 proceeding shall be convened within 7 days after the rendering
466 of the order for the sole purpose of determining whether the
467 person, individually or in connection with any affiliated person
468 of such person, has acquired 10 ~~5~~ percent or more of the
469 outstanding voting securities of a domestic stock insurer or
470 controlling company. Upon the failure of the person or
471 affiliated person to request a hearing within 7 days, or upon a
472 determination at a hearing convened pursuant to this subsection
473 that the person or affiliated person has acquired voting
474 securities of a domestic stock insurer or controlling company in
475 violation of this section, the office may order the person and
476 affiliated person to divest themselves of any voting securities
477 so acquired.
478 (12)(a) A presumption of control may be rebutted by filing
479 a disclaimer of control. Any person may file a disclaimer of
480 control with the office. The disclaimer must fully disclose all
481 material relationships and bases for affiliation between the
482 person and the insurer as well as the basis for disclaiming the
483 affiliation. After a disclaimer has been filed, the insurer is
484 relieved of any duty to register or report under this section
485 that may arise out of the insurer's relationship with the person
486 unless the office disallows the disclaimer.
487 (b) Any controlling person of a domestic insurer who seeks
488 to divest the person's controlling interest in the domestic
489 insurer in any manner shall file with the office, with a copy to
490 the insurer, confidential notice, not subject to public
491 inspection as provided under s. 624.4212, of the person's
492 proposed divestiture at least 30 days before the cessation of
493 control. The office shall determine those instances in which the

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494 party seeking to divest or to acquire a controlling interest in
495 an insurer must file for and obtain approval of the transaction.
496 The information remains confidential until the conclusion of the
497 transaction unless the office, in its discretion, determines
498 that confidential treatment interferes with enforcement of this
499 section. If the statement referred to in subsection (1) is
500 otherwise filed, this paragraph does not apply. ~~For the purpose~~
501 ~~of this section, the term "affiliated person" of another person~~
502 ~~means:~~
503 ~~1. The spouse of such other person;~~
504 ~~2. The parents of such other person and their lineal~~
505 ~~descendants and the parents of such other person's spouse and~~
506 ~~their lineal descendants;~~
507 ~~3. Any person who directly or indirectly owns or controls,~~
508 ~~or holds with power to vote, 5 percent or more of the~~
509 ~~outstanding voting securities of such other person;~~
510 ~~4. Any person 5 percent or more of the outstanding voting~~
511 ~~securities of which are directly or indirectly owned or~~
512 ~~controlled, or held with power to vote, by such other person;~~
513 ~~5. Any person or group of persons who directly or~~
514 ~~indirectly control, are controlled by, or are under common~~
515 ~~control with such other person;~~
516 ~~6. Any officer, director, partner, copartner, or employee~~
517 ~~of such other person;~~
518 ~~7. If such other person is an investment company, any~~
519 ~~investment adviser of such company or any member of an advisory~~
520 ~~board of such company;~~
521 ~~8. If such other person is an unincorporated investment~~
522 ~~company not having a board of directors, the depositor of such~~

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523 ~~company; or~~
524 ~~9. Any person who has entered into an agreement, written or~~
525 ~~unwritten, to act in concert with such other person in acquiring~~
526 ~~or limiting the disposition of securities of a domestic stock~~
527 ~~insurer or controlling company.~~
528 (c) ~~(b)~~ For the purposes of this section, the term
529 "controlling company" means any corporation, trust, or
530 association owning, directly or indirectly, 25 percent or more
531 of the voting securities of one or more domestic stock insurance
532 companies.
533 (13) The commission may adopt, amend, or repeal rules that
534 are necessary to administer ~~implement the provisions of~~ this
535 section~~, pursuant to chapter 120~~.
536 Section 6. Section 628.801, Florida Statutes, is amended to
537 read:
538 628.801 Insurance holding companies; registration;
539 regulation.—
540 (1) An ~~Every~~ insurer that is authorized to do business in
541 this state and that is a member of an insurance holding company
542 shall, on or before April 1 of each year, register with the
543 office and file a registration statement and be subject to
544 regulation with respect to its relationship to the holding
545 company as provided by law or rule ~~or statute~~. The commission
546 shall adopt rules establishing the information and statement
547 form required for registration and the manner in which
548 registered insurers and their affiliates are regulated. The
549 rules apply to domestic insurers, foreign insurers, and
550 commercially domiciled insurers, except for a foreign insurer
551 domiciled in states that were ~~are~~ accredited by the National

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552 Association of Insurance Commissioners by December 31, 1995.
553 Except to the extent of any conflict with this code, the rules
554 must include all requirements and standards of ss. 4 and 5 of
555 the Insurance Holding Company System Regulatory Act and the
556 Insurance Holding Company System Model Regulation of the
557 National Association of Insurance Commissioners, as adopted on
558 December 2010. The commission may adopt subsequent amendments
559 thereto if the methodology remains substantially consistent. The
560 rules ~~Regulatory Act and the Model Regulation existed on~~
561 ~~November 30, 2001, and~~ may include a prohibition on oral
562 contracts between affiliated entities. Material transactions
563 between an insurer and its affiliates shall be filed with the
564 office as provided by rule ~~Upon request, the office may waive~~
565 ~~filing requirements under this section for a domestic insurer~~
566 ~~that is the subsidiary of an insurer that is in full compliance~~
567 ~~with the insurance holding company registration laws of its~~
568 ~~state of domicile, which state is accredited by the National~~
569 ~~Association of Insurance Commissioners~~.
570 (2) The ultimate controlling person of every insurer
571 subject to registration must also file an annual enterprise risk
572 report on or before April 1. As used in this subsection, the
573 term "ultimate controlling person" means a person who is not
574 controlled by any other person. The report, to the best of the
575 ultimate controlling person's knowledge and belief, must
576 identify the material risks within the insurance holding company
577 system that could pose enterprise risk to the insurer. The
578 report shall be filed with the lead state office of the
579 insurance holding company system as determined by the procedures
580 within the Financial Analysis Handbook adopted by the National

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581 Association of Insurance Commissioners and is confidential and
582 exempt from public disclosure as provided in s. 624.4212.
583 (a) An insurer may satisfy this requirement by providing
584 the office with the most recently filed parent corporation
585 reports that have been filed with the Securities and Exchange
586 Commission which provide the appropriate enterprise risk
587 information.
588 (b) The term "enterprise risk" means any activity,
589 circumstance, event, or series of events involving one or more
590 affiliates of an insurer which, if not remedied promptly, is
591 likely to have a materially adverse effect upon the financial
592 condition or liquidity of the insurer or its insurance holding
593 company system as a whole, including anything that would cause
594 the insurer's risk-based capital to fall into company action
595 level as set forth in s. 624.4085 or would cause the insurer to
596 be in hazardous financial condition.
597 (3) Pursuant to chapter 624 relating to the examination of
598 insurers, the office may examine any insurer registered under
599 this section and its affiliates to ascertain the financial
600 condition of the insurer, including the enterprise risk to the
601 insurer by the ultimate controlling party, or by any entity or
602 combination of entities within the insurance holding company
603 system, or by the insurance holding company system on a
604 consolidated basis.
605 (4) The filings and related documents filed pursuant to
606 this section are confidential and exempt as provided in s.
607 624.4212 and are not subject to subpoena or discovery, or
608 admissible in evidence in any private civil action. A waiver of
609 any applicable privilege or claim of confidentiality in the

610 filings and related documents may not occur as a result of any
611 disclosure to the office under this section or any other section
612 of the insurance code as authorized under s. 624.4212. Neither
613 the office nor any person who received the filings and related
614 documents while acting under the authority of the office or with
615 whom such information is shared pursuant to s. 624.4212 is
616 permitted or required to testify in any private civil action
617 concerning any confidential documents, materials, or information
618 subject to s. 624.4212.
619 (5) The failure to file a registration statement, or a
620 summary of the registration statement, or the enterprise risk
621 filing report required by this section within the time specified
622 for filing is a violation of this section.
623 (6) Upon request, the office may waive the filing
624 requirements of this section:
625 (a) If the insurer is a domestic insurer that is the
626 subsidiary of an insurer that is in full compliance with the
627 insurance holding company registration laws of its state of
628 domicile, which state is accredited by the National Association
629 of Insurance Commissioners; or
630 (b) If the insurer is a domestic insurer that writes only
631 in this state and has annual direct written and assumed premium
632 of less than $300 million, excluding premiums reinsured with the
633 Federal Crop Insurance Corporation and Federal Flood Program,
634 and demonstrates that compliance with this section would not
635 provide substantial regulatory or consumer benefit. In
636 evaluating a waiver request made under this paragraph, the
637 office may consider various factors including, but not limited
638 to, the type of business entity, the volume of business written,

639 the ownership or organizational structure of the entity, or
640 whether the company is in run-off.
641
642 A waiver granted pursuant to this subsection is valid for 2
643 years unless sooner withdrawn due to a change in the
644 circumstances under which the waiver was granted.
645 Section 7. Subsection (4) of section 628.803, Florida
646 Statutes, is renumbered as subsection (5), and a new subsection
647 (4) is added to that section to read:
648 628.803 Sanctions.—
649 (4) If the office determines that any person committed a
650 violation of s. 628.461 or s. 628.801, the violation may serve
651 as an independent basis for disapproving dividends or
652 distributions and for placing the insurer under an order of
653 supervision in accordance with part VI of chapter 624.
654 Section 8. Section 628.805, Florida Statutes, is created to
655 read:
656 628.805 Supervisory colleges.—In order to assess the
657 business strategy, financial position, legal and regulatory
658 position, risk exposure, risk management, and governance
659 processes, and as part of the examination of individual insurers
660 in accordance with ss. 628.801 and 624.316, the office may
661 participate in a supervisory college with other regulators
662 charged with supervision of the insurer or its affiliates,
663 including other state, federal, and international regulatory
664 agencies. In accordance with s. 624.4212 regarding confidential
665 information sharing, the office may enter into agreements that
666 provide the basis for cooperation between the office and the
667 other regulatory agencies and the activities of the supervisory

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668 college. This section does not delegate to the supervisory
669 college the office's authority to regulate or supervise the
670 insurer or its affiliates under its jurisdiction.
671 (1) With respect to participation in a supervisory college,
672 the office may:
673 (a) Initiate the establishment of a supervisory college.
674 (b) Clarify the membership and participation of other
675 supervisors in the supervisory college.
676 (c) Clarify the functions of the supervisory college and
677 the role of other regulators, including the establishment of a
678 group-wide supervisor.
679 (d) Coordinate the ongoing activities of the supervisory
680 college, including planning meetings, supervisory activities,
681 and processes for information sharing.
682 (e) Establish a crisis management plan.
683 (2) With respect to an insurer registered under s. 628.801,
684 and in accordance with this section, the office may participate
685 in a supervisory college for any domestic insurer that is part
686 of an insurance holding company system that has international
687 operations in order to determine the insurer's compliance with
688 this chapter.
689 (3) Each registered insurer subject to this section is
690 liable for and shall pay reasonable expenses for the office's
691 participation in a supervisory college, including reasonable
692 travel expenses. A supervisory college may be convened as a
693 temporary or permanent forum for communication and cooperation
694 between the regulators charged with the supervision of the
695 insurer or its affiliates, and the office may impose a regular
696 assessment on the insurer for the payment of these expenses.

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697 Section 9. Subsection (3) is added to section 636.045,
698 Florida Statutes, to read:
699 636.045 Minimum surplus requirements.—
700 (3) A prepaid limited health service organization that is
701 authorized in this state and one or more other states,
702 jurisdictions, or countries is subject to ss. 624.4085 and
703 624.40851.
704 Section 10. Subsection (7) is added to section 641.225,
705 Florida Statutes, to read:
706 641.225 Surplus requirements.—
707 (7) A health maintenance organization that is authorized in
708 this state and one or more other states, jurisdictions, or
709 countries is subject to ss. 624.4085 and 624.40851.
710 Section 11. Subsection (3) is added to section 641.255,
711 Florida Statutes, to read:
712 641.255 Acquisition, merger, or consolidation.—
713 (3) A health maintenance organization that is a member of a
714 holding company system is subject to s. 628.461 but not s.
715 628.4615.
716 Section 12. This act shall take effect October 1, 2013, if
717 SB 834 or similar legislation is adopted in the same legislative
718 session or an extension thereof and becomes law.

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THE FLORIDA SENATE

APPEARANCE RECORD

4/15/13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic: Senate Bill 836 Insurer Solvency

Bill Number: 836 (if applicable)

Name: Rebecca Matthews

Amendment Barcode: (if applicable)

Job Title: Government Affairs Director

Address: (Street)

Phone:

(City) (State) (Zip)

E-mail:

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

Representing: FL Office of Insurance Regulation

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____ Bill Number 836 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 946

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Computer or Electronic Device Harassment

DATE: April 12, 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 946 creates a third degree felony offense for non-consensual transmission or posting of nude photographs and videos and personal identification information to websites or social networking services or other websites. The bill enhances the conduct to a second degree felony if the offender is at least 18 years old and the victim is younger than 16 years old. The bill also adds the new offense to the list of offenses for which a court must issue an order prohibiting the defendant from contacting the victim.

This bill creates section 847.0042, Florida Statutes.

The bill substantially amends section 921.0042, Florida Statutes.

II. Present Situation:

Publishing a nude or semi-nude photograph or video on the Internet that was originally intended to be kept private between two people has become known as “revenge porn.” This occurred recently to a young woman in Brevard County whose ex-boyfriend posted nude photographs and videos of her online along with her name, e-mail address, and city where she lived. Some victims

of such activity have been so emotionally affected that they have committed or attempted suicide.[1]

In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.[2] Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of materials posted by third parties if the material is not illegal, such as child pornography.[3]

A federal court of appeals recently applied the Communications Decency Act to protect Yahoo! from a lawsuit for failing to remove nude pictures and personal identification information from a personal profile page that appeared to belong to an Oregon woman. As in most cases, the false profile page had been created by the women's ex-boyfriend.[4]

Currently, a group is suing for damages against a revenge porn website operator in an attempt to pierce the protections provided by the Communications Decency Act.[5]

McAfee, an Internet security provider, recently published the results of a survey exploring the connection between romantic breakups and loss of privacy online. The survey found that 1 in 10 ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time. Men reported being threatened with exposure more than women, and also reported that a higher number of threats were carried out.[6]

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. Therefore, most victims in the state have no recourse. However, in some circumstances posting such pictures could be an element of the offenses of stalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chapters 827 or 847, F.S.

Regardless of whether information is accompanied by other material, s. 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person's personal identification information to harass that person.

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[1] WFTV News online, *"9 investigates issue of nude photos posted online without consent", available at* http://www.wftv.com/news/news/local/9-investigates-issue-nude-photos-posted-online-wit/nWgdb/ .

[2] The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

[3] The relevant portion of the Act states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker or any information provided by another information content provider." 47 U.S.C. 230(c)(1)

[4] *See Barnes v. Yahoo, Inc.!,* 570 F.3d 1096 (9th Cir. USCOA 2009).

[5] ABC News online, "*Women's Outrage after Ex-boyfriends Post Revenge Photos", available at* http://abcnews.go.com/blogs/headlines/2013/01/womens-outrage-after-ex-boyfriends-post-nude-photos/ ; San Francisco Chronicle online, *"Public Humiliation over Private Photos", available at* http://www.sfgate.com/opinion/article/Public-humiliation-over-private-photos-4264155.php.

[6] McAfee online, *"Lovers Beware: Scorned Exes may Share Intimate Data and Images Online*", *available at* http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx.

III. Effect of Proposed Changes:

The bill creates s. 847.0042, F.S., to specifically address the non-consensual transmission or posting of nude photographs and videos and personal information to websites or social networking services. Currently, such behavior may be prosecuted under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, these actions might also be prosecuted as a felony if they include the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under ch. 827 or 847, F.S.

Specifically, the bill prohibits a person from harassing[7] another person by knowingly transmitting or posting to a social networking service or any other website, or causing to be transmitted or posted to a social networking service or any other website:

- Photographs or videos that depict nudity of another person;[8] and
- Descriptive information that conveys the depicted person's personal identification information[9] that is displayed together with, or being identifiable as being connected with the photograph or video.

The bill provides that the offense is committed in Florida if any conduct that is an element of the offense is committed in this state or if harm to the depicted person occurs in the state.

The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S. A no-contact order prohibits a defendant from contacting the victim of an offense.

The bill takes effect October 1, 2013.

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[7] As defined in the bill, "harass" means "to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose."

[8] The following definition of "nudity" in s. 847.001(9), F.S., will apply to the bill: "'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding."

[9] The bill incorporates the definition of personal identification information from s. 817.568(1)(f), F.S.:
"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code; 4. Medical records; 5. Telecommunication identifying information or access device; or, 6. Other number or information that can be used to access a person's financial resources.

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 could cause loss of revenues for operators of websites that feature the types of posts that are prohibited by the bill. To the extent that this bill has a deterrent effect, would be victims may otherwise be spared emotionally and financially.

C. Government Sector Impact:

The Florida Department of Law Enforcement (FDLE) does not expect a fiscal impact as a result of this bill.[10]

The Criminal Justice Impact Conference (CJIC) has not yet estimated the impact of this bill on prison bed space requirements. However, CJIC reviewed CS/HB 787, which is similar and provides for the same new crime and penalties. The Criminal Justice Impact Conference met on April 4, 2013, and determined that the bill will have an insignificant fiscal impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[10] FDLE, *Senate Fiscal Note, SB 946* (March 13, 2013) (on file with the Senate Judiciary Committee).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 18, 2013:

- Clarifies that the personal identifying information must be that of the person whose nudity is depicted.
- Includes "harassment" as an element of the crime.
- Removes language regarding consent because harassment is inherently non-consensual.
- Eliminates specification of the method of transmitting or posting the offending information.
- Provides that the resulting post must result in identification of the person as being connected with the photo or video, eliminating the bill's inadvertent requirement that the picture actually contain the personal identification information.
- Removes reference to fictitious or counterfeit personal identification information.
- Removes "harm to privacy interests" as part of the jurisdictional language.

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 Simmons

591-02620-13 2013946c1

A bill to be entitled

An act relating to computer or electronic device harassment; creating s. 847.0042, F.S.; prohibiting knowing use of a computer or other device to transmit or post any photograph or video of an individual which depicts nudity and specified information relating to the depicted individual for the purpose of harassment; providing criminal penalties; providing enhanced penalties for violations by persons 18 years of age or older involving victims younger than 16 years of age; providing for jurisdiction; amending s. 921.244, F.S.; providing that a person convicted of a violation of s. 847.0042, F.S., be ordered to have no contact with the victim; providing criminal penalties for violation of such an order; providing an effective date.

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

Section 1. Section 847.0042, Florida Statutes, is created to read:

847.0042 Nude depictions with personal identifying information.—

(1) A person may not knowingly transmit or post to a social networking service or any other website, or knowingly cause to be transmitted or posted to a social networking service or any other website, in one or more transmissions or posts:

(a) A photograph or video which depicts nudity of another person, and

(b) Descriptive information in any form that conveys the

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

591-02620-13 2013946c1

personal identification information, as defined in s. 817.568, of the person whose nudity is depicted in the photograph or video;

(c) That results in the personal identification information being displayed together with, or being otherwise identifiable as connected with, the photograph or video;

for the purpose of harassing the depicted person or causing others to harass the depicted person. “Harass” means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.

(2)(a) Except as provided in paragraph (b), a person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who is 18 years of age or older at the time of violating this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation involves a photograph or video of a person who was younger than 16 years of age at the time the photograph or video was made.

(3) An offense is committed within this state if any conduct that is an element of the offense or any harm to the depicted person resulting from the offense occurs within this state.

Section 2. Section 921.244, Florida Statutes, is amended to read:

921.244 Order of no contact; penalties.—

(1) At the time of sentencing an offender convicted of a

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

59 violation of s. 794.011, s. 800.04, s. 847.0042, s. 847.0135(5),
60 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order
61 that the offender be prohibited from having any contact with the
62 victim, directly or indirectly, including through a third
63 person, for the duration of the sentence imposed. The court may
64 reconsider the order upon the request of the victim if the
65 request is made at any time after the victim has attained 18
66 years of age. In considering the request, the court shall
67 conduct an evidentiary hearing to determine whether a change of
68 circumstances has occurred which warrants a change in the court
69 order prohibiting contact and whether it is in the best interest
70 of the victim that the court order be modified or rescinded.
71 (2) Any offender who violates a court order issued under
72 this section commits a felony of the third degree, punishable as
73 provided in s. 775.082, s. 775.083, or s. 775.084.
74 (3) The punishment imposed under this section shall run
75 consecutive to any former sentence imposed for a conviction for
76 any offense under s. 794.011, s. 800.04, s. 847.0135(5), or any
77 offense in s. 775.084(1)(b)1.a.-o.
78 Section 3. This act shall take effect October 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Computer Device Harassment

Bill Number: SB 946 (if applicable)

Name: DANIEL OGDEN

Amendment Barcode: _____ (if applicable)

Job Title: AGENT

Address: 340 Gus Hipp Blvd
Street

Rockledge FL
City State Zip

Phone: 321 6338419

E-mail: _____

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

Representing: Brevard County Sheriff Office

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____

Bill Number 946 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1000

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Purchase of Firearms by Mentally Ill Persons

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
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 1000 amends the definition of "committed to a mental institution" in s. 790.065, F.S., to include persons found by an examining physician and a court to qualify for involuntary treatment but who decide to voluntarily admit him or herself for inpatient or outpatient treatment.

The court's order finding that the voluntary patient meets the criteria for involuntary placement (because the patient presents an imminent danger to him or herself or others) will be added to the state and national databases used in background checks for firearm purchases. The patient's license to carry a concealed weapon in Florida will be withheld, suspended, or revoked.

Current law allows a person who is adjudicated as mentally defective to petition the court to have the firearm restrictions removed. The court must find that the person is not likely to act in a manner that is dangerous to public safety and that granting the relief is not contrary to the public interest.[1] The bill authorizes persons who are voluntarily admitted for treatment to seek removal of the firearm restrictions in the same manner.

[1] Section 790.065(2)(a)4.d., F.S.

This bill substantially amends section 790.065, Florida Statutes.

II. Present Situation:

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,[2] Florida law requires federal firearms licensees (FFLs)[3] to request background checks on individuals attempting to purchase a firearm.

Created in 1989, the Firearms Purchase Program (FPP) operates 7 days a week, 363 days a year and is designed to provide FFLs with immediate responses to background check inquiries.[4] Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving requests, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm will violate federal or state law and provides a response to the FFL.[5]

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms[6] to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.[7]

Florida defines "adjudicated mentally defective" as:

> A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.[8]

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[2] Pub. L. No. 103-159 (1993).

[3] 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

[4] The Florida Senate, *Interim Project Report 2004-128, Review of FDLE Firearm Purchase* Program 4 (Dec. 2003).

[5] Jamie Y. Chandler, *Firearm Purchase Program, Can Non-approval Data be Used as a Predictor of Future Criminal Activity? A Strategic Assessment*, Florida Dept. of Law Enforcement 8 (Nov. 5, 2007).

[6] "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

[7] Section 790.065(2)(a)4., F.S. *see also* 18 U.S.C. § 922(d), which states that "it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."

[8] Section 790.065(2)(a)4.a., F.S. Note that "incapacitated person" is defined as 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. s. 744.102(12), F.S.

The term "committed to a mental institution" is defined as:

> Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.[9]

To help ensure that the above-described persons are not able to purchase a firearm, the Florida Department of Law Enforcement (FDLE) created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. According to FDLE, there are currently more than 120,000 mental health orders relating to nearly 87,000 persons in the MECOM database.

The statute requires clerks of court to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month after the adjudication or commitment.[10] These records are then uploaded into the MECOM database,[11] and are accessed by the FPP as part of the screening of potential firearm purchasers. FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license.[12]

Concealed Weapons Permits

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants who qualify.[13] Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.[14]

According to the FY 2011-2012 statistics, the DACS received 151,883 new licensure applications and 66,974 requests for licensure renewal during that time period.[15]

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[9] Section 790.065(2)(a)4.b., F.S.
[10] Section 790.065(2)(a)4.c., F.S.
[11] FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).
[12] Section 790.065(2)(a)4.f., F.S.
[13] Section 790.06(1), F.S.
[14] *Id.*
[15] Florida Dept. of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Reports, Applications and Dispositions by County* (July 1, 2011 – June 30, 2012), *available at* http://licgweb.doacs.state.fl.us/stats/07012011_06302012_cw_annual.pdf .

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.[16]

Most pertinent to this bill, the applicant must attest that he or she is in compliance with the criteria contained in subsection (2) of s. 790.06, F.S., which requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. An applicant is presumed to chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[17]

[16] Section 790.06(2), (4), and (5), F.S.
[17] Section 790.06(2), F.S.

The DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the same criteria required for the DACS to initially issue a license;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.[18]

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.[19] Failure to have proper documentation and display it upon demand is a noncriminal violation, carrying a penalty of $25.[20]

Florida's Mental Health Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.[21] Codified in part I of ch. 394, F.S., the Baker Act provide the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for an involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
    - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
    - A substantial likelihood exists that without care or treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.[22] In no case may a receiving facility hold a patient for involuntary

[18] Section 790.06(10), F.S.
[19] Section 790.06(1), F.S.
[20] Section 790.06(1), F.S.
[21] Chapter 71-131, L.O.F.
[22] Section 394.463(2)(f), F.S.

examination longer than 72 hours.[23] Within the 72-hour examination period, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.[24]

III. Effect of Proposed Changes:

The bill amends the definition of "committed to a mental institution" in s. 790.065(2)(a)4.b., F.S., to include persons who have had an involuntary examination under the Baker Act and who then voluntarily admit themselves for outpatient or inpatient treatment so long as all of the requirements below are satisfied:

- An examining physician finds that the person is an imminent danger to himself or herself or others;
- The examining physician certifies that if the person does not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment will be filed under the Baker Act., or the examining physician certifies that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition;
- Before agreeing to voluntary treatment, the person receives written notice of that finding and certification, and written notice that as a result of such finding, he or she will be prohibited from purchasing a firearm, and will not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledges such notice in writing, in substantially the following form:

> "I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

[23] *Id*.
[24] Section 394.463(2)(i), F.S.

- A judge or a magistrate reviews the record classifying the person as an imminent danger to himself or herself or others and orders that such record be submitted to FDLE.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, F.S., with the clerk of the court for the county in which the involuntary examination under s. 394.463, F.S., occurred. No fee may be charged for such filing. The clerk must present the record to a judge or magistrate within 24 hours after receipt. The judge or magistrate is required to review the record ex parte (in private). If the judge determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, the judge must order that the record be submitted to FDLE. If so ordered, the record must be submitted to FDLE within 24 hours.

The new definition of "committed to a mental institution" and the procedure created for the examining physician, receiving or treatment facility, and the court to follow will allow the court order and records to be transmitted to FDLE to be included in the MECOM and NICS databases.

Because the records are a part of the databases, the person will not be able to purchase a firearm or receive a concealed weapons permit, and if he or she possesses a concealed weapons permit, it will be suspended or revoked. The firearm and concealed weapons restrictions will remain effective until the person is ready to avail him or herself of the process under current law for having these restrictions lifted.[25]

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.

[25] Section 790.065(2)(a)4.d., F.S.

B. Private Sector Impact:

A person who voluntarily commits himself or herself to a mental health facility voluntarily under pressure of involuntary commitment will lose the ability to purchase a firearm or to lawfully carry a concealed weapon. The person will have to petition the court to get firearm ownership rights restored.[26]

C. Government Sector Impact:

The Division of Licensing of the Department of Agriculture and Consumer Services reports that this bill may result in about 25 additional administrative actions to suspend or deny concealed weapon licenses. Therefore, the bill will not result in a fiscal impact.[27]

The Florida Department of Law Enforcement (FDLE) maintains the Mental Competency Database, used for state firearm purchase checks and shared with the FBI national criminal history database for firearm checks. The FDLE may need to enter more information into the database, but it expects a minimal fiscal impact.[28]

To the extent that this bill increases judicial and court workload, the Office of the State Courts Administrator expects a fiscal impact from the following:

- Judges and magistrates are required to review records of persons who had an involuntary examination under the Baker Act and who have then voluntarily admitted themselves.
- Judges must then determine whether the record supports a finding that the person poses an imminent danger to himself or herself or others.
- If the judge makes this finding, the judge must order that the record be submitted to FDLE.
- Judges may also experience an increased number of petition filings for relief from firearm disabilities.

Fiscal impact, however, is indeterminate.[29]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[26] *Id.*
[27] Florida Department of Agriculture and Consumer Services, April 10, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).
[28] FDLE Bill Analysis, March 29, 2013 (on file with the Senate Criminal Justice Committee and the Judiciary Committee).
[29] OSCA Bill Analysis, April 9, 2013 (on file with the Senate Judiciary Committee).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on April 1, 2013:
Contains none of the original bill language.

- Includes within the definition of "committed to a mental institution" in s. 790.065, F.S., persons who have undergone an involuntary examination pursuant to s. 394.463, F.S., and found by the examining physician to present an imminent danger to him or herself or others and who therefore meets the criteria for involuntary treatment; and
  - The physician certifies that a petition for involuntary treatment either was filed or would have been filed with the court but the person chose to enter treatment voluntarily; and
  - Prior to agreeing to voluntary treatment the person was given written notice of the physician's finding and certification as well as written notice that he or she may not be able to purchase a firearm or lawfully carry a concealed weapon as a result of entering voluntary treatment; and
  - A judge or magistrate reviewed all of the documentation provided to the court and ordered that the record be sent to the Department of Law Enforcement (FDLE).
- The administrator of the receiving facility must submit the records to the clerk of court within 24 hours of the person agreeing to voluntary admission to treatment.
- The clerk must submit the records to the judge or magistrate within 24 hours of receiving the records.
- If the judge or magistrate enters the order that the records should be submitted to FDLE that submission must occur within 24 hours of the order.
- Clerks of court are required to submit the records to FDLE pursuant to the court's order.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Gibson

591-03343-13 20131000c1

A bill to be entitled

An act relating to the purchase of firearms by mentally ill persons; amending s. 790.065, F.S.; providing conditions under which a person who has been voluntarily admitted to a mental institution for treatment and has undergone an involuntary examination under the Baker Act may be prohibited from purchasing a firearm; providing requirements for the examining physician; providing for judicial review of certain findings; providing specified notice requirements; providing form and contents of notice; providing requirements with respect to the filing of specified records with the court and presentation of such records to a judge or magistrate; providing lawful authority of a judge or magistrate to review specified records and order such records be submitted to the Department of Law Enforcement; providing a timeframe for submission of records to the department upon order by a judge or magistrate; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the

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591-03343-13 20131000c1

potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b. (II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as

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59 defined in s. 394.467, involuntary outpatient placement as
60 defined in s. 394.4655, involuntary assessment and stabilization
61 under s. 397.6818, and involuntary substance abuse treatment
62 under s. 397.6957, but does not include a person in a mental
63 institution for observation or discharged from a mental
64 institution based upon the initial review by the physician or a
65 voluntary admission to a mental institution; or~~.~~
66 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
67 admission to a mental institution for outpatient or inpatient
68 treatment of a person who had an involuntary examination under
69 s. 394.463, where each of the following conditions have been
70 met:
71 (A) An examining physician found that the person is an
72 imminent danger to himself or herself or others.
73 (B) The examining physician certified that if the person
74 did not agree to voluntary treatment, a petition for involuntary
75 outpatient or inpatient treatment would have been filed under s.
76 394.463(2)(i)4., or the examining physician certified that a
77 petition was filed and the person subsequently agreed to
78 voluntary treatment prior to a court hearing on the petition.
79 (C) Before agreeing to voluntary treatment, the person
80 received written notice of that finding and certification, and
81 written notice that as a result of such finding, he or she may
82 be prohibited from purchasing a firearm, and may not be eligible
83 to apply for or retain a concealed weapon or firearms license
84 under s. 790.06 and the person acknowledged such notice in
85 writing, in substantially the following form:
86
87 "I understand that the doctor who examined me believes I am a

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88 danger to myself or to others. I understand that if I do not
89 agree to voluntary treatment, a petition will be filed in court
90 to require me to receive involuntary treatment. I understand
91 that if that petition is filed, I have the right to contest it.
92 In the event a petition has been filed, I understand that I can
93 subsequently agree to voluntary treatment prior to a court
94 hearing. I understand that by agreeing to voluntary treatment in
95 either of these situations, I may be prohibited from buying
96 firearms and from applying for or retaining a concealed weapons
97 or firearms license until I apply for and receive relief from
98 that restriction under Florida law."
99 (D) A judge or a magistrate has, pursuant to sub-sub-
100 subparagraph c.(II), reviewed the record of the finding,
101 certification, notice, and written acknowledgement classifying
102 the person as an imminent danger to himself or herself or
103 others, and ordered that such record be submitted to the
104 department.
105 c. In order to check for these conditions, the department
106 shall compile and maintain an automated database of persons who
107 are prohibited from purchasing a firearm based on court records
108 of adjudications of mental defectiveness or commitments to
109 mental institutions.
110 (I) Except as provided in sub-sub-subparagraph (II), clerks
111 of court shall submit these records to the department within 1
112 month after the rendition of the adjudication or commitment.
113 Reports shall be submitted in an automated format. The reports
114 must, at a minimum, include the name, along with any known alias
115 or former name, the sex, and the date of birth of the subject.
116 (II) For persons committed to a mental institution pursuant

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117 to sub-sub-subparagraph b.(II), within 24 hours after the
118 person's agreement to voluntary admission, a record of the
119 finding, certification, notice, and written acknowledgement must
120 be filed by the administrator of the receiving or treatment
121 facility, as defined in s. 394.455, with the clerk of the court
122 for the county in which the involuntary examination under s.
123 394.463 occurred. No fee shall be charged for the filing under
124 this sub-sub-subparagraph. The clerk must present the records to
125 a judge or magistrate within 24 hours after receipt of the
126 records. A judge or magistrate is required and has the lawful
127 authority to review the records ex parte and, if the judge or
128 magistrate determines that the record supports the classifying
129 of the person as an imminent danger to himself or herself or
130 others, to order that the record be submitted to the department.
131 If a judge or magistrate orders the submittal of the record to
132 the department, the record must be submitted to the department
133 within 24 hours.
134 d. A person who has been adjudicated mentally defective or
135 committed to a mental institution, as those terms are defined in
136 this paragraph, may petition the circuit court that made the
137 adjudication or commitment, or the court that ordered that the
138 record be submitted to the department pursuant to sub-sub-
139 subparagraph c.(II), for relief from the firearm disabilities
140 imposed by such adjudication or commitment. A copy of the
141 petition shall be served on the state attorney for the county in
142 which the person was adjudicated or committed. The state
143 attorney may object to and present evidence relevant to the
144 relief sought by the petition. The hearing on the petition may
145 be open or closed as the petitioner may choose. The petitioner

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146 may present evidence and subpoena witnesses to appear at the
147 hearing on the petition. The petitioner may confront and cross-
148 examine witnesses called by the state attorney. A record of the
149 hearing shall be made by a certified court reporter or by court-
150 approved electronic means. The court shall make written findings
151 of fact and conclusions of law on the issues before it and issue
152 a final order. The court shall grant the relief requested in the
153 petition if the court finds, based on the evidence presented
154 with respect to the petitioner's reputation, the petitioner's
155 mental health record and, if applicable, criminal history
156 record, the circumstances surrounding the firearm disability,
157 and any other evidence in the record, that the petitioner will
158 not be likely to act in a manner that is dangerous to public
159 safety and that granting the relief would not be contrary to the
160 public interest. If the final order denies relief, the
161 petitioner may not petition again for relief from firearm
162 disabilities until 1 year after the date of the final order. The
163 petitioner may seek judicial review of a final order denying
164 relief in the district court of appeal having jurisdiction over
165 the court that issued the order. The review shall be conducted
166 de novo. Relief from a firearm disability granted under this
167 sub-subparagraph has no effect on the loss of civil rights,
168 including firearm rights, for any reason other than the
169 particular adjudication of mental defectiveness or commitment to
170 a mental institution from which relief is granted.
171 e. Upon receipt of proper notice of relief from firearm
172 disabilities granted under sub-subparagraph d., the department
173 shall delete any mental health record of the person granted
174 relief from the automated database of persons who are prohibited

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175 from purchasing a firearm based on court records of
176 adjudications of mental defectiveness or commitments to mental
177 institutions.
178 f. The department is authorized to disclose data ~~the~~
179 collected pursuant to this subparagraph ~~data~~ to agencies of the
180 Federal Government and other states for use exclusively in
181 determining the lawfulness of a firearm sale or transfer. The
182 department is also authorized to disclose this ~~any collected~~
183 data to the Department of Agriculture and Consumer Services for
184 purposes of determining eligibility for issuance of a concealed
185 weapons or concealed firearms license and for determining
186 whether a basis exists for revoking or suspending a previously
187 issued license pursuant to s. 790.06(10). When a potential buyer
188 or transferee appeals a nonapproval based on these records, the
189 clerks of court and mental institutions shall, upon request by
190 the department, provide information to help determine whether
191 the potential buyer or transferee is the same person as the
192 subject of the record. Photographs and any other data that could
193 confirm or negate identity must be made available to the
194 department for such purposes, notwithstanding any other
195 provision of state law to the contrary. Any such information
196 that is made confidential or exempt from disclosure by law shall
197 retain such confidential or exempt status when transferred to
198 the department.
199 Section 2. This act shall take effect July 1, 2013.

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TESTIFY LAST PLEASE

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15, 2013
Meeting Date

Topic: Mental Illness /Purchase of Firearms

Bill Number: SB-1000 *(if applicable)*

Name: Marion Hammer

Amendment Barcode: *(if applicable)*

Job Title:

Address: P.O. Box 1387
Street

Tallahassee, Florida 32302
City, State, Zip

Phone: 850-222-9518

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: National Rifle Association & Unified Sportsmen of Florida

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/15/13
Meeting Date

Topic: Mental Health / Guns

Bill Number: SB 1000 *(if applicable)*

Name: Steve Leifman

Amendment Barcode: *(if applicable)*

Job Title: Judge - Miami Dade Co.

Address: 1351 NW 12th ST
Street

Miami FL 33125
City *State* *Zip*

Phone: 305/803 3181

E-mail: sleifman@jud11.flcourts.org

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

Representing: Self

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

15 April 2013
Meeting Date

Topic: Firearms WAIVES IN SUPPORT

Bill Number: 1000 *(if applicable)*

Name: Jill Gran

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 2868 Mahan Dr
Street

Tallahassee, FL 32308
City, State, Zip

Phone: _____

E-mail: jill@fadaa.org

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

Representing: FL Alcohol & Drug Abuse Assoc

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 15 /2013
Meeting Date

Topic _____ Bill Number 1000 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: [✓] For [ ] Against [✓] Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1114

INTRODUCER: Criminal Justice Committee and Senator Altman

SUBJECT: Sex Offenses

DATE: April 12, 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 1114, which primarily addresses sexual predator/offender registration, includes the following major features:

- Modifies the child victim out-of-court statement exception to the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).
- Modifies various registration, reregistration, and reporting provisions relevant to sexual predators and sexual offenders to:
  - Add specified sex offenses (e.g., lewd offenses committed upon the elderly or disabled) to criteria or definitions that qualify a person as a sexual predator or sexual offender.
  - Require that Internet identifiers, palm prints, passports, professional license information, immigration status information, volunteer status at a Florida institution of higher education, and other information be provided, produced, or reported, as specified in the bill.
  - Require sexual predators or sexual offenders to register all Internet identifiers with the FDLE prior to use.
  - Require a sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles

(DHSMV) to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change.
  - Require a sexual predator or sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence.
  - Authorize certain sexual offenders to move for removal of the registration requirement after a specified time period and subject to specified criteria being met.
  - Remove a current requirement that the petitioning sexual offender demonstrate to the court that he or she has not been arrested for any crime since release.
  - Modify various penalty provisions to punish a sexual predator or sexual offender who fails to report that he or she remains in Florida after reporting an intent to leave Florida, fails to provide required Internet identifiers prior to use, or knowingly provides false registration information by act or omission.
- Provides that a third or subsequent violation of s. 800.03, F.S. (vulgar or indecent exposure or exhibition of person's sexual organs and public nakedness in a place not provided or set apart for that purpose), is a third degree felony.
- Provides that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a traffic misdemeanor offense under ch. 316, F.S., is required to register as a sexual offender or a sexual predator; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Provides that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
- Modifies the child victim age requirement (from 14 years of age to 13 years of age) and modifies other criteria in s. 943.04354, F.S. (the "Romeo and Juliet" statute). A sexual predator or sexual offender who meet these criteria may move the court, as specified in the bill, to have the registration requirement removed.
- Authorizes the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

This bill substantially amends the following sections of the Florida Statutes: 90.803, 775.21, 800.03, 903.046, 921.0022, 943.0435, 943.04351, 943.04354, 943.0437, 944.606, 944.607, 947.005, 948.31, 985.481, and 985.4815.

II. Present Situation:

Hearsay Exception: Out-of-Court Statement of Child Victim

Chapter 90, F.S., is the Florida Evidence Code (Code). Section 90.802, F.S., of the Code, provides the general rule that hearsay is inadmissible except as provided by statute. Section 90.801(1)(c), F.S., defines "hearsay" as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

Section 90.803(23), F.S., provides an exception to the hearsay rule. Specifically, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
- The child either:
  - Testifies; or
  - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.

In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

The court is required to make specific findings of fact, on the record, as to the basis for its ruling under s. 90.803(23), F.S.

Registration of Sexual Predators and Sexual Offenders: General Information

Florida requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain

information about sexual predators and sexual offenders, span several different chapters and numerous statutes, and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Family Services (DCF).[1]

A person who meets sexual predator qualifying criteria is designated by a court as a sexual predator. A person who meets sexual offender qualifying criteria is classified as a sexual offender (no court designation). Aside from sexual predator qualifying criteria, there are a few other provisions that apply only to sexual predators, such as the prohibition against working or volunteering at places where children regularly congregate.

Requirements for in-person registration and reregistration (discussed below) are similar for sexual predators and sexual offenders but frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, i.e., the sexual predator or sexual offender is in the DOC's control or custody or under its supervision; is in residential commitment under the DJJ or under DJJ's supervision; or is in civil commitment under the DCF as a sexually violent predator. These agencies are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

Certain information on sexual predators and sexual offenders is a public record and there are various provisions authorizing or requiring public or community notification of this information. The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.[2] Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry maintained by the FDLE.

SORNA

The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),[3] attempts to make all states' laws uniform with respect to requirements (or "minimum" standards) that Congress has judged to be necessary to be included in states' laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.[4] While states are free to choose not to substantially implement SORNA, the AWA provides for sanctioning noncomplying states through a partial reduction in Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented[5] SORNA.[6] Florida was the third state to do so.[7]

---

[1] The FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. Florida Dept. of Law Enforcement, Florida, Sex Offenders and Predators, *About Us*, http://offender.fdle.state.fl.us/offender/About.jsp (last visited April 11, 2012).
[2] *Id*.
[3] P.L. 109-248 (July 27, 2006).
[4] U.S. Dept. of Justice, *Dru Sjodin National Sex Offender Public Website*, http://www.nsopw.gov/Core/Portal.aspx (last visited April 11, 2013).
[5] This standard is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the DOJ's guidelines on SORNA. It does not mean that the jurisdiction has necessarily followed SORNA or the DOJ's guidelines on SORNA in all respects.

Registration and Reregistration Requirements

At the FDLE's website,[8] the following information is provided to sexual predators and sexual offenders regarding registration, reregistration, and other requirements:

- A sexual predator or sexual offender must report in person to the local sheriff's office to register his or her temporary, transient, or permanent address and other information specified in statute within 48 hours of establishing or maintaining a residence in Florida; within 48 hours of release from custody and/or supervision of the DOC, DCF, or DJJ; or in the county of conviction (if not under custody and/or supervision), within 48 hours of conviction if not under custody and/or supervision of the DOC.
- At initial registration, a sexual predator or sexual offender must provide the following information to the FDLE: name; date of birth; social security number; race; sex; height; weight; hair and eye color; photograph; home telephone number and any cellular telephone number; any electronic mail address and any instant message name (as required by statute); address of legal residence; address of any current temporary residence, if no permanent or temporary residence; any transient residence within Florida; dates of any current or known future temporary residence within Florida or out of state; occupation and place of employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed.
- Within 48 hours after the initial report required (as previously stated), a sexual predator or sexual offender must report in person to the driver license office of the DHSMV and provide proof of initial registration as a sexual predator or sexual offender to secure or renew a valid Florida driver's license or identification card displaying either "775.21, F.S." or "943.0435, F.S.," unless a driver's license or identification card with such designation was previously secured or updated. A sexual offender must also submit to the taking of a photograph for use by the FDLE in maintaining current records of sexual offenders.
- Each time the driver's license or identification card is subject to renewal, or within 48 hours after any change in permanent, temporary, or transient residence or change in name made by marriage or other legal process, a sexual predator or sexual offender must report in person to a driver's license office to update the driver's license or identification card and ensure that it displays the designations (as previously identified).
- If enrolled, employed, or carrying on a vocation at a Florida institution of higher education, a sexual predator or sexual offender must provide the name, address, and county of each institution, including each campus, enrollment, or employment status, and each change in enrollment or employment status (i.e. commencement or termination) in person at the sheriff's office. If a sexual offender is supervised by the DOC or the DJJ, this information

[6] Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, *Jurisdictions that have substantially implemented SORNA*, http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on April 11, 2013).
[7] Press Release, Governor Crist Announces Florida's Implementation of the Adam Walsh Act (May 18, 2010), Florida Department of Law Enforcement, *available at* https://www.fdle.state.fl.us/Content/News/May-2010/Governor-Crist-Announces-Florida%e2%80%99s-Implementation-.aspx.
[8] Florida Department of Law Enforcement, *Important Information*, http://offender.fdle.state.fl.us/offender/Important.jsp#General (last visited on March 25, 2013). The webpage discusses provisions of ss. 775.21 and 943.0435, F.S.

must be reported to the sexual offender's probation office, within 48 hours after any change in status.

- A sexual predator or sexual offender must report any electronic mail address or instant message name, prior to using the address or name, during registration/reregistration or by providing all updates through the online system maintained by the FDLE.
- If a sexual predator or sexual offender vacates a permanent, temporary, or transient residence and does not have another permanent, temporary, or transient residence, he or she must report in person to the sheriff's office in the county where he or she is located within 48 hours. If a sexual predator or sexual offender reports that he or she has vacated a permanent, temporary, or transient residence and then remains at that residence, he or she must report in person to the sheriff's office where he or she reported vacating the residence. Failure to report this information is a second degree felony. The address will be verified by county, state, or local law enforcement agencies.
- If a sexual predator or sexual offender intends on establishing a permanent, temporary, or transient residence in another state or in a jurisdiction other than Florida, he or she must report in person to the sheriff's office of the county of current residence within 48 hours before the date that he or she intends to leave Florida to establish residence in another state or jurisdiction. If the sexual predator or sexual offender reporting this information later decides to remain in Florida, he or she must report in person to the sheriff's office to which he or she reported the intention of leaving Florida within 48 hours after the intended departure date. Failure to report this information is a second degree felony.
- A sexual predator or sexual offender must report in person either twice a year (during the birth month and during the sixth month following the birth month) or four times a year (once during the birth month and every third month thereafter), depending upon his or her offense/designation, to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. All sexual predators and sexual offenders convicted for offenses specified in s. 943.0435(14), F.S., and juvenile sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S., are required to reregister four times a year. All other sexual offenders are required to reregister twice a year.
- If a sexual predator or sexual offender lives in another state but works or attends school in Florida, he or she must register the work or school address as a temporary address within 48 hours by reporting in person to the local sheriff's office.
- A sexual predator or sexual offender must respond to any address verification correspondence from the FDLE within three weeks of the date of the correspondence.
- If employed, carrying on a vocation, a student, or becoming a resident of another state, a sexual predator or sexual offender may have a requirement to register under the laws of that state.
- A sexual predator or sexual offender must maintain registration for the duration of his or her life.[9]

Reporting of Information Regarding Sexual Predators and Sexual Offenders

Section 944.606, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is being released after serving a period of incarceration. Similarly, agency reporting requirements exist in other statutes:

[9] This is the general rule. Exceptions exist in ss. 775.21, 943.0435, and 943.04354, F.S.

- Section 944.607, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.
- Section 985.481, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender released from residential commitment under the DJJ.
- Section 985.4815, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender under DJJ supervision but who is not committed.

Public Registry Searches Prior to Appointment or Employment of Certain Government Employees

Section 943.04351, F.S., provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S. The agency or governmental subdivision may conduct the search using the Internet site maintained by the FDLE. Section 943.04351, F.S., does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

Providing Information to Commercial Social Networking Websites

Section 943.0437, F.S., provides that the FDLE may provide information relating to electronic mail addresses and instant message names maintained as part of the sexual offender registry to commercial social networking websites[10] or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by the FDLE.

Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action that meets either criterion:

- The action was voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.
- The action was taken to restrict access by such registered user to the commercial social networking website.

[10] The term "commercial social networking website" is defined in the statute as a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

Removal of Registration Requirement

Section 943.04354, F.S.,[11] provides for the removal of the requirement to register as a sexual predator or sexual offender if a court finds that *all* criteria are met and grants a motion or petition for removal of the registration requirement. A person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

- Was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., or the person committed a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S.
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation.
- Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

A person who meets all of these criteria can move the court for removal of the registration requirement if the qualifying violation was committed on or after July 1, 2007. The motion is made in the court that will sentence or dispose of the qualifying violation. The person must allege in the motion that he or she meets all of the criteria and that removal of the registration requirement will not conflict with federal law.[12] The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of the qualifying violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of the qualifying violation, the court must rule on this motion and, if the court determines the person meets the criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized to petition for removal of the registration requirement.

A person who meets all of the criteria but does not qualify to seek relief by motion can seek relief by petition in the court in which the sentence or disposition for the qualifying violation occurred. All of the previously described requirements for the motion and the disposition of the motion apply to the petition and disposition of petition. If the court denies the petition, the person is not authorized under s. 943.04354, F.S., to file any further petition for removal of the registration requirement.

If a person provides to the FDLE a certified copy of the court's order removing the requirement that the person register as a sexual offender or sexual predator, the registration requirement will

[11] This statute is sometimes referred to as the "Romeo and Juliet" statute or law.

[12] Of relevance to s. 943.04354, F.S., SORNA does not require registration "[w]here both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act," though "jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct." Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, *SORNA*, http://www.ojp.usdoj.gov/smart/sorna.htm#consensualconduct (last visited on March 25, 2013).

not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE. However, the removal of this information from the public registry does not mean that the public is denied access to information about the person's criminal history or record that is otherwise available as a public record.

Purpose of and Criteria for Bail Determination

Article I, Section 14, of the Florida Constitution, provides: "Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained."

Section 903.046, F.S., sets forth the purpose of a bail determination. It also provides considerations which the court is required to consider when determining whether to release a defendant on bail or other conditions, and what the bail or those conditions may be. For example, the court must consider the nature and circumstances of the offense charged. The bill includes a new consideration, which bears some similarity to the consideration in s. 903.046(2)(l), F.S.: "The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant."

Whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Evaluation and Treatment of Sexual Predators and Sexual Offenders on Probation or Community Control

Section 948.31, F.S., provides that the court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need for the treatment is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21, F.S., or sexual offender under s. 943.0435, F.S., s. 944.606, F.S., or s. 944.607, F.S. The treatment must be obtained from a qualified practitioner as defined in s. 948.001, F.S. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I), F.S. The court must impose a restriction against contact with minors if sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee must be provided to the court for review.

III. Effect of Proposed Changes:

Section 1 amends s. 90.803(23), F.S., the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

As amended, the exception provides that, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if the court finds the statement is reliable (in accordance with the hearing requirements in this subsection) and the child either testifies or is unavailable as a witness (as specified in the subsection).

Section 2 amends s. 775.21, F.S., relating to sexual predator registration, to:

- Add to the list of offenses that, in addition to other criteria, qualify a person for designation as a "sexual predator" the following offenses:
  - Sexual misconduct by an employee of the Department of Children and Family Services (DCF) or other specified person with specified individuals with developmental disabilities. (s. 393.135(2), F.S.)
  - Sexual activity by a DCF employee or other specified person with a patient in the DCF's custody or residing in a receiving or treatment facility. (s. 394.4593(2), F.S.)
  - Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person. (s. 825.1025, F.S.)[13]
  - Sexual misconduct by a DCF employee or other specified person with a forensic client who resides in a civil or forensic facility. (s. 916.1075(2), F.S.)
- Require a sexual predator to provide or produce at registration and reregistration the following information and changes to that information:
  - Tattoos or other identifying marks.
  - All "Internet identifiers"[14] (current references to instant message name in various registration statutes are removed). A sexual predator is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual predators may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Palm prints. The sheriff's office is required to take a sexual predator's palm prints and forward them to the FDLE.
  - A passport, if the sexual predator has a passport.

[13] Current law just references lewd or lascivious battery upon an elderly person or disabled person.
[14] The bill defines "Internet identifier" as all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). However, voluntary disclosure of date of birth, social security number, or PIN number waives the disclosure exemption.

  - Information about documents establishing immigration status, if the sexual predator is an alien.
  - Information about any professional licenses the sexual predator may have.
  - Information that the sexual predator is volunteering at a Florida institution of higher education.[15] The sheriff's office or the DOC, if the sexual predator is in the DOC's custody or control or under its supervision, is required to report to a Florida institution of higher education any change in the sexual predator's status as a volunteer at that institution.
- Require a sexual predator who is unable to secure or update a driver license or identification card with the DHSMV to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county in which the sexual predator resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual predator who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual predator's intended residence.
- Require a sexual predator who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual predator indicated he or she would leave Florida, to the sheriff's office where the sexual predator reported the intended change of residence and report his or her intent to remain in Florida.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual predator who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 775.21, F.S.
  - It is a third degree felony to fail to provide required Internet identifier information and other information prior to their use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 3 amends s. 800.03, F.S., which prohibits vulgar or indecent exposure or exhibition of a person's sexual organs and public nakedness in a place not provided or set apart for that purpose, to provide that a third or subsequent violation of s. 800.03, F.S., is a third degree felony.

Section 4 amends s. 903.046, F.S., relating to the purpose of and criteria for bail determination, to provide that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S. (state uniform traffic control), is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or

[15] Under current law, a sexual predator must report a change in enrollment or employment status at a Florida institution of higher education within 48 hours after the change, unless the sexual predator is in the DOC's custody or control or under its supervision, in which case the DOC reports the change. Section 775.21(6)(a)(1)(b), F.S.

surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 5 amends s. 943.0435, F.S., relating to sexual offender registration, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 943.0435, F.S.
- Provide that a court is not required to make a written finding of the age of the victim at the time of the offense if the offense is a violation of s. 794.011, F.S.
- Require a sexual offender to provide or produce at registration and/or reregistration the following information and changes to that information:
  - All Internet identifiers. A sexual offender is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual offenders may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Fingerprints.
  - Palm prints. The sheriff's office is required to take a sexual offender's palm prints and forward them to the FDLE.
  - Photograph.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff's office within 48 hours after the change. The sheriff is required to report to a Florida institution of higher education any change in the sexual offender's status as a volunteer at that institution.
  - Any other information determined necessary by the FDLE, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.
- Require a sexual offender who is unable to secure or update a driver license or identification card with the DHSMV to report any change in residence or change in name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the sexual offender resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual offender's intended residence.
- Require a sexual offender who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual offender indicated he or she would leave Florida, to the sheriff's

office where the sexual offender reported the intended change of residence and report his or her intent to remain in Florida.

- Authorize a sexual offender to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for removal of the registration requirement if:
  - Twenty-five years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - The sexual offender's requirement to register was not based upon an adult conviction for a violation of s. 787.01, F.S., s. 794.011, F.S., excluding s. 794.011(10), F.S., s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion, s. 800.04(5)(b), F.S., or s. 800.04(5)(c)2., F.S., where the court finds the offense involved unclothed genitals or genital area; for any attempt or conspiracy to commit any of these offenses; or for a violation of similar law of another jurisdiction; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender whose requirement to register was based upon an adult conviction for a violation of s. 787.02, F.S., or s. 827.071(5), F.S., for any attempt or conspiracy to commit any of these offenses, or for a violation of similar law of another jurisdiction, to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:
  - Fifteen years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender required to register under s. 943.0435(1)(a)(1)(d), F.S.,[16] to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:
  - Twenty-five years have elapsed since the sexual offender's registration period for the most recent adjudication that required the offender to register began;

[16] This sub-subparagraph applies to a person who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the statutes or statutory provisions listed in the sub-subparagraph.

  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court; and
  - The sexual offender has successfully completed all sanctions imposed for any offense that required the offender to register.
- Remove a current provision that requires the sexual offender to demonstrate to the court considering whether to grant or deny the relief that he or she has not been arrested for any crime since release.
- Require the FDLE to be given notice of the petition for removal of the registration requirement.
- Provide that if the court grants the petition, the court shall instruct the petitioner to provide the FDLE with a certified copy of the order granting relief.
- Provide, for the purpose of sexual offenders who may qualify to petition for removal of the registration requirement, that:
  - The registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon the offender's release from incarceration or commitment for the most recent conviction that required the offender to register.
  - A sexual offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to chapter 985, F.S., or committed to a residential program.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual offender who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 943.0435, F.S.
  - It is a third degree felony to fail to report all required Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 6 amends s. 943.04351, F.S., regarding required searches of sexual predator and sexual offender registration information, to provide that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a national search through the Dru Sjodin National Sex Offender Public Website maintained by the DOJ.

Section 7 amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances, to:

- Amend criteria for qualifying for consideration for removal of the registration requirement to remove reference to an incipient conviction ("will be convicted") and modify qualifying convictions or juvenile adjudications to include:
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of a specified Florida offense, or a similar offense in another jurisdiction, and the person does not have any other conviction, regardless of adjudication or adjudication of delinquency, for a specified Florida offense or a similar offense in another jurisdiction.

  - A conviction, regardless of adjudication, or an adjudication of delinquency of a specified Florida offense, or a similar offense in another jurisdiction, and the person is required to register as a sexual offender or sexual predator solely on the basis of this conviction or adjudication.
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of an offense in another jurisdiction that is similar to a specified Florida offense, and the person with the conviction or adjudication of delinquency no longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction where the similar offense occurred.
- Provide that the victim of the qualifying offense must have been 13 years of age or older but less than 18 years of age at the time the offense was committed.
- Remove the current requirement that a person's relevant offense must be committed on or after July 1, 2007, to move for removal of the registration requirement.
- Provide that the motion for removal of the registration requirement is in the criminal court of the circuit in which the offense occurred or the sentencing court or, for persons convicted or adjudicated delinquent of a qualifying offense in another jurisdiction, the criminal court of the circuit in which the person resides.
- Remove current provisions providing for removal of the registration requirement by petition.[17]
- Require that a person who was convicted or adjudicated delinquent of an offense in another jurisdiction that is similar to a specified Florida offense must provide the court with written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
- Provide as another permissible time period for notice of the motion: at least 21 days prior to the hearing on the motion.
- Require the FDLE to be given notice of the motion for removal of the registration requirement.
- Authorize the FDLE to present evidence in opposition to the requested relief or otherwise demonstrate why the motion should be denied.
- Provide as another permissible time period for the court to rule on the motion: at the hearing on the motion.
- Require the court to instruct the person to provide to the FDLE a certified copy of the order granting relief.
- Specify that if a person provides to the FDLE a certified copy of the court's order removing the requirement to register as a sexual predator or sexual offender for a violation of a similar offense in another jurisdiction, the registration requirement does not apply to that person and the FDLE shall remove all information about the person from the public registry.

Section 8 amends s. 943.0437, F.S., relating to commercial social networking websites, to authorize the FDLE to provide information relating to Internet identifiers maintained as part of the sexual offender registry to commercial social networking sites or their designated third parties. A commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the website against the list of Internet identifiers provided by the FDLE. Section 943.0437, F.S., shall not be construed to impose any

[17] This petition process is currently available to those who do not qualify under the statute to seek removal by motion but otherwise meet criteria to be considered for removal of the registration requirement.

civil liability on a commercial social networking website for any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an Internet identifier contained in the sexual offender registry.

Section 9 amends s. 944.606, F.S., relating to notification of release of sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 944.606, F.S.
- Require the DOC to provide to the FDLE the following information about a sexual offender released from imprisonment:
  - Palm prints.
  - All Internet identifiers.
  - Information about any professional licenses the sexual offender may have, if known.
  - Passport information, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.

Section 10 amends s. 944.607, F.S., relating to notification to the FDLE of information on sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 944.607, F.S.
- Require a sexual offender who is under the supervision of the DOC but is not incarcerated to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Palm prints.
  - All Internet identifiers.
  - All home telephone numbers and cellular telephone numbers.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff's office within 48 hours after the change. The DOC is required to report to a Florida institution of higher education any change in the sexual offender's status as a volunteer at that institution.
- Amend penalties to provide that:
  - It is a third degree felony to fail to report all Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 11 amends s. 947.005, F.S., the definitions section of ch. 947, F.S., relating to the Parole Commission, to modify the definition of "risk assessment" to mean an assessment completed by

a qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child (the current definition indicates the practitioner must be an "*independent* qualified practitioner").

Section 12 amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation and community control, to:

- Remove from the statute language that:
  - Requires the court to order an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment.
  - Provides that if the court determines that there is a need for treatment, the court shall require sexual offender treatment as a term of condition of probation or community control for any person required to register as a sexual predator or sexual offender.
  - Requires the court to impose a restriction against contact with minors if sexual offender treatment is recommended.
  - Requires that the evaluation and recommendations for treatment of the probationer or community controllee be provided to the court for review.
- Authorize the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

Section 13 amends s. 985.481, F.S., relating to registration of sexual offenders adjudicated delinquent of certain offenses and DJJ notification of release, to require the DJJ to provide to the FDLE the following information regarding any sexual offender who is being released after serving a period of residential commitment under the DJJ:

- Make, model, color, registration number, and license tag number of all vehicles owned.
- Information about any professional licenses the offender may have, if known.
- Passport information, if the sexual offender has a passport.
- Information about documents establishing immigration status, if the sexual offender is an alien.

Section 14 amends s. 985.4815, F.S., relating to notification to the FDLE of information on juvenile sex offenders, to:

- Require a sexual offender under the supervision of the DJJ but who is not committed to the DJJ to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.[18]
  - Information about documents establishing immigration status, if the sexual offender is an alien.

[18] The reregistration provision specifies passport information.

  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported to the DJJ within 48 hours after the change. The DJJ must report to the Florida institution of higher education any change in the sexual offender's volunteer status at the institution.
- Amend a penalty provision to provide that it is a third degree felony to knowingly provide false registration information by act or omission.

Section 15 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, not substantive changes (grammatical corrections and corrections to descriptive language of some offenses for accuracy).

The bill takes effect October 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 Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the penalty provisions of the original bill will have an insignificant prison bed impact. The committee substitute does not change these penalty provisions.

The estimated fiscal impact of the bill on the FDLE is $66,425 in non-recurring expenditures. The $66,425 fiscal impact will be handled within the department's existing

resources.[19] The committee substitute does not change provisions of the original bill impacting the FDLE.

This bill will have no operational or programming impact to the DHSMV since a process is already in place to facilitate the notification process.[20]

The DOC has not provided an analysis. In remarks regarding a similar bill last year (SB 1812), the department remarked that the bill would have required internal programming, form, and procedure revisions, but the fiscal impact for these revisions was not significant.[21]

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 April 1, 2013:
Modifies the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

B. Amendments:

None.

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

[19] Analysis of SB 1114, Florida Department of Law Enforcement, dated March 21, 2013 (on file with the Committee on Criminal Justice).
[20] Analysis of SB 1114, Florida Department of Highway Safety and Motor Vehicles, dated March 7, 2013 (on file with the Committee on Criminal Justice).
[21] Analysis of SB 1812, Florida Department of Corrections, dated January 31, 2012 (on file with the Committee on Criminal Justice).

By the Committee on Criminal Justice; and Senator Altman

591-03347-13 20131114c1

A bill to be entitled

An act relating to sex offenses; amending s. 90.803, F.S.; providing that an out-of-court statement by a child victim with a physical, mental, emotional, or developmental age of 16 or less rather than 11 or less describing specified criminal acts is admissible in evidence in certain instances; amending s. 775.21, F.S.; replacing the definition of the term “instant message name” with the definition of the term “Internet identifier”; providing that voluntary disclosure of specified information waives a disclosure exemption for such information; conforming provisions; adding additional offenses to the list of sexual predator qualifying offenses; requiring disclosure of additional information during the sexual predator registration process; requiring that a sexual predator who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff’s office within a specified period after such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles; revising reporting requirements if a sexual predator plans to leave the United States for more than a specified period; providing criminal penalties for knowingly providing false registration information by act or omission; amending s. 800.03, F.S.; providing enhanced penalties for third or subsequent indecent exposure violations; amending s.

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591-03347-13 20131114c1

903.046, F.S.; requiring a court considering whether to release a defendant on bail to determine whether the defendant is subject to registration as a sexual offender or sexual predator and, if so, to hold the defendant without bail until the first appearance on the case; providing an exception; amending s. 943.0435, F.S.; adding additional offenses to the list of sexual offender qualifying offenses; replacing the definition of the term “instant message name” with the definition of the term “Internet identifier”; conforming provisions; requiring disclosure of additional sexual offender registration information; requiring that a sexual offender who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff’s office within a specified period of such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles; providing additional requirements for sexual offenders intending to reside outside of the United States; revising criteria applicable to provisions allowing removal from the requirement to register as a sexual offender; providing criminal penalties for knowingly providing false registration information by act or omission; amending s. 943.04351, F.S.; requiring a specified national search of registration information regarding sexual predators and sexual offenders prior to appointment or employment of persons by state

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59 agencies and governmental subdivisions; amending s.
60 943.04354, F.S.; revising the criteria applicable to
61 provisions allowing removal of the requirement to
62 register as a sexual offender or sexual predator;
63 amending s. 943.0437, F.S.; replacing the term
64 “instant message name” with the term “Internet
65 identifier”; amending ss. 944.606 and 944.607, F.S.;
66 adding additional offenses to the list of sexual
67 offender qualifying offenses; replacing the definition
68 of the term “instant message name” with the definition
69 of the term “Internet identifier”; conforming
70 provisions; requiring disclosure of additional
71 registration information; providing criminal penalties
72 for knowingly providing false registration information
73 by act or omission; amending s. 947.005, F.S.;
74 revising the definition of the term “risk assessment”;
75 amending s. 948.31, F.S.; authorizing the court to
76 require sexual offenders and sexual predators who are
77 on probation or community control to undergo an
78 evaluation to determine whether the offender or
79 predator needs sexual offender treatment; requiring
80 the probationer or community controllee to pay for the
81 treatment; removing a provision prohibiting contact
82 with minors if sexual offender treatment is
83 recommended; amending ss. 985.481 and 985.4815, F.S.;
84 requiring disclosure of additional registration
85 information by certain sexual offenders adjudicated
86 delinquent and certain juvenile sexual offenders;
87 providing criminal penalties for knowingly providing

88 false registration information by act or omission;
89 amending s. 921.0022, F.S.; conforming cross-
90 references; providing an effective date.
91
92 Be It Enacted by the Legislature of the State of Florida:
93
94 Section 1. Paragraph (a) of subsection (23) of section
95 90.803, Florida Statutes, is amended to read:
96 90.803 Hearsay exceptions; availability of declarant
97 immaterial.—The provision of s. 90.802 to the contrary
98 notwithstanding, the following are not inadmissible as evidence,
99 even though the declarant is available as a witness:
100 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—
101 (a) Unless the source of information or the method or
102 circumstances by which the statement is reported indicates a
103 lack of trustworthiness, an out-of-court statement made by a
104 child victim with a physical, mental, emotional, or
105 developmental age of 16 ~~11~~ or less describing any act of child
106 abuse or neglect, any act of sexual abuse against a child, the
107 offense of child abuse, the offense of aggravated child abuse,
108 or any offense involving an unlawful sexual act, contact,
109 intrusion, or penetration performed in the presence of, with,
110 by, or on the declarant child, not otherwise admissible, is
111 admissible in evidence in any civil or criminal proceeding if:
112 1. The court finds in a hearing conducted outside the
113 presence of the jury that the time, content, and circumstances
114 of the statement provide sufficient safeguards of reliability.
115 In making its determination, the court may consider the mental
116 and physical age and maturity of the child, the nature and

117 duration of the abuse or offense, the relationship of the child
118 to the offender, the reliability of the assertion, the
119 reliability of the child victim, and any other factor deemed
120 appropriate; and
121 2. The child either:
122 a. Testifies; or
123 b. Is unavailable as a witness, provided that there is
124 other corroborative evidence of the abuse or offense.
125 Unavailability shall include a finding by the court that the
126 child's participation in the trial or proceeding would result in
127 a substantial likelihood of severe emotional or mental harm, in
128 addition to findings pursuant to s. 90.804(1).
129 Section 2. Paragraph (i) of subsection (2), paragraph (a)
130 of subsection (4), subsections (6) and (8), and paragraph (a) of
131 subsection (10) of section 775.21, Florida Statutes, are amended
132 to read:
133 775.21 The Florida Sexual Predators Act.—
134 (2) DEFINITIONS.—As used in this section, the term:
135 (i) "Internet identifier ~~Instant message name~~" means all
136 electronic mail, chat, instant messenger, social networking, or
137 similar name used for Internet communication, but does not
138 include a date of birth, social security number, or personal
139 identification number (PIN). Voluntary disclosure by the sexual
140 predator of his or her date of birth, social security number, or
141 personal identification number (PIN) as an Internet identifier
142 waives the disclosure exemption in this paragraph for such
143 personal information ~~an identifier that allows a person to~~
144 ~~communicate in real time with another person using the Internet~~.
145 (4) SEXUAL PREDATOR CRITERIA.—

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146 (a) For a current offense committed on or after October 1,
147 1993, upon conviction, an offender shall be designated as a
148 "sexual predator" under subsection (5), and subject to
149 registration under subsection (6) and community and public
150 notification under subsection (7) if:
151 1. The felony is:
152 a. A capital, life, or first-degree felony violation, or
153 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
154 is a minor and the defendant is not the victim's parent or
155 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
156 violation of a similar law of another jurisdiction; or
157 b. Any felony violation, or any attempt thereof, of s.
158 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
159 787.025(2)(c), where the victim is a minor and the defendant is
160 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
161 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
162 796.03; s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025
163 ~~825.1025(2)(b)~~; s. 827.071; s. 847.0135(5); s. 847.0145; s.
164 916.1075(2); or s. 985.701(1); or a violation of a similar law
165 of another jurisdiction, and the offender has previously been
166 convicted of or found to have committed, or has pled nolo
167 contendere or guilty to, regardless of adjudication, any
168 violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
169 787.02, or s. 787.025(2)(c), where the victim is a minor and the
170 defendant is not the victim's parent or guardian; s.
171 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
172 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
173 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
174 847.0135(6); s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a

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175 violation of a similar law of another jurisdiction;
176 2. The offender has not received a pardon for any felony or
177 similar law of another jurisdiction that is necessary for the
178 operation of this paragraph; and
179 3. A conviction of a felony or similar law of another
180 jurisdiction necessary to the operation of this paragraph has
181 not been set aside in any postconviction proceeding.
182 (6) REGISTRATION.—
183 (a) A sexual predator must register with the department
184 through the sheriff's office by providing the following
185 information to the department:
186 1. Name; social security number; age; race; sex; date of
187 birth; height; weight; tattoos or other identifying marks; hair
188 and eye color; photograph; address of legal residence and
189 address of any current temporary residence, within the state or
190 out of state, including a rural route address and a post office
191 box; if no permanent or temporary address, any transient
192 residence within the state; address, location or description,
193 and dates of any current or known future temporary residence
194 within the state or out of state; all ~~any~~ electronic mail
195 addresses ~~address~~ and all Internet identifiers ~~any instant~~
196 ~~message name~~ required to be provided pursuant to subparagraph
197 (g)4.; all home telephone numbers ~~number~~ and ~~any~~ cellular
198 telephone numbers ~~number~~; date and place of any employment; the
199 make, model, color, registration number, and license tag number
200 of all vehicles owned; date and place of each conviction;
201 fingerprints; palm prints; and a brief description of the crime
202 or crimes committed by the offender. A post office box shall not
203 be provided in lieu of a physical residential address. The

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204 sexual predator must also produce his or her passport, if he or
205 she has a passport, and, if he or she is an alien, must produce
206 or provide information about documents establishing his or her
207 immigration status. The sexual predator must also provide
208 information about any professional licenses he or she may have.
209 a. If the sexual predator's place of residence is a motor
210 vehicle, trailer, mobile home, or manufactured home, as defined
211 in chapter 320, the sexual predator shall also provide to the
212 department written notice of the vehicle identification number;
213 the license tag number; the registration number; and a
214 description, including color scheme, of the motor vehicle,
215 trailer, mobile home, or manufactured home. If a sexual
216 predator's place of residence is a vessel, live-aboard vessel,
217 or houseboat, as defined in chapter 327, the sexual predator
218 shall also provide to the department written notice of the hull
219 identification number; the manufacturer's serial number; the
220 name of the vessel, live-aboard vessel, or houseboat; the
221 registration number; and a description, including color scheme,
222 of the vessel, live-aboard vessel, or houseboat.
223 b. If the sexual predator is enrolled, employed,
224 volunteering, or carrying on a vocation at an institution of
225 higher education in this state, the sexual predator shall also
226 provide to the department the name, address, and county of each
227 institution, including each campus attended, and the sexual
228 predator's enrollment, volunteer, or employment status. Each
229 change in enrollment, volunteer, or employment status shall be
230 reported in person at the sheriff's office, or the Department of
231 Corrections if the sexual predator is in the custody or control
232 of or under the supervision of the Department of Corrections,

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233 within 48 hours after any change in status. The sheriff or the
234 Department of Corrections shall promptly notify each institution
235 of the sexual predator's presence and any change in the sexual
236 predator's enrollment, volunteer, or employment status.
237 2. Any other information determined necessary by the
238 department, including criminal and corrections records;
239 nonprivileged personnel and treatment records; and evidentiary
240 genetic markers when available.
241 (b) If the sexual predator is in the custody or control of,
242 or under the supervision of, the Department of Corrections, or
243 is in the custody of a private correctional facility, the sexual
244 predator must register with the Department of Corrections. A
245 sexual predator who is under the supervision of the Department
246 of Corrections but who is not incarcerated must register with
247 the Department of Corrections within 3 business days after the
248 court finds the offender to be a sexual predator. The Department
249 of Corrections shall provide to the department registration
250 information and the location of, and local telephone number for,
251 any Department of Corrections office that is responsible for
252 supervising the sexual predator. In addition, the Department of
253 Corrections shall notify the department if the sexual predator
254 escapes or absconds from custody or supervision or if the sexual
255 predator dies.
256 (c) If the sexual predator is in the custody of a local
257 jail, the custodian of the local jail shall register the sexual
258 predator within 3 business days after intake of the sexual
259 predator for any reason and upon release, and shall forward the
260 registration information to the department. The custodian of the
261 local jail shall also take a digitized photograph of the sexual

262 predator while the sexual predator remains in custody and shall
263 provide the digitized photograph to the department. The
264 custodian shall notify the department if the sexual predator
265 escapes from custody or dies.
266 (d) If the sexual predator is under federal supervision,
267 the federal agency responsible for supervising the sexual
268 predator may forward to the department any information regarding
269 the sexual predator which is consistent with the information
270 provided by the Department of Corrections under this section,
271 and may indicate whether use of the information is restricted to
272 law enforcement purposes only or may be used by the department
273 for purposes of public notification.
274 (e)1. If the sexual predator is not in the custody or
275 control of, or under the supervision of, the Department of
276 Corrections or is not in the custody of a private correctional
277 facility, the sexual predator shall register in person:
278 a. At the sheriff's office in the county where he or she
279 establishes or maintains a residence within 48 hours after
280 establishing or maintaining a residence in this state; and
281 b. At the sheriff's office in the county where he or she
282 was designated a sexual predator by the court within 48 hours
283 after such finding is made.
284 2. Any change in the sexual predator's permanent or
285 temporary residence, name, ~~or any~~ electronic mail addresses, or
286 Internet identifiers ~~address and any instant message name~~
287 required to be provided pursuant to subparagraph (g)4., after
288 the sexual predator registers in person at the sheriff's office
289 as provided in subparagraph 1., shall be accomplished in the
290 manner provided in paragraphs (g), (i), and (j). When a sexual

291 predator registers with the sheriff's office, the sheriff shall
292 take a photograph, ~~and~~ a set of fingerprints, and palm prints of
293 the predator and forward the photographs, palm prints, and
294 fingerprints to the department, along with the information that
295 the predator is required to provide pursuant to this section.
296 (f) Within 48 hours after the registration required under
297 paragraph (a) or paragraph (e), a sexual predator who is not
298 incarcerated and who resides in the community, including a
299 sexual predator under the supervision of the Department of
300 Corrections, shall register in person at a driver ~~driver's~~
301 license office of the Department of Highway Safety and Motor
302 Vehicles and shall present proof of registration. At the driver
303 ~~driver's~~ license office the sexual predator shall:
304 1. If otherwise qualified, secure a Florida driver ~~driver's~~
305 license, renew a Florida driver ~~driver's~~ license, or secure an
306 identification card. The sexual predator shall identify himself
307 or herself as a sexual predator who is required to comply with
308 this section, provide his or her place of permanent, temporary,
309 or transient residence, including a rural route address and a
310 post office box, and submit to the taking of a photograph for
311 use in issuing a driver ~~driver's~~ license, renewed license, or
312 identification card, and for use by the department in
313 maintaining current records of sexual predators. A post office
314 box shall not be provided in lieu of a physical residential
315 address. If the sexual predator's place of residence is a motor
316 vehicle, trailer, mobile home, or manufactured home, as defined
317 in chapter 320, the sexual predator shall also provide to the
318 Department of Highway Safety and Motor Vehicles the vehicle
319 identification number; the license tag number; the registration

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320 number; and a description, including color scheme, of the motor
321 vehicle, trailer, mobile home, or manufactured home. If a sexual
322 predator's place of residence is a vessel, live-aboard vessel,
323 or houseboat, as defined in chapter 327, the sexual predator
324 shall also provide to the Department of Highway Safety and Motor
325 Vehicles the hull identification number; the manufacturer's
326 serial number; the name of the vessel, live-aboard vessel, or
327 houseboat; the registration number; and a description, including
328 color scheme, of the vessel, live-aboard vessel, or houseboat.
329 2. Pay the costs assessed by the Department of Highway
330 Safety and Motor Vehicles for issuing or renewing a driver
331 ~~driver's~~ license or identification card as required by this
332 section. The driver ~~driver's~~ license or identification card
333 issued to the sexual predator must be in compliance with s.
334 322.141(3).
335 3. Provide, upon request, any additional information
336 necessary to confirm the identity of the sexual predator,
337 including a set of fingerprints.
338 (g)1. Each time a sexual predator's driver ~~driver's~~ license
339 or identification card is subject to renewal, and, without
340 regard to the status of the predator's driver ~~driver's~~ license
341 or identification card, within 48 hours after any change of the
342 predator's residence or change in the predator's name by reason
343 of marriage or other legal process, the predator shall report in
344 person to a driver ~~driver's~~ license office and shall be subject
345 to the requirements specified in paragraph (f). The Department
346 of Highway Safety and Motor Vehicles shall forward to the
347 department and to the Department of Corrections all photographs
348 and information provided by sexual predators. Notwithstanding

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349 the restrictions set forth in s. 322.142, the Department of
350 Highway Safety and Motor Vehicles is authorized to release a
351 reproduction of a color-photograph or digital-image license to
352 the Department of Law Enforcement for purposes of public
353 notification of sexual predators as provided in this section. A
354 sexual predator who is unable to secure or update a driver
355 license or identification card with the Department of Highway
356 Safety and Motor Vehicles as provided in paragraph (f) and this
357 paragraph must also report any change of the predator's
358 residence or change in the predator's name by reason of marriage
359 or other legal process within 48 hours after the change to the
360 sheriff's office in the county where the predator resides or is
361 located and provide confirmation that he or she reported such
362 information to the Department of Highway Safety and Motor
363 Vehicles.
364 2. A sexual predator who vacates a permanent, temporary, or
365 transient residence and fails to establish or maintain another
366 permanent, temporary, or transient residence shall, within 48
367 hours after vacating the permanent, temporary, or transient
368 residence, report in person to the sheriff's office of the
369 county in which he or she is located. The sexual predator shall
370 specify the date upon which he or she intends to or did vacate
371 such residence. The sexual predator must provide or update all
372 of the registration information required under paragraph (a).
373 The sexual predator must provide an address for the residence or
374 other place that he or she is or will be located during the time
375 in which he or she fails to establish or maintain a permanent or
376 temporary residence.
377 3. A sexual predator who remains at a permanent, temporary,

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378 or transient residence after reporting his or her intent to
379 vacate such residence shall, within 48 hours after the date upon
380 which the predator indicated he or she would or did vacate such
381 residence, report in person to the sheriff's office to which he
382 or she reported pursuant to subparagraph 2. for the purpose of
383 reporting his or her address at such residence. When the sheriff
384 receives the report, the sheriff shall promptly convey the
385 information to the department. An offender who makes a report as
386 required under subparagraph 2. but fails to make a report as
387 required under this subparagraph commits a felony of the second
388 degree, punishable as provided in s. 775.082, s. 775.083, or s.
389 775.084.
390 4. A sexual predator must register all ~~any~~ electronic mail
391 addresses and Internet identifiers ~~address or instant message~~
392 ~~name~~ with the department prior to using such electronic mail
393 addresses and Internet identifiers ~~address or instant message~~
394 ~~name on or after October 1, 2007~~. The department shall establish
395 an online system through which sexual predators may securely
396 access and update all electronic mail address and Internet
397 identifier ~~instant message name~~ information.
398 (h) The department must notify the sheriff and the state
399 attorney of the county and, if applicable, the police chief of
400 the municipality, where the sexual predator maintains a
401 residence.
402 (i) A sexual predator who intends to establish a permanent,
403 temporary, or transient residence in another state or
404 jurisdiction other than the State of Florida shall report in
405 person to the sheriff of the county of current residence within
406 48 hours before the date he or she intends to leave this state

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407 to establish residence in another state or jurisdiction or
408 within 21 days before his or her planned departure date if the
409 intended residence of 5 days or more is outside of the United
410 States. The sexual predator must provide to the sheriff the
411 address, municipality, county, ~~and~~ state, and country of
412 intended residence. The sheriff shall promptly provide to the
413 department the information received from the sexual predator.
414 The department shall notify the statewide law enforcement
415 agency, or a comparable agency, in the intended state, ~~or~~
416 jurisdiction, or country of residence of the sexual predator's
417 intended residence. The failure of a sexual predator to provide
418 his or her intended place of residence is punishable as provided
419 in subsection (10).
420 (j) A sexual predator who indicates his or her intent to
421 establish a permanent, temporary, or transient residence in
422 another state, a ~~or~~ jurisdiction other than the State of
423 Florida, or another country and later decides to remain in this
424 state shall, within 48 hours after the date upon which the
425 sexual predator indicated he or she would leave this state,
426 report in person to the sheriff to which the sexual predator
427 reported the intended change of residence, and report his or her
428 intent to remain in this state. If the sheriff is notified by
429 the sexual predator that he or she intends to remain in this
430 state, the sheriff shall promptly report this information to the
431 department. A sexual predator who reports his or her intent to
432 establish a permanent, temporary, or transient residence in
433 another state, a ~~or~~ jurisdiction other than the State of
434 Florida, or another country, but who remains in this state
435 without reporting to the sheriff in the manner required by this

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436 paragraph, commits a felony of the second degree, punishable as
437 provided in s. 775.082, s. 775.083, or s. 775.084.
438 (k)1. The department is responsible for the online
439 maintenance of current information regarding each registered
440 sexual predator. The department must maintain hotline access for
441 state, local, and federal law enforcement agencies to obtain
442 instantaneous locator file and offender characteristics
443 information on all released registered sexual predators for
444 purposes of monitoring, tracking, and prosecution. The
445 photograph and fingerprints do not have to be stored in a
446 computerized format.
447 2. The department's sexual predator registration list,
448 containing the information described in subparagraph (a)1., is a
449 public record. The department is authorized to disseminate this
450 public information by any means deemed appropriate, including
451 operating a toll-free telephone number for this purpose. When
452 the department provides information regarding a registered
453 sexual predator to the public, department personnel must advise
454 the person making the inquiry that positive identification of a
455 person believed to be a sexual predator cannot be established
456 unless a fingerprint comparison is made, and that it is illegal
457 to use public information regarding a registered sexual predator
458 to facilitate the commission of a crime.
459 3. The department shall adopt guidelines as necessary
460 regarding the registration of sexual predators and the
461 dissemination of information regarding sexual predators as
462 required by this section.
463 (l) A sexual predator must maintain registration with the
464 department for the duration of his or her life, unless the

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465 sexual predator has received a full pardon or has had a
466 conviction set aside in a postconviction proceeding for any
467 offense that met the criteria for the sexual predator
468 designation.
469 (8) VERIFICATION.—The department and the Department of
470 Corrections shall implement a system for verifying the addresses
471 of sexual predators. The system must be consistent with the
472 provisions of the federal Adam Walsh Child Protection and Safety
473 Act of 2006 and any other federal standards applicable to such
474 verification or required to be met as a condition for the
475 receipt of federal funds by the state. The Department of
476 Corrections shall verify the addresses of sexual predators who
477 are not incarcerated but who reside in the community under the
478 supervision of the Department of Corrections and shall report to
479 the department any failure by a sexual predator to comply with
480 registration requirements. County and local law enforcement
481 agencies, in conjunction with the department, shall verify the
482 addresses of sexual predators who are not under the care,
483 custody, control, or supervision of the Department of
484 Corrections. Local law enforcement agencies shall report to the
485 department any failure by a sexual predator to comply with
486 registration requirements.
487 (a) A sexual predator must report in person each year
488 during the month of the sexual predator's birthday and during
489 every third month thereafter to the sheriff's office in the
490 county in which he or she resides or is otherwise located to
491 reregister. The sheriff's office may determine the appropriate
492 times and days for reporting by the sexual predator, which shall
493 be consistent with the reporting requirements of this paragraph.

494 Reregistration shall include any changes to the following
495 information:
496 1. Name; social security number; age; race; sex; date of
497 birth; height; weight; tattoos or other identifying marks; hair
498 and eye color; address of any permanent residence and address of
499 any current temporary residence, within the state or out of
500 state, including a rural route address and a post office box; if
501 no permanent or temporary address, any transient residence
502 within the state; address, location or description, and dates of
503 any current or known future temporary residence within the state
504 or out of state; ~~any~~ electronic mail addresses or Internet
505 identifiers ~~address and any instant message name~~ required to be
506 provided pursuant to subparagraph (6)(g)4.; home telephone
507 numbers or ~~number and any~~ cellular telephone numbers ~~number~~;
508 date and place of any employment; the ~~vehicle~~ make, model,
509 color, registration number, and license tag number of any
510 vehicles owned; fingerprints; palm prints; and photograph. A
511 post office box shall not be provided in lieu of a physical
512 residential address. The sexual predator must also produce his
513 or her passport, if he or she has a passport, and, if he or she
514 is an alien, must produce or provide information about documents
515 establishing his or her immigration status. The sexual predator
516 must also provide information about any professional licenses he
517 or she may have.
518 2. If the sexual predator is enrolled, employed,
519 volunteering, or carrying on a vocation at an institution of
520 higher education in this state, the sexual predator shall also
521 provide to the department the name, address, and county of each
522 institution, including each campus attended, and the sexual

523 predator's enrollment, volunteer, or employment status.
524 3. If the sexual predator's place of residence is a motor
525 vehicle, trailer, mobile home, or manufactured home, as defined
526 in chapter 320, the sexual predator shall also provide the
527 vehicle identification number; the license tag number; the
528 registration number; and a description, including color scheme,
529 of the motor vehicle, trailer, mobile home, or manufactured
530 home. If the sexual predator's place of residence is a vessel,
531 live-aboard vessel, or houseboat, as defined in chapter 327, the
532 sexual predator shall also provide the hull identification
533 number; the manufacturer's serial number; the name of the
534 vessel, live-aboard vessel, or houseboat; the registration
535 number; and a description, including color scheme, of the
536 vessel, live-aboard vessel, or houseboat.
537 (b) The sheriff's office shall, within 2 working days,
538 electronically submit and update all information provided by the
539 sexual predator to the department in a manner prescribed by the
540 department.
541 (10) PENALTIES.—
542 (a) Except as otherwise specifically provided, a sexual
543 predator who fails to register; who fails, after registration,
544 to maintain, acquire, or renew a driver ~~driver's~~ license or
545 identification card; who fails to provide required location
546 information, electronic mail address information prior to use,
547 Internet identifier ~~instant message name~~ information prior to
548 use, all home telephone numbers ~~number~~ and ~~any~~ cellular
549 telephone numbers ~~number~~, or change-of-name information; who
550 fails to make a required report in connection with vacating a
551 permanent residence; who fails to reregister as required; who

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552 fails to respond to any address verification correspondence from
553 the department within 3 weeks of the date of the correspondence;
554 who knowingly provides false registration information by act or
555 omission; or who otherwise fails, by act or omission, to comply
556 with the requirements of this section~~,~~ commits a felony of the
557 third degree, punishable as provided in s. 775.082, s. 775.083,
558 or s. 775.084.
559 Section 3. Section 800.03, Florida Statutes, is amended to
560 read:
561 800.03 Exposure of sexual organs.—
562 (1) It is unlawful to expose or exhibit one's sexual organs
563 in public or on the private premises of another, or so near
564 thereto as to be seen from such private premises, in a vulgar or
565 indecent manner, or to be naked in public except in any place
566 provided or set apart for that purpose.
567 (2)(a) Except as provided in paragraph (b), a violation of
568 this section is a misdemeanor of the first degree, punishable as
569 provided in s. 775.082 or s. 775.083.
570 (b) A third or subsequent violation of this section is a
571 felony of the third degree, punishable as provided in s.
572 775.082, s. 775.083, or s. 775.084.
573 (3) A mother's breastfeeding of her baby does not under any
574 circumstance violate this section.
575 Section 4. Paragraph (m) is added to subsection (2) of
576 section 903.046, Florida Statutes, to read:
577 903.046 Purpose of and criteria for bail determination.—
578 (2) When determining whether to release a defendant on bail
579 or other conditions, and what that bail or those conditions may
580 be, the court shall consider:

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581 (m) Whether the defendant, other than a defendant whose
582 only criminal charge is a misdemeanor offense under chapter 316,
583 is required to register as a sexual offender under s. 943.0435
584 or a sexual predator under s. 775.21; and, if so, he or she is
585 not eligible for release on bail or surety bond until the first
586 appearance on the case in order to ensure the full participation
587 of the prosecutor and the protection of the public.
588 Section 5. Paragraphs (a) and (g) of subsection (1),
589 subsection (2), paragraphs (a) and (d) of subsection (4),
590 subsections (7), (8), and (11), and paragraph (c) of subsection
591 (14) of section 943.0435, Florida Statutes, are amended to read:
592 943.0435 Sexual offenders required to register with the
593 department; penalty.—
594 (1) As used in this section, the term:
595 (a)1. "Sexual offender" means a person who meets the
596 criteria in sub-subparagraph a., sub-subparagraph b., sub-
597 subparagraph c., or sub-subparagraph d., as follows:
598 a.(I) Has been convicted of committing, or attempting,
599 soliciting, or conspiring to commit, any of the criminal
600 offenses proscribed in the following statutes in this state or
601 similar offenses in another jurisdiction: s. 393.135(2); s.
602 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
603 the victim is a minor and the defendant is not the victim's
604 parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s.
605 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
606 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
607 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
608 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
609 similar offense committed in this state which has been

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610 redesignated from a former statute number to one of those listed
611 in this sub-sub-subparagraph; and
612 (II) Has been released on or after October 1, 1997, from
613 the sanction imposed for any conviction of an offense described
614 in sub-sub-subparagraph (I). For purposes of sub-sub-
615 subparagraph (I), a sanction imposed in this state or in any
616 other jurisdiction includes, but is not limited to, a fine,
617 probation, community control, parole, conditional release,
618 control release, or incarceration in a state prison, federal
619 prison, private correctional facility, or local detention
620 facility;
621 b. Establishes or maintains a residence in this state and
622 who has not been designated as a sexual predator by a court of
623 this state but who has been designated as a sexual predator, as
624 a sexually violent predator, or by another sexual offender
625 designation in another state or jurisdiction and was, as a
626 result of such designation, subjected to registration or
627 community or public notification, or both, or would be if the
628 person were a resident of that state or jurisdiction, without
629 regard to whether the person otherwise meets the criteria for
630 registration as a sexual offender;
631 c. Establishes or maintains a residence in this state who
632 is in the custody or control of, or under the supervision of,
633 any other state or jurisdiction as a result of a conviction for
634 committing, or attempting, soliciting, or conspiring to commit,
635 any of the criminal offenses proscribed in the following
636 statutes or similar offense in another jurisdiction: s.
637 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
638 787.025(2)(c), where the victim is a minor and the defendant is

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639 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
640 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
641 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
642 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
643 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
644 985.701(1); or any similar offense committed in this state which
645 has been redesignated from a former statute number to one of
646 those listed in this sub-subparagraph; or
647 d. On or after July 1, 2007, has been adjudicated
648 delinquent for committing, or attempting, soliciting, or
649 conspiring to commit, any of the criminal offenses proscribed in
650 the following statutes in this state or similar offenses in
651 another jurisdiction when the juvenile was 14 years of age or
652 older at the time of the offense:
653 (I) Section 794.011, excluding s. 794.011(10);
654 (II) Section 800.04(4)(b) where the victim is under 12
655 years of age or where the court finds sexual activity by the use
656 of force or coercion;
657 (III) Section 800.04(5)(c)1. where the court finds
658 molestation involving unclothed genitals; or
659 (IV) Section 800.04(5)(d) where the court finds the use of
660 force or coercion and unclothed genitals.
661 2. For all qualifying offenses listed in sub-subparagraph
662 (1)(a)1.d., the court shall make a written finding of the age of
663 the offender at the time of the offense.
664
665 For each violation of a qualifying offense listed in this
666 subsection, except for a violation of s. 794.011, the court
667 shall make a written finding of the age of the victim at the

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668 time of the offense. For a violation of s. 800.04(4), the court
669 shall additionally make a written finding indicating that the
670 offense did or did not involve sexual activity and indicating
671 that the offense did or did not involve force or coercion. For a
672 violation of s. 800.04(5), the court shall additionally make a
673 written finding that the offense did or did not involve
674 unclothed genitals or genital area and that the offense did or
675 did not involve the use of force or coercion.
676 (g) "Internet identifier ~~Instant message name~~" has the same
677 meaning as provided in s. 775.21 ~~means an identifier that allows~~
678 ~~a person to communicate in real time with another person using~~
679 ~~the Internet~~.
680 (2) A sexual offender shall:
681 (a) Report in person at the sheriff's office:
682 1. In the county in which the offender establishes or
683 maintains a permanent, temporary, or transient residence within
684 48 hours after:
685 a. Establishing permanent, temporary, or transient
686 residence in this state; or
687 b. Being released from the custody, control, or supervision
688 of the Department of Corrections or from the custody of a
689 private correctional facility; or
690 2. In the county where he or she was convicted within 48
691 hours after being convicted for a qualifying offense for
692 registration under this section if the offender is not in the
693 custody or control of, or under the supervision of, the
694 Department of Corrections, or is not in the custody of a private
695 correctional facility.
696

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697 Any change in the information required to be provided pursuant
698 to paragraph (b), including, but not limited to, any change in
699 the sexual offender's permanent, temporary, or transient
700 residence, name, ~~any~~ electronic mail addresses, or Internet
701 identifiers ~~address and any instant message name~~ required to be
702 provided pursuant to paragraph (4)(d), after the sexual offender
703 reports in person at the sheriff's office, shall be accomplished
704 in the manner provided in subsections (4), (7), and (8).
705 (b) Provide his or her name; date of birth; social security
706 number; race; sex; height; weight; hair and eye color; tattoos
707 or other identifying marks; occupation and place of employment;
708 address of permanent or legal residence or address of any
709 current temporary residence, within the state or out of state,
710 including a rural route address and a post office box; if no
711 permanent or temporary address, any transient residence within
712 the state, address, location or description, and dates of any
713 current or known future temporary residence within the state or
714 out of state; the make, model, color, registration number, and
715 license tag number of all vehicles owned; all home telephone
716 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; all
717 ~~any~~ electronic mail addresses ~~address~~ and all Internet
718 identifiers ~~any instant message name~~ required to be provided
719 pursuant to paragraph (4)(d); fingerprints; palm prints;
720 photograph; date and place of each conviction; and a brief
721 description of the crime or crimes committed by the offender. A
722 post office box shall not be provided in lieu of a physical
723 residential address. The sexual offender must also produce his
724 or her passport, if he or she has a passport, and, if he or she
725 is an alien, must produce or provide information about documents

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726 establishing his or her immigration status. The sexual offender
727 must also provide information about any professional licenses he
728 or she may have.
729 1. If the sexual offender's place of residence is a motor
730 vehicle, trailer, mobile home, or manufactured home, as defined
731 in chapter 320, the sexual offender shall also provide to the
732 department through the sheriff's office written notice of the
733 vehicle identification number; the license tag number; the
734 registration number; and a description, including color scheme,
735 of the motor vehicle, trailer, mobile home, or manufactured
736 home. If the sexual offender's place of residence is a vessel,
737 live-aboard vessel, or houseboat, as defined in chapter 327, the
738 sexual offender shall also provide to the department written
739 notice of the hull identification number; the manufacturer's
740 serial number; the name of the vessel, live-aboard vessel, or
741 houseboat; the registration number; and a description, including
742 color scheme, of the vessel, live-aboard vessel, or houseboat.
743 2. If the sexual offender is enrolled, employed,
744 volunteering, or carrying on a vocation at an institution of
745 higher education in this state, the sexual offender shall also
746 provide to the department through the sheriff's office the name,
747 address, and county of each institution, including each campus
748 attended, and the sexual offender's enrollment, volunteer, or
749 employment status. Each change in enrollment, volunteer, or
750 employment status shall be reported in person at the sheriff's
751 office, within 48 hours after any change in status. The sheriff
752 shall promptly notify each institution of the sexual offender's
753 presence and any change in the sexual offender's enrollment,
754 volunteer, or employment status.

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755 (c) Provide any other information determined necessary by
756 the department, including criminal and corrections records;
757 nonprivileged personnel and treatment records; and evidentiary
758 genetic markers, when available.
759
760 When a sexual offender reports at the sheriff's office, the
761 sheriff shall take a photograph, ~~and~~ a set of fingerprints, and
762 palm prints of the offender and forward the photographs, palm
763 prints, and fingerprints to the department, along with the
764 information provided by the sexual offender. The sheriff shall
765 promptly provide to the department the information received from
766 the sexual offender.
767 (4)(a) Each time a sexual offender's driver ~~driver's~~
768 license or identification card is subject to renewal, and,
769 without regard to the status of the offender's driver ~~driver's~~
770 license or identification card, within 48 hours after any change
771 in the offender's permanent, temporary, or transient residence
772 or change in the offender's name by reason of marriage or other
773 legal process, the offender shall report in person to a driver
774 ~~driver's~~ license office, and shall be subject to the
775 requirements specified in subsection (3). The Department of
776 Highway Safety and Motor Vehicles shall forward to the
777 department all photographs and information provided by sexual
778 offenders. Notwithstanding the restrictions set forth in s.
779 322.142, the Department of Highway Safety and Motor Vehicles is
780 authorized to release a reproduction of a color-photograph or
781 digital-image license to the Department of Law Enforcement for
782 purposes of public notification of sexual offenders as provided
783 in this section and ss. 943.043 and 944.606. A sexual offender

784 who is unable to secure or update a driver license or
785 identification card with the Department of Highway Safety and
786 Motor Vehicles as provided in subsection (3) and this subsection
787 must also report any change in the sexual offender's permanent,
788 temporary, or transient residence or change in the offender's
789 name by reason of marriage or other legal process within 48
790 hours after the change to the sheriff's office in the county
791 where the offender resides or is located and provide
792 confirmation that he or she reported such information to the
793 Department of Highway Safety and Motor Vehicles.
794 (d) A sexual offender must register all ~~any~~ electronic mail
795 addresses and Internet identifiers ~~address or instant message~~
796 ~~name~~ with the department prior to using such electronic mail
797 addresses and Internet identifiers ~~address or instant message~~
798 ~~name on or after October 1, 2007~~. The department shall establish
799 an online system through which sexual offenders may securely
800 access and update all electronic mail address and Internet
801 identifier ~~instant message name~~ information.
802 (7) A sexual offender who intends to establish a permanent,
803 temporary, or transient residence in another state or
804 jurisdiction other than the State of Florida shall report in
805 person to the sheriff of the county of current residence within
806 48 hours before the date he or she intends to leave this state
807 to establish residence in another state or jurisdiction or
808 within 21 days before his or her planned departure date if the
809 intended residence of 5 days or more is outside of the United
810 States. The notification must include the address, municipality,
811 county, ~~and~~ state, and country of intended residence. The
812 sheriff shall promptly provide to the department the information

received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, ~~or~~ jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a ~~or~~ jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual offender reported the intended change of permanent, temporary, or transient residence, and report his or her intent to remain in this state. The sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a ~~or~~ jurisdiction other than the State of Florida, or another country but who remains in this state without reporting to the sheriff in the manner required by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11) Except as provided in this subsection and s. 943.04354, a sexual offender must maintain registration with the department for the duration of his or her life, unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a

sexual offender for purposes of registration. ~~However, a sexual offender:~~

(a)1. A sexual offender may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender if ~~Who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and has not been arrested for any felony or misdemeanor offense since release, provided that the sexual offender's requirement to register was not based upon an adult conviction~~:

a. Twenty-five years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;

b. The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court;

c. The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register;

d. The sexual offender's requirement to register was not based upon an adult conviction for a violation of s. 787.01, s. 794.011, excluding s. 794.011(10), s. 800.04(4)(b) where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion, s. 800.04(5)(b), or s. 800.04(5)(c)2. where the court finds the offense involved unclothed genitals or genital area; for any attempt or conspiracy to commit any offense listed in this sub-

871 subparagraph; or for a violation of similar law of another
872 jurisdiction; and
873 e. For sexual offenders whose requirement to register is
874 based upon a conviction in another state, the sexual offender is
875 not required to register as a sexual offender pursuant to the
876 laws of the state where the conviction occurred. Such an
877 offender must provide the court written confirmation that he or
878 she is not required to register in the state where the
879 conviction occurred.
880 ~~a. For a violation of s. 787.01 or s. 787.02;~~
881 ~~b. For a violation of s. 794.011, excluding s. 794.011(10);~~
882 ~~c. For a violation of s. 800.04(4)(b) where the court finds~~
883 ~~the offense involved a victim under 12 years of age or sexual~~
884 ~~activity by the use of force or coercion;~~
885 ~~d. For a violation of s. 800.04(5)(b);~~
886 ~~e. For a violation of s. 800.04(5)c.2. where the court~~
887 ~~finds the offense involved unclothed genitals or genital area;~~
888 ~~f. For any attempt or conspiracy to commit any such~~
889 ~~offense; or~~
890 ~~g. For a violation of similar law of another jurisdiction,~~
891 ~~may petition the criminal division of the circuit court of the~~
892 ~~circuit in which the sexual offender resides for the purpose of~~
893 ~~removing the requirement for registration as a sexual offender.~~
894 2. A sexual offender whose requirement to register was
895 based upon an adult conviction for a violation of s. 787.02 or
896 s. 827.071(5), for any attempt or conspiracy to commit any
897 offense listed in this subparagraph, or for a violation of
898 similar law of another jurisdiction, may petition the criminal
899 division of the circuit court of the circuit in which the sexual

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900 offender resides for the purpose of removing the requirement for
901 registration as a sexual offender if:
902 a. Fifteen years have elapsed since the sexual offender's
903 registration period for the most recent conviction that required
904 the offender to register began;
905 b. The sexual offender has not been convicted or
906 adjudicated delinquent of any felony offense or of an offense
907 punishable by more than 1 year of imprisonment during the 10
908 years preceding the petition to the court;
909 c. The sexual offender has successfully completed all
910 sanctions imposed for all offenses that required the offender to
911 register; and
912 d. For sexual offenders whose requirement to register is
913 based upon a conviction in another state, the sexual offender is
914 not required to register as a sexual offender pursuant to the
915 laws of the state where the conviction occurred. Such an
916 offender must provide the court written confirmation that he or
917 she is not required to register in the state where the
918 conviction occurred.
919 3. A sexual offender required to register under sub-
920 subparagraph (1)(a)1.d. may petition the criminal division of
921 the circuit court of the circuit in which the sexual offender
922 resides for the purpose of removing the requirement for
923 registration as a sexual offender if:
924 a. Twenty-five years have elapsed since the sexual
925 offender's registration period for the most recent adjudication
926 that required the offender to register began;
927 b. The sexual offender has not been convicted or
928 adjudicated delinquent of any felony offense or of an offense

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929 punishable by more than 1 year of imprisonment during the 25
930 years preceding the petition to the court; and
931 c. The sexual offender has successfully completed all
932 sanctions imposed for any offense that required the offender to
933 register.
934 4.~~2.~~ The court may grant or deny relief if the offender
935 demonstrates to the court that ~~he or she has not been arrested~~
936 ~~for any crime since release;~~ the requested relief complies with
937 this paragraph, ~~the provisions of~~ the federal Adam Walsh Child
938 Protection and Safety Act of 2006, and any other federal
939 standards applicable to the removal of registration requirements
940 for a sexual offender or required to be met as a condition for
941 the receipt of federal funds by the state; and the court is
942 otherwise satisfied that the offender is not a current or
943 potential threat to public safety. The state attorney in the
944 circuit in which the petition is filed and the department must
945 be given notice of the petition at least 3 weeks before the
946 hearing on the matter. The state attorney may present evidence
947 in opposition to the requested relief or may otherwise
948 demonstrate the reasons why the petition should be denied. If
949 the court grants the petition, the court shall instruct the
950 petitioner to provide the department with a certified copy of
951 the order granting relief. If the court denies the petition, the
952 court may set a future date at which the sexual offender may
953 again petition the court for relief, subject to the standards
954 for relief provided in this subsection.
955 5.~~3.~~ The department shall remove an offender from
956 classification as a sexual offender for purposes of registration
957 if the offender provides to the department a certified copy of

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958 the court's written findings or order that indicates that the
959 offender is no longer required to comply with the requirements
960 for registration as a sexual offender.
961 6. For purposes of this paragraph:
962 a. The registration period of a sexual offender sentenced
963 to a term of incarceration or committed to a residential program
964 begins upon the offender's release from incarceration or
965 commitment for the most recent conviction that required the
966 offender to register.
967 b. A sexual offender's registration period is tolled during
968 any period in which the offender is incarcerated, civilly
969 committed, detained pursuant to chapter 985, or committed to a
970 residential program.
971 (b) A sexual offender as defined in sub-subparagraph
972 (1)(a)1.b. must maintain registration with the department for
973 the duration of his or her life until the person provides the
974 department with an order issued by the court that designated the
975 person as a sexual predator, as a sexually violent predator, or
976 by another sexual offender designation in the state or
977 jurisdiction in which the order was issued which states that
978 such designation has been removed or demonstrates to the
979 department that such designation, if not imposed by a court, has
980 been removed by operation of law or court order in the state or
981 jurisdiction in which the designation was made, and provided
982 such person no longer meets the criteria for registration as a
983 sexual offender under the laws of this state.
984 (14)
985 (c) The sheriff's office may determine the appropriate
986 times and days for reporting by the sexual offender, which shall

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987 be consistent with the reporting requirements of this
988 subsection. Reregistration shall include any changes to the
989 following information:
990 1. Name; social security number; age; race; sex; date of
991 birth; height; weight; hair and eye color; address of any
992 permanent residence and address of any current temporary
993 residence, within the state or out of state, including a rural
994 route address and a post office box; if no permanent or
995 temporary address, any transient residence within the state;
996 address, location or description, and dates of any current or
997 known future temporary residence within the state or out of
998 state; ~~any~~ electronic mail addresses or Internet identifiers
999 ~~address and any instant message name~~ required to be provided
1000 pursuant to paragraph (4)(d); home telephone numbers or ~~number~~
1001 ~~and any~~ cellular telephone numbers ~~number~~; date and place of any
1002 employment; the ~~vehicle~~ make, model, color, registration number,
1003 and license tag number of any vehicles owned; fingerprints; palm
1004 prints; and photograph. A post office box may ~~shall~~ not be
1005 provided in lieu of a physical residential address. The sexual
1006 offender must also produce his or her passport, if he or she has
1007 a passport, and, if he or she is an alien, must produce or
1008 provide information about documents establishing his or her
1009 immigration status. The sexual offender must also provide
1010 information about any professional licenses he or she may have.
1011 2. If the sexual offender is enrolled, volunteering,
1012 employed, or carrying on a vocation at an institution of higher
1013 education in this state, the sexual offender shall also provide
1014 to the department the name, address, and county of each
1015 institution, including each campus attended, and the sexual

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1016 offender's enrollment, volunteer, or employment status.
1017 3. If the sexual offender's place of residence is a motor
1018 vehicle, trailer, mobile home, or manufactured home, as defined
1019 in chapter 320, the sexual offender shall also provide the
1020 vehicle identification number; the license tag number; the
1021 registration number; and a description, including color scheme,
1022 of the motor vehicle, trailer, mobile home, or manufactured
1023 home. If the sexual offender's place of residence is a vessel,
1024 live-aboard vessel, or houseboat, as defined in chapter 327, the
1025 sexual offender shall also provide the hull identification
1026 number; the manufacturer's serial number; the name of the
1027 vessel, live-aboard vessel, or houseboat; the registration
1028 number; and a description, including color scheme, of the
1029 vessel, live-aboard vessel or houseboat.
1030 4. Any sexual offender who fails to report in person as
1031 required at the sheriff's office, ~~or~~ who fails to respond to any
1032 address verification correspondence from the department within 3
1033 weeks of the date of the correspondence, ~~or~~ who fails to report
1034 all electronic mail addresses and all Internet identifiers prior
1035 to use ~~or instant message names~~, or who knowingly provides false
1036 registration information by act or omission commits a felony of
1037 the third degree, punishable as provided in s. 775.082, s.
1038 775.083, or s. 775.084.
1039 Section 6. Section 943.04351, Florida Statutes, is amended
1040 to read:
1041 943.04351 Search of registration information regarding
1042 sexual predators and sexual offenders required prior to
1043 appointment or employment.—A state agency or governmental
1044 subdivision, prior to making any decision to appoint or employ a

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1045 person to work, whether for compensation or as a volunteer, at
1046 any park, playground, day care center, or other place where
1047 children regularly congregate, must conduct a search of that
1048 person's name or other identifying information against the
1049 registration information regarding sexual predators and sexual
1050 offenders maintained by the Department of Law Enforcement under
1051 s. 943.043. The agency or governmental subdivision may conduct
1052 the search using the Internet site maintained by the Department
1053 of Law Enforcement. Also, a national search must be conducted
1054 through the Dru Sjodin National Sex Offender Public Website
1055 maintained by the United States Department of Justice. This
1056 section does not apply to those positions or appointments within
1057 a state agency or governmental subdivision for which a state and
1058 national criminal history background check is conducted.
1059 Section 7. Section 943.04354, Florida Statutes, is amended
1060 to read:
1061 943.04354 Removal of the requirement to register as a
1062 sexual offender or sexual predator in special circumstances.—
1063 (1) For purposes of this section, a person shall be
1064 considered for removal of the requirement to register as a
1065 sexual offender or sexual predator only if the person:
1066 (a) Was ~~or will be~~ convicted, regardless of adjudication,
1067 or adjudicated delinquent of a violation of s. 794.011, s.
1068 800.04, s. 827.071, or s. 847.0135(5), or a similar offense in
1069 another jurisdiction, ~~or the person committed a violation of s.~~
1070 ~~794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which~~
1071 ~~adjudication of guilt was or will be withheld,~~ and the person
1072 does not have any other conviction, regardless of adjudication,
1073 or adjudication of delinquency~~, or withhold of adjudication of~~

1074 ~~guilt~~ for a violation of s. 794.011, s. 800.04, s. 827.071, or
1075 s. 847.0135(5), or a similar offense in another jurisdiction;
1076 (b)1. Was convicted, regardless of adjudication, or
1077 adjudicated delinquent of an offense listed in paragraph (a) and
1078 is required to register as a sexual offender or sexual predator
1079 solely on the basis of this conviction or adjudication
1080 ~~violation~~; or ~~and~~
1081 2. Was convicted, regardless of adjudication, or
1082 adjudicated delinquent of an offense in another jurisdiction
1083 that is similar to an offense listed in paragraph (a) and no
1084 longer meets the criteria for registration as a sexual offender
1085 or sexual predator under the laws of the jurisdiction where the
1086 similar offense occurred; and
1087 (c) Is not more than 4 years older than the victim of this
1088 violation who was 13 ~~14~~ years of age or older but less ~~not more~~
1089 than 18 ~~17~~ years of age at the time the person committed this
1090 violation.
1091 (2) If a person meets the criteria in subsection (1) ~~and~~
1092 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
1093 ~~847.0135(5) was committed on or after July 1, 2007~~, the person
1094 may move the criminal court of the circuit in which the offense
1095 occurred or the sentencing court or, for persons convicted or
1096 adjudicated delinquent of a qualifying offense in another
1097 jurisdiction, the criminal circuit court of the circuit in which
1098 the person resides ~~that will sentence or dispose of this~~
1099 ~~violation~~ to remove the requirement that the person register as
1100 a sexual offender or sexual predator. The person must allege in
1101 the motion that he or she meets the criteria in subsection (1)
1102 and that removal of the registration requirement will not

1103 conflict with federal law. Persons convicted or adjudicated
1104 delinquent of an offense in another jurisdiction that is similar
1105 to an offense listed in paragraph (1)(a) must provide the court
1106 written confirmation that he or she is not required to register
1107 in the state where the conviction or adjudication occurred. The
1108 state attorney and the department must be given notice of the
1109 motion at least 21 days before the date of sentencing, ~~or~~
1110 disposition of the ~~this~~ violation, or hearing on the motion and
1111 may present evidence in opposition to the requested relief or
1112 may otherwise demonstrate why the motion should be denied. At
1113 sentencing, ~~or~~ disposition of the ~~this~~ violation, or hearing on
1114 the motion, the court shall rule on this motion and, if the
1115 court determines the person meets the criteria in subsection (1)
1116 and the removal of the registration requirement will not
1117 conflict with federal law, it may grant the motion and order the
1118 removal of the registration requirement. The court shall
1119 instruct the person to provide the department a certified copy
1120 of the order granting relief. If the court denies the motion,
1121 the person is not authorized under this section to file another
1122 motion ~~petition~~ for removal of the registration requirement.
1123 ~~(3)(a) This subsection applies to a person who:~~
1124 ~~1. Is not a person described in subsection (2) because the~~
1125 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
1126 ~~committed on or after July 1, 2007;~~
1127 ~~2. Is subject to registration as a sexual offender or~~
1128 ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~
1129 ~~827.071; and~~
1130 ~~3. Meets the criteria in subsection (1).~~
1131 ~~(b) A person may petition the court in which the sentence~~

1132 ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~
1133 ~~827.071 occurred for removal of the requirement to register as a~~
1134 ~~sexual offender or sexual predator. The person must allege in~~
1135 ~~the petition that he or she meets the criteria in subsection (1)~~
1136 ~~and removal of the registration requirement will not conflict~~
1137 ~~with federal law. The state attorney must be given notice of the~~
1138 ~~petition at least 21 days before the hearing on the petition and~~
1139 ~~may present evidence in opposition to the requested relief or~~
1140 ~~may otherwise demonstrate why the petition should be denied. The~~
1141 ~~court shall rule on the petition and, if the court determines~~
1142 ~~the person meets the criteria in subsection (1) and removal of~~
1143 ~~the registration requirement will not conflict with federal law,~~
1144 ~~it may grant the petition and order the removal of the~~
1145 ~~registration requirement. If the court denies the petition, the~~
1146 ~~person is not authorized under this section to file any further~~
1147 ~~petition for removal of the registration requirement.~~
1148 (3)~~(4)~~ If a person provides to the Department of Law
1149 Enforcement a certified copy of the court's order removing the
1150 requirement that the person register as a sexual offender or
1151 sexual predator for the violation of s. 794.011, s. 800.04, s.
1152 827.071, or s. 847.0135(5), or a similar offense in another
1153 jurisdiction, the registration requirement will not apply to the
1154 person and the department shall remove all information about the
1155 person from the public registry of sexual offenders and sexual
1156 predators maintained by the department. However, the removal of
1157 this information from the public registry does not mean that the
1158 public is denied access to information about the person's
1159 criminal history or record that is otherwise available as a
1160 public record.

1161 Section 8. Subsection (2) and paragraph (a) of subsection
1162 (3) of section 943.0437, Florida Statutes, are amended to read:
1163 943.0437 Commercial social networking websites.—
1164 (2) The department may provide information relating to
1165 electronic mail addresses and Internet identifiers ~~instant~~
1166 ~~message names~~ maintained as part of the sexual offender registry
1167 to commercial social networking websites or third parties
1168 designated by commercial social networking websites. The
1169 commercial social networking website may use this information
1170 for the purpose of comparing registered users and screening
1171 potential users of the commercial social networking website
1172 against the list of electronic mail addresses and Internet
1173 identifiers ~~instant message names~~ provided by the department.
1174 (3) This section shall not be construed to impose any civil
1175 liability on a commercial social networking website for:
1176 (a) Any action voluntarily taken in good faith to remove or
1177 disable any profile of a registered user associated with an
1178 electronic mail address or Internet identifier ~~instant message~~
1179 ~~name~~ contained in the sexual offender registry.
1180 Section 9. Paragraphs (b) and (d) of subsection (1) and
1181 paragraph (a) of subsection (3) of section 944.606, Florida
1182 Statutes, are amended to read:
1183 944.606 Sexual offenders; notification upon release.—
1184 (1) As used in this section:
1185 (b) "Sexual offender" means a person who has been convicted
1186 of committing, or attempting, soliciting, or conspiring to
1187 commit, any of the criminal offenses proscribed in the following
1188 statutes in this state or similar offenses in another
1189 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.

1190 787.02, or s. 787.025(2)(c), where the victim is a minor and the
1191 defendant is not the victim's parent or guardian; s.
1192 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
1193 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
1194 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
1195 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
1196 s. 916.1075(2); or s. 985.701(1); or any similar offense
1197 committed in this state which has been redesignated from a
1198 former statute number to one of those listed in this subsection,
1199 when the department has received verified information regarding
1200 such conviction; an offender's computerized criminal history
1201 record is not, in and of itself, verified information.
1202 (d) "Internet identifier ~~Instant message name~~" has the same
1203 meaning as provided in s. 775.21 ~~means an identifier that allows~~
1204 ~~a person to communicate in real time with another person using~~
1205 ~~the Internet~~.
1206 (3)(a) The department must provide information regarding
1207 any sexual offender who is being released after serving a period
1208 of incarceration for any offense, as follows:
1209 1. The department must provide: the sexual offender's name,
1210 any change in the offender's name by reason of marriage or other
1211 legal process, and any alias, if known; the correctional
1212 facility from which the sexual offender is released; the sexual
1213 offender's social security number, race, sex, date of birth,
1214 height, weight, and hair and eye color; address of any planned
1215 permanent residence or temporary residence, within the state or
1216 out of state, including a rural route address and a post office
1217 box; if no permanent or temporary address, any transient
1218 residence within the state; address, location or description,

1219 and dates of any known future temporary residence within the
1220 state or out of state; date and county of sentence and each
1221 crime for which the offender was sentenced; a copy of the
1222 offender's fingerprints, palm prints, and a digitized photograph
1223 taken within 60 days before release; the date of release of the
1224 sexual offender; all ~~any~~ electronic mail addresses ~~address~~ and
1225 all Internet identifiers ~~any instant message name~~ required to be
1226 provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone
1227 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
1228 about any professional licenses the offender may have, if known;
1229 and passport information, if he or she has a passport, and, if
1230 he or she is an alien, information about documents establishing
1231 his or her immigration status ~~number~~. The department shall
1232 notify the Department of Law Enforcement if the sexual offender
1233 escapes, absconds, or dies. If the sexual offender is in the
1234 custody of a private correctional facility, the facility shall
1235 take the digitized photograph of the sexual offender within 60
1236 days before the sexual offender's release and provide this
1237 photograph to the Department of Corrections and also place it in
1238 the sexual offender's file. If the sexual offender is in the
1239 custody of a local jail, the custodian of the local jail shall
1240 register the offender within 3 business days after intake of the
1241 offender for any reason and upon release, and shall notify the
1242 Department of Law Enforcement of the sexual offender's release
1243 and provide to the Department of Law Enforcement the information
1244 specified in this paragraph and any information specified in
1245 subparagraph 2. that the Department of Law Enforcement requests.
1246 2. The department may provide any other information deemed
1247 necessary, including criminal and corrections records,

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1248 nonprivileged personnel and treatment records, when available.
1249 Section 10. Paragraphs (a) and (f) of subsection (1),
1250 subsection (4), and paragraph (c) of subsection (13) of section
1251 944.607, Florida Statutes, are amended to read:
1252 944.607 Notification to Department of Law Enforcement of
1253 information on sexual offenders.—
1254 (1) As used in this section, the term:
1255 (a) "Sexual offender" means a person who is in the custody
1256 or control of, or under the supervision of, the department or is
1257 in the custody of a private correctional facility:
1258 1. On or after October 1, 1997, as a result of a conviction
1259 for committing, or attempting, soliciting, or conspiring to
1260 commit, any of the criminal offenses proscribed in the following
1261 statutes in this state or similar offenses in another
1262 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
1263 787.02, or s. 787.025(2)(c), where the victim is a minor and the
1264 defendant is not the victim's parent or guardian; s.
1265 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
1266 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
1267 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
1268 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
1269 s. 916.1075(2); or s. 985.701(1); or any similar offense
1270 committed in this state which has been redesignated from a
1271 former statute number to one of those listed in this paragraph;
1272 or
1273 2. Who establishes or maintains a residence in this state
1274 and who has not been designated as a sexual predator by a court
1275 of this state but who has been designated as a sexual predator,
1276 as a sexually violent predator, or by another sexual offender

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1277 designation in another state or jurisdiction and was, as a
1278 result of such designation, subjected to registration or
1279 community or public notification, or both, or would be if the
1280 person were a resident of that state or jurisdiction, without
1281 regard as to whether the person otherwise meets the criteria for
1282 registration as a sexual offender.
1283 (f) "Internet identifier ~~Instant message name~~" has the same
1284 meaning as provided in s. 775.21 ~~means an identifier that allows~~
1285 ~~a person to communicate in real time with another person using~~
1286 ~~the Internet~~.
1287 (4) A sexual offender, as described in this section, who is
1288 under the supervision of the Department of Corrections but is
1289 not incarcerated must register with the Department of
1290 Corrections within 3 business days after sentencing for a
1291 registrable offense and otherwise provide information as
1292 required by this subsection.
1293 (a) The sexual offender shall provide his or her name; date
1294 of birth; social security number; race; sex; height; weight;
1295 hair and eye color; tattoos or other identifying marks; all ~~any~~
1296 electronic mail addresses ~~address~~ and all Internet identifiers
1297 ~~any instant message name~~ required to be provided pursuant to s.
1298 943.0435(4)(d); all home telephone numbers and cellular
1299 telephone numbers; the make, model, color, registration number,
1300 and license tag number of all vehicles owned; permanent or legal
1301 residence and address of temporary residence within the state or
1302 out of state while the sexual offender is under supervision in
1303 this state, including any rural route address or post office
1304 box; if no permanent or temporary address, any transient
1305 residence within the state; and address, location or

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1306 description, and dates of any current or known future temporary
1307 residence within the state or out of state. The sexual offender
1308 must also produce his or her passport, if he or she has a
1309 passport, and, if he or she is an alien, must produce or provide
1310 information about documents establishing his or her immigration
1311 status. The sexual offender must also provide information about
1312 any professional licenses he or she may have. The Department of
1313 Corrections shall verify the address of each sexual offender in
1314 the manner described in ss. 775.21 and 943.0435. The department
1315 shall report to the Department of Law Enforcement any failure by
1316 a sexual predator or sexual offender to comply with registration
1317 requirements.
1318 (b) If the sexual offender is enrolled, employed,
1319 volunteering, or carrying on a vocation at an institution of
1320 higher education in this state, the sexual offender shall
1321 provide the name, address, and county of each institution,
1322 including each campus attended, and the sexual offender's
1323 enrollment, volunteer, or employment status. Each change in
1324 enrollment, volunteer, or employment status shall be reported to
1325 the department within 48 hours after the change in status. The
1326 Department of Corrections shall promptly notify each institution
1327 of the sexual offender's presence and any change in the sexual
1328 offender's enrollment, volunteer, or employment status.
1329 (13)
1330 (c) The sheriff's office may determine the appropriate
1331 times and days for reporting by the sexual offender, which shall
1332 be consistent with the reporting requirements of this
1333 subsection. Reregistration shall include any changes to the
1334 following information:

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1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; ~~any~~ electronic mail addresses or Internet identifiers ~~address and any instant message name~~ required to be provided pursuant to s. 943.0435(4)(d); home telephone numbers or cellular telephone numbers; date and place of any employment; the ~~vehicle~~ make, model, color, registration number, and license tag number of any vehicles owned; fingerprints; palm prints; and photograph. A post office box shall not be provided in lieu of a physical residential address. The sexual offender must also produce his or her passport, if he or she has a passport, and, if he or she is an alien, must produce or provide information about documents establishing his or her immigration status. The sexual offender must also provide information about any professional licenses he or she may have.

2. If the sexual offender is enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined

in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, ~~or~~ who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, ~~or~~ who fails to report all electronic mail addresses or Internet identifiers prior to use ~~or instant message names~~, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 11. Subsection (11) of section 947.005, Florida Statutes, is amended to read:

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

(11) "Risk assessment" means an assessment completed by a ~~an independent~~ qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.

Section 12. Section 948.31, Florida Statutes, is amended to read:

1393 948.31 Evaluation and treatment of sexual predators and
1394 offenders on probation or community control.—The court may ~~shall~~
1395 require ~~an evaluation by a qualified practitioner to determine~~
1396 ~~the need of a probationer or community controllee for treatment.~~
1397 ~~If the court determines that a need therefor is established by~~
1398 ~~the evaluation process, the court shall require sexual offender~~
1399 ~~treatment as a term or condition of probation or community~~
1400 ~~control for~~ any probationer or community controllee ~~person~~ who
1401 is required to register as a sexual predator under s. 775.21 or
1402 sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to
1403 undergo an evaluation, at the probationer or community
1404 controllee's expense, by a qualified practitioner to determine
1405 whether such person needs sexual offender treatment. If the
1406 qualified practitioner determines that sexual offender treatment
1407 is needed and recommends treatment, the probationer or community
1408 controllee must successfully complete and pay for the treatment.
1409 Such treatment must ~~shall be required to~~ be obtained from a
1410 qualified practitioner as defined in s. 948.001. Treatment may
1411 not be administered by a qualified practitioner who has been
1412 convicted or adjudicated delinquent of committing, or
1413 attempting, soliciting, or conspiring to commit, any offense
1414 that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~
1415 ~~impose a restriction against contact with minors if sexual~~
1416 ~~offender treatment is recommended. The evaluation and~~
1417 ~~recommendations for treatment of the probationer or community~~
1418 ~~controllee shall be provided to the court for review.~~
1419 Section 13. Paragraph (a) of subsection (3) of section
1420 985.481, Florida Statutes, is amended to read:
1421 985.481 Sexual offenders adjudicated delinquent;

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1422 notification upon release.—
1423 (3)(a) The department must provide information regarding
1424 any sexual offender who is being released after serving a period
1425 of residential commitment under the department for any offense,
1426 as follows:
1427 1. The department must provide the sexual offender's name,
1428 any change in the offender's name by reason of marriage or other
1429 legal process, and any alias, if known; the correctional
1430 facility from which the sexual offender is released; the sexual
1431 offender's social security number, race, sex, date of birth,
1432 height, weight, and hair and eye color; the make, model, color,
1433 registration number, and license tag number of all vehicles
1434 owned, if known; address of any planned permanent residence or
1435 temporary residence, within the state or out of state, including
1436 a rural route address and a post office box; if no permanent or
1437 temporary address, any transient residence within the state;
1438 address, location or description, and dates of any known future
1439 temporary residence within the state or out of state; date and
1440 county of disposition and each crime for which there was a
1441 disposition; a copy of the offender's fingerprints and a
1442 digitized photograph taken within 60 days before release; the
1443 date of release of the sexual offender; all ~~and~~ home telephone
1444 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
1445 about any professional licenses the offender may have, if known;
1446 and passport information, if he or she has a passport, and, if
1447 he or she is an alien, information about documents establishing
1448 his or her immigration status ~~number~~. The department shall
1449 notify the Department of Law Enforcement if the sexual offender
1450 escapes, absconds, or dies. If the sexual offender is in the

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1451 custody of a private correctional facility, the facility shall
1452 take the digitized photograph of the sexual offender within 60
1453 days before the sexual offender's release and also place it in
1454 the sexual offender's file. If the sexual offender is in the
1455 custody of a local jail, the custodian of the local jail shall
1456 register the offender within 3 business days after intake of the
1457 offender for any reason and upon release, and shall notify the
1458 Department of Law Enforcement of the sexual offender's release
1459 and provide to the Department of Law Enforcement the information
1460 specified in this subparagraph and any information specified in
1461 subparagraph 2. which the Department of Law Enforcement
1462 requests.
1463 2. The department may provide any other information
1464 considered necessary, including criminal and delinquency
1465 records, when available.
1466 Section 14. Subsection (4) and paragraph (b) of subsection
1467 (13) of section 985.4815, Florida Statutes, are amended to read:
1468 985.4815 Notification to Department of Law Enforcement of
1469 information on juvenile sexual offenders.—
1470 (4) A sexual offender, as described in this section, who is
1471 under the supervision of the department but who is not committed
1472 must register with the department within 3 business days after
1473 adjudication and disposition for a registrable offense and
1474 otherwise provide information as required by this subsection.
1475 (a) The sexual offender shall provide his or her name; date
1476 of birth; social security number; race; sex; height; weight;
1477 hair and eye color; tattoos or other identifying marks; the
1478 make, model, color, registration number, and license tag number
1479 of all vehicles owned; permanent or legal residence and address

1480 of temporary residence within the state or out of state while
1481 the sexual offender is in the care or custody or under the
1482 jurisdiction or supervision of the department in this state,
1483 including any rural route address or post office box; if no
1484 permanent or temporary address, any transient residence;
1485 address, location or description, and dates of any current or
1486 known future temporary residence within the state or out of
1487 state; and the name and address of each school attended. The
1488 sexual offender must also produce his or her passport, if he or
1489 she has a passport, and, if he or she is an alien, must produce
1490 or provide information about documents establishing his or her
1491 immigration status. The offender must also provide information
1492 about any professional licenses he or she may have. The
1493 department shall verify the address of each sexual offender and
1494 shall report to the Department of Law Enforcement any failure by
1495 a sexual offender to comply with registration requirements.
1496 (b) If the sexual offender is enrolled, employed,
1497 volunteering, or carrying on a vocation at an institution of
1498 higher education in this state, the sexual offender shall
1499 provide the name, address, and county of each institution,
1500 including each campus attended, and the sexual offender's
1501 enrollment, volunteer, or employment status. Each change in
1502 enrollment, volunteer, or employment status shall be reported to
1503 the department within 48 hours after the change in status. The
1504 department shall promptly notify each institution of the sexual
1505 offender's presence and any change in the sexual offender's
1506 enrollment, volunteer, or employment status.
1507 (13)
1508 (b) The sheriff's office may determine the appropriate

1509 times and days for reporting by the sexual offender, which shall
1510 be consistent with the reporting requirements of this
1511 subsection. Reregistration shall include any changes to the
1512 following information:
1513 1. Name; social security number; age; race; sex; date of
1514 birth; height; weight; hair and eye color; fingerprints; palm
1515 prints; address of any permanent residence and address of any
1516 current temporary residence, within the state or out of state,
1517 including a rural route address and a post office box; if no
1518 permanent or temporary address, any transient residence;
1519 address, location or description, and dates of any current or
1520 known future temporary residence within the state or out of
1521 state; passport information, if he or she has a passport, and,
1522 if he or she is an alien, information about documents
1523 establishing his or her immigration status; name and address of
1524 each school attended; date and place of any employment; the
1525 ~~vehicle~~ make, model, color, registration number, and license tag
1526 number of all vehicles owned; ~~fingerprints;~~ and photograph. A
1527 post office box shall not be provided in lieu of a physical
1528 residential address. The offender must also provide information
1529 about any professional licenses he or she may have.
1530 2. If the sexual offender is enrolled, employed,
1531 volunteering, or carrying on a vocation at an institution of
1532 higher education in this state, the sexual offender shall also
1533 provide to the department the name, address, and county of each
1534 institution, including each campus attended, and the sexual
1535 offender's enrollment, volunteer, or employment status.
1536 3. If the sexual offender's place of residence is a motor
1537 vehicle, trailer, mobile home, or manufactured home, as defined

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1538 in chapter 320, the sexual offender shall also provide the
1539 vehicle identification number; the license tag number; the
1540 registration number; and a description, including color scheme,
1541 of the motor vehicle, trailer, mobile home, or manufactured
1542 home. If the sexual offender's place of residence is a vessel,
1543 live-aboard vessel, or houseboat, as defined in chapter 327, the
1544 sexual offender shall also provide the hull identification
1545 number; the manufacturer's serial number; the name of the
1546 vessel, live-aboard vessel, or houseboat; the registration
1547 number; and a description, including color scheme, of the
1548 vessel, live-aboard vessel, or houseboat.
1549 4. Any sexual offender who fails to report in person as
1550 required at the sheriff's office, ~~or~~ who fails to respond to any
1551 address verification correspondence from the department within 3
1552 weeks after the date of the correspondence, or who knowingly
1553 provides false registration information by act or omission
1554 commits a felony of the third degree, punishable as provided in
1555 ss. 775.082, 775.083, and 775.084.
1556 Section 15. Paragraphs (g) and (i) of subsection (3) of
1557 section 921.0022, Florida Statutes, are amended to read:
1558 921.0022 Criminal Punishment Code; offense severity ranking
1559 chart.—
1560 (3) OFFENSE SEVERITY RANKING CHART
1561 (g) LEVEL 7
1562

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to

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		stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.

456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.

	468.366	3rd	Delivering respiratory care services without a license.
1583			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1584			
	483.901(9)	3rd	Practicing medical physics without a license.
1585			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1586			
	484.053	3rd	Dispensing hearing aids without a license.
1587			
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
1588			
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
1589			
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.

1590			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
1591			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver ~~driver's~~ license or identification card; other registration violations.
1592			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1593			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1594			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1595			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1596			
	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

1597
782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

1598
784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.

1599
784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.

1600
784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.

1601
784.048(4) 3rd Aggravated stalking; violation of injunction or court order.

1602
784.048(7) 3rd Aggravated stalking; violation of court order.

1603
784.07(2)(d) 1st Aggravated battery on law enforcement officer.

1604
784.074(1)(a) 1st Aggravated battery on sexually violent predators facility staff.

1605
784.08(2)(a) 1st Aggravated battery on a person 65 years of age or older.

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1606
784.081(1) 1st Aggravated battery on specified official or employee.

1607
784.082(1) 1st Aggravated battery by detained person on visitor or other detainee.

1608
784.083(1) 1st Aggravated battery on code inspector.

1609
787.06(3)(a) 1st Human trafficking using coercion for labor and services.

1610
787.06(3)(e) 1st Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

1611
790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

1612
790.16(1) 1st Discharge of a machine gun under specified circumstances.

1613
790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

1614
790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing

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		or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 18 ~~16~~ years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than

		16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

1630
812.014(2)(b)4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

1631
812.0145(2)(a) 1st Theft from person 65 years of age or older; $50,000 or more.

1632
812.019(2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

1633
812.131(2)(a) 2nd Robbery by sudden snatching.

1634
812.133(2)(b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

1635
817.234(8)(a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

1636
817.234(9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

1637
817.234(11)(c) 1st Insurance fraud; property value $100,000 or more.

1638
817.2341 (2)(b) & 1st Making false entries of material fact or false statements regarding property

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

1639
825.102(3)(b) 2nd Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

1640
825.103(2)(b) 2nd Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.

1641
827.03(2)(b) 2nd Neglect of a child causing great bodily harm, disability, or disfigurement.

1642
827.04(3) 3rd Impregnation of a child under 16 years of age by person 21 years of age or older.

1643
837.05(2) 3rd Giving false information about alleged capital felony to a law enforcement officer.

1644
838.015 2nd Bribery.

1645
838.016 2nd Unlawful compensation or reward for official behavior.

1646

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838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a),

		(2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

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

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

the taking of a digitized photograph.

1678

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

1679

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

1680

1681 (i) LEVEL 9

1682

Florida Statute	Felony Degree	Description

1683

316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.

1684

327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.

1685

409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.

1686

499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.

1687

560.123(8)(b)3.	1st	Failure to report currency or payment

instruments totaling or exceeding $100,000 by money transmitter.

1688

560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.

1689

655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.

1690

775.0844	1st	Aggravated white collar crime.

1691

782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

1692

782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

1693

782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

1694

782.07(2)	1st	Aggravated manslaughter of an elderly

		person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
787.06(4)	1st	Selling or buying of minors into human trafficking.

790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
796.035	1st	Selling or buying of minors into prostitution.

800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink,

		medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.

893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 16. This act shall take effect October 1, 2013.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Sex Offenses

Bill Number: SB 1114 *(if applicable)*

Name: Ron Book

Amendment Barcode: *(if applicable)*

Job Title:

Address: 104 W. Jefferson
Street

Tlh 32301
City *State* *Zip*

Phone:

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: Lauren's Kids

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Sexual Offenders

Bill Number: 1114 *(if applicable)*

Name: Robert Steinkraus

Amendment Barcode: _____ *(if applicable)*

Job Title: Police Officer

Address: 121 SW PSL Blvd
Street

Port St. Lucie FL 34984
City *State* *Zip*

Phone: 772-871-5001

E-mail: _____

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

Representing: _____

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-13
Meeting Date

Topic: Sex Offenses

Bill Number: 1114 *(if applicable)*

Name: Joann Faiella

Amendment Barcode: *(if applicable)*

Job Title: Mayor, City of Port St Lucie

Address: 121 SW Port St Lucie Blvd
Street

Port St Lucie FL 34986
City *State* *Zip*

Phone: 772-871-5159

E-mail: Mayor@cityofpsl.com

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

Representing: City of Port St Lucie

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Hearsay Exception Change

Bill Number: 1114 (if applicable)

Name: Robert Trammell

Amendment Barcode: (if applicable)

Job Title: Gen Counsel Public Def

Address: PO Box 1799
Street

Tallahassee FL 32302
City State Zip

Phone: 850 510-2187

E-mail:

Speaking: ☐ For ☐ Against ☑ Information

Representing: FL Public Defenders

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/[illegible]/12
Meeting Date

Topic: Sex Offense

Bill Number: 1114 *(if applicable)*

Name: Jennifer Dick DRFTT

Amendment Barcode: *(if applicable)*

Job Title: Exec Direct

Address: 1820 [illegible] Park
Street

[illegible] FL 32[illegible]
City *State* *Zip*

Phone: 297-[illegible]

E-mail: jdick@[illegible]

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

Representing: Florida Council Against Sexual Violence

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____

Bill Number 1114 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1268

INTRODUCER: Criminal Justice Committee and Senator Detert

SUBJECT: Service of Process

DATE: April 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.	Shankle	Cibula	JU	**Pre-meeting**
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 1268 amends the service of process laws as follows:

- Provides that a fee of $40 will be charged by the sheriff for each summons served.
- Provides that execution must be accompanied by an affidavit containing a statement directing distribution of proceeds of public sale.
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale.
- Requires that the party requesting service of process or the process server file the return-of-service form.
- Adds a first degree misdemeanor penalty for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.
- Provides that a sole proprietorship may be served by serving the person in charge of the business on the first attempt even if the owner is temporarily absent from the office.
- Permits service of process on a corporation at any address where the registered agent, president, vice president, or other head of the corporation is located.

This bill substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 48.081, and 56.27.

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the defendant is located.[1] The sheriff may appoint special process servers who meet specified statutory minimum requirements.[2] The chief judge of the circuit court may establish an approved list of certified process servers.[3] Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.[4] Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.[5]

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas are made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.[6] Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[7]

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved. The party requesting service of process has the responsibility to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.[8]

Service on Employees and Businesses

Section 48.031, F.S., provides that employers "shall permit" service of process on employees in a private area designated by the employer. Substitute service may only be made on a person in

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[1] Section 48.021, F.S.
[2] *Id.*
[3] Section 48.27, F.S.
[4] *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).
[5] Section 48.031, F.S.; *Vidal* at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).
[6] Sections 48.031(1), (3), F.S.
[7] Sections 48.29 and 48.031(5), F.S.
[8] *See* s. 30.321, F.S.

charge of a business when the owner is absent after two or more attempts at service. The person making service of process files a return with the court to show service has been made.

Service on Corporations

Section 48.081, F.S., provides that service of process on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon another officer, and in their absence, a director. If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service of process may be made in accordance with s. 48.031, F.S.

Sheriff's Fees for Service

Section 30.231, F.S., provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee.

Sheriff Sales in Execution of Judgments

Sheriffs may levy upon assets in satisfaction of a judgment and sell those assets for payment of the judgment when they are provided a writ of execution by the court.[9]

III. Effect of Proposed Changes:

Service on Employees and Businesses

The bill creates a first degree misdemeanor for employers and their agents, or other employees who fail to permit service of process on employees in a private area designated by the employer.[10] The bill provides that a sole proprietorship may be served by serving the person on the first attempt even if the owner is temporarily absent from the office. The bill adds that the person requesting service may also file the return-of-service form.

Service on Corporations

The bill deletes "provided" from s. 48.081, F.S., which results in permitting a process server to serve process at any address where the registered agent, president, vice president, or other head of the corporation is located.

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., allowing the sheriff to charge $40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.[11]

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[9] *See* s. 30.30, F.S.

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

[11] For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the same person in two capacities. Therefore, that person would be served twice with the complaint.

Sheriff Sales in Execution of Judgments

The bill amends s. 56.27, F.S., by providing that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale. Additionally, it provides that the sheriff is not liable for damages in the event of a wrongful levy or payout.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an impact on local jails to the extent that the bill's misdemeanor offense results in persons being sentenced to jail. The bill also allows for a sheriff's office to collect multiple fees for multiple services of process on the same person in the same cause of action, resulting in a minor positive fiscal impact for that office.

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 April 1, 2013:

- Deletes the provisions relating to service of process on a limited liability company, involuntary examinations, injunctions, and warrantless arrests.
- Permits a process server to serve process at any address where the registered agent, president, vice president, or other head of a corporation is located.

B. Amendments:

None.

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

132438

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 41 - 59
and insert:
48.031 Service of process generally; service of witness subpoenas.—
(1)
(b) Employers, when contacted by an individual authorized to make service of process, must allow ~~shall permit~~ the authorized individual to make service on employees in a private area designated by the employer. An employer who fails to comply with this paragraph is guilty of a non-criminal violation, punishable by a fine of up to $1,000.

132438

14 (2)
15 (b) Substitute service may be made on an individual doing
16 business as a sole proprietorship at his or her place of
17 business, during regular business hours, by serving the person
18 in charge of the business at the time of service if two ~~or more~~
19 attempts to serve the owner have been made at the place of
20 business.
21
22 ========== T I T L E A M E N D M E N T ==========
23 And the title is amended as follows:
24 Delete lines 5 - 11
25 and insert:
26 requiring an employer to allow an authorized
27 individual to make service on an employee in a private
28 area designated by the employer; providing a civil
29 fine for employers failing to comply with the process;
30 authorizing substitute service during the second
31 attempt of service at a business that is a sole

946316

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 77 - 89
and insert:
Section 4. Subsection (5) of section 56.27, Florida Statutes, is amended, and subsection (6) is added to that section, to read:
56.27 Executions; payment of money collected.—
(5) A sheriff may rely upon the affidavit submitted as required by this section, and a sheriff paying money received under an execution in accordance with the information contained in the affidavit under subsection (4) is not liable to anyone for damages arising from a wrongful levy or wrongful

946316

14 distribution of funds.
15 (6) Nothing in this section shall preclude a sheriff who is
16 uncertain as to whom to disburse the proceeds of the levy sale
17 from applying for instructions from the court that entered the
18 judgment that is the basis of the judgment lien or the
19 appropriate court where the property subject to the levy was
20 located at the time of the levy, provided the sheriff serves by
21 process permitted under chapter 48, Florida Statutes, or
22 certified mail, return receipt requested, a copy of any such
23 application and notice of hearing on the levying creditor,
24 judgment debtor, and any other parties identified in the
25 affidavit.
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 lines 16 - 21
30 and insert:
31 relating to service on a corporation; amending s.
32 56.27, F.S.; providing that a sheriff may rely on the
33 affidavit submitted by the levying creditor; providing
34 that the sheriff may apply for instructions from the
35 court regarding the distribution of proceeds from a
36 levy sale;

By the Committee on Criminal Justice; and Senator Detert

591-03352-13 20131268c1

A bill to be entitled

An act relating to service of process; amending s. 30.231, F.S.; requiring sheriffs to charge a uniform fee for service of process; amending s. 48.031, F.S.; requiring an employer, employee, or representative or agent of an employer to permit an authorized individual to make service on an employee in a private area designated by the employer; providing criminal penalties for persons failing to comply with the process; authorizing substitute service during the first attempt of service at a business that is a sole proprietorship under certain circumstances; requiring the person requesting service or the person authorized to serve the process to file the return-of-service form; amending s. 48.081, F.S.; revising provisions relating to the address used for service on a registered agent; amending s. 56.27, F.S.; requiring the levying creditor to deliver to the sheriff an affidavit setting forth how to pay out moneys received under an execution sale; providing that the sheriff is not liable for damages under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 30.231, Florida Statutes, is amended to read:

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

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

591-03352-13 20131268c1

(1) The sheriffs of all counties of the state in civil cases shall charge fixed, nonrefundable fees for ~~docketing and~~ service of process, according to the following schedule:

(a) All summons or writs except executions: $40 for each summons or writ to be served~~, except when more than one summons or writ is issued at the same time out of the same cause of action to be served upon one person or defendant at the same time, in which case the sheriff shall be entitled to one fee~~.

Section 2. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (5) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(1)

(b) An employer ~~Employers~~, employee, or a representative or agent of the employer, when contacted by an individual authorized to make service of process, must ~~shall~~ permit the authorized individual to make service on employees in a private area designated by the employer. If the employer, employee, or a representative or agent of the employer fails to comply with this paragraph, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business during the first attempt of service even if the owner is temporarily absent from his or her office ~~at the time of service if two or more attempts to serve the~~

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

59 ~~owner have been made at the place of business~~.
60 (5) A person serving process shall place, on the first page
61 of at least one of the processes served, the date and time of
62 service and his or her identification number and initials for
63 all service of process. The person serving process shall list on
64 the return-of-service form all initial pleadings delivered and
65 served along with the process. The person requesting service or
66 the person authorized to serve ~~issuing~~ the process shall file
67 the return-of-service form with the court.
68 Section 3. Paragraph (b) of subsection (3) of section
69 48.081, Florida Statutes, is amended to read:
70 48.081 Service on corporation.—
71 (3)
72 (b) If the address ~~provided~~ for the registered agent,
73 officer, director, or principal place of business is a residence
74 or private mailbox, service on the corporation may be made by
75 serving the registered agent, officer, or director in accordance
76 with s. 48.031.
77 Section 4. Paragraph (d) is added to subsection (4) of
78 section 56.27, Florida Statutes, to read:
79 56.27 Executions; payment of money collected.—
80 (4) Before the date of the first publication or posting of
81 the notice of sale provided for under s. 56.21, at the time of
82 the levy request to the sheriff, the levying creditor shall
83 deliver to the sheriff an affidavit setting forth all of the
84 following as to the judgment debtor:
85 (d) A statement directing the sheriff how to pay out all
86 moneys received under an execution sale pursuant to subsections
87 (1) and (2). The sheriff paying pursuant to the affidavit is not

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

88 liable to anyone for damages arising from a wrongful levy and
89 pay out.
90 Section 5. 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 Judiciary

BILL: CS/CS/SB 1482

INTRODUCER: Judiciary Committee; Health Policy Committee; and Senator Hays

SUBJECT: Skilled Nursing Facilities

DATE: April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.			AP	
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/CS/SB 1482 provides for a certificate of need (CON) exemption for up to 240 additional skilled-nursing-facility beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- Is zoned for mixed use;
- Is deed restricted for older persons; and
- Has a population of at least 8,000 residents.

This bill creates section 408.0362 of the Florida Statutes.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the Agency for Health Care Administration (AHCA or Agency) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.[1] Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.[2] The nursing home projects addressed in s. 408.036, F.S., related to CONs are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities.[3]

Projects Subject to Expedited Review

- Replacing a nursing home within the same district; and
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

Exemptions from CON Review

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a skilled nursing facility that is part of a retirement community which had been in operation on or before July 1, 1949, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;[4]
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;

[1] Section 408.032(3), F.S.
[2] Section 408.036, F.S.
[3] Section 408.032(16), F.S., defines a skilled nursing facility as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
[4] This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and
- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

The CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

Determination of Need

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within the Agency's 11 service districts[5] based on a formula[6] and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.[7] The legislation reenacted the moratorium in 2006,[8] and then again in 2011.[9] The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide.

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;[10]
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
  - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or

[5] The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.
[6] Rule 59C-1.036, F.A.C.
[7] Chapter 2001-45, Laws of Florida, s. 52.
[8] Chapter 2006-161, Laws of Florida.
[9] Chapter 2011-135, Laws of Florida.
[10] The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

  - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
  - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
  - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
  - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.[11]

County Populations

According to the AHCA population estimates from 2012,[12] 10 counties[13] have populations of 25 percent or more persons aged 65 or over. Of those counties, five currently also have ratios of 16.1 or less nursing home beds per 1,000 persons aged 65 or older.[14] Within those five counties, only the Villages retirement community, located in Sumter County, and On Top of the World retirement community, located in Marion County, currently meet the remaining criteria listed in the bill for an exemption from the CON process.

Housing for Older Persons

Section 760.29(4), F.S., defines housing for older persons as housing that:
- Is provided for under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- Is intended for, and solely occupied by, persons age 62 or older; or
- Is intended for, and solely occupied by, persons age 55 or older if:
  - At least 80 percent of the occupied units are occupied by at least one person age 55 or older;
  - The housing facility or community meets policy requirements to demonstrate the intent to restrict the facility to older persons and the facility or community's governing documents meet certain criteria; and
  - The housing facility or community complies with federal law.

Additionally, s. 760.29(4)(c), F.S., states that housing will not fail to be considered housing for older persons if some current residents[15] do not meet the age requirements or if some housing units are vacant as long as any new residents meet the age requirement.

[11] The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.
[12] On file with Senate Health Policy staff.
[13] Sumter, Charlotte, Citrus, Highlands, Sarasota, Martin, Indian River, Collier, Marion, and Hernando counties.
[14] Sumter, Indian River, Collier, Marion, and Hernando counties.
[15] Residents who have lived in the housing on or after Oct. 1, 1989.

III. Effect of Proposed Changes:

The bill creates s. 408.0362, F.S., to provide for a CON exemption for additional-skilled-nursing-facility beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- Is zoned for mixed use;
- Is deed restricted for housing for older persons;[16] and
- Has a population of at least 8,000 residents.

The bill caps the maximum number of beds which may be added within the community to the lesser of 240 or the maximum number of beds required to reach a ratio of 16.1 beds per 1,000 residents aged 65 or older in the county where the community is located. To determine the percentage of older persons in a county, and the ratio of 16.1 beds per person aged 65 or older, the agency must use county population estimates for 3 years in the future.

The bill also requires that, in order to receive the CON exemption, a retirement community must make a written request for the exemption which includes evidence of population, mixed-use status, and data on the gross and net numbers of skilled-nursing-facility beds in the county. Also, any skilled nursing facility built pursuant to the exemption, and all new skilled-nursing-facility beds, must be certified under both Medicare and Medicaid programs.

The bill provides for 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.

[16] As defined in s. 760.29, F.S.

B. Private Sector Impact:

The bill may have a positive fiscal impact for persons or entities that will be able to open a skilled nursing facility or add skilled-nursing-facility beds where they are now currently restricted by the CON process.

The bill may have a negative fiscal impact on skilled nursing facilities that are currently serving the area where new nursing facilities are opened if demand decreases due to the increase in the number of skilled nursing beds. In addition, if the skilled-nursing-facility beds are included in the calculations for future skilled-nursing-facility-bed need, it could impact the ability of other providers to compete for beds in the district.

Both the negative and positive impacts of this bill will be restrained by the 240 bed cap provided for in the bill.

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/CS by Judiciary on April 15, 2013
The committee substitute clarifies that the bill does not authorize more than one additional nursing home in a single retirement community.

CS by Health Policy on April 2, 2013:
The committee substitute substantially amends SB 1482 to:

- Conform the bill to the language in CS/HB 1159;
- Exempt the construction of a skilled nursing facility located in a retirement community from the CON process if the retirement community:
  - Is located in a county that has 25 percent or more of its population aged 65 or older;
  - Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
  - Is zoned for mixed use;
  - Is deed restricted for older persons; and

  - Has a population of at least 8,000 residents.
- Caps the number of additional beds at the lesser of either the maximum number of beds to reach a ratio of 16.1 beds per 1,000 persons aged 65 or older in the county where the community is located or 240 beds per community;
- Details how retirement communities can apply for the exemption, what beds qualify, and how the 16.1 beds per 1,000 persons aged 65 or older ratio must be determined.

B. Amendments:

None.

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

398670

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

1 **Senate Amendment**
2
3 Between lines 70 and 71
4 insert:
5 (6) This section does not authorize more than one skilled
6 nursing facility within a single retirement community.

By the Committee on Health Policy; and Senator Hays

588-03421-13 20131482c1

A bill to be entitled

An act relating to skilled nursing facilities; creating s. 408.0362, F.S.; providing an exemption from certificate-of-need requirements for construction of a licensed skilled nursing facility in a retirement community; providing an effective date.

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

Section 1. Section 408.0362, Florida Statutes, is created to read:

408.0362 Skilled nursing facility in retirement community; exempt from review.—

(1) Upon request by a deed-restricted retirement community, the construction of a skilled nursing facility licensed under part II of chapter 400 for the addition of community skilled nursing home beds located within the retirement community is exempt from s. 408.036 if:

(a) The retirement community is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;

(b) The retirement community is located in a county that has a rate of no more than 16.1 beds per thousand persons aged 65 years or older. The rate shall be determined by using the current number of licensed and approved community skilled nursing home beds in the agency's most recent published inventory;

(c) The retirement community is zoned for a mix of residential and nonresidential uses;

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

588-03421-13 20131482c1

(d) The residential use area of the retirement community is deed-restricted as housing for older persons as defined in s. 760.29; and

(e) The retirement community has a population of at least 8,000 residents, based on a population data source accepted by the agency.

(2) The number of community skilled nursing home beds allowed in a retirement community under the exemption shall be calculated at a rate of 16.1 beds per thousand persons aged 65 years and older in the county in which the retirement community is located. To determine whether or not the county in which the retirement community is located is at or above the rate of 16.1 beds per 1,000 elderly, the agency must use a prospective county population estimate 3 years in the future to demonstrate:

(a) That the number of persons aged 65 years and older will comprise at least 25 percent of the county's population at the end of the 3 years. From this result, the current number of licensed community skilled nursing home beds in the agency's published inventory shall be subtracted to determine the net number of additional community skilled nursing home beds that the agency shall grant for development under the exemption; and

(b) That the rate of community skilled nursing home beds in the county will either remain at 16.1 beds per thousand persons aged 65 years or older or will be less after 3 years, prior to approval of additional community skilled nursing home beds under the exemption.

(3) A retirement community that qualifies for the exemption provided in this section shall provide a written request for an exemption in accordance with the applicable rules. In the

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

59 request, the retirement community shall provide evidence of
60 population, mixed-use status, and the results of the calculation
61 showing the gross and net numbers of community skilled nursing
62 home beds in the county.
63 (4) The number of community skilled nursing home beds that
64 are added pursuant to the exemption shall at no time exceed 240
65 in any qualifying retirement community.
66 (5) Any skilled nursing home facility built pursuant to the
67 exemption shall be certified under both the Medicare and
68 Medicaid programs. All beds in the skilled nursing home facility
69 shall be certified under both the Medicare and Medicaid
70 programs.
71 Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic

Bill Number SB 1482 (if applicable)

Name Bob Asztalos

Amendment Barcode (if applicable)

Job Title Chief Lobbyist

Address 307 W Park Ave
Street

Tallahassee FL 32301
City State Zip

Phone 850-224-3907

E-mail basztalos@fhca.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic _____

Bill Number 1482 *(if applicable)*

Name Steve Bogomilsky

Amendment Barcode _____ *(if applicable)*

Job Title President

Address 3701 Pine Tree Dr
Street

Miami Beach FL 33140
City *State* *Zip*

Phone 954-401-7901

E-mail Steve@bogomilsky.com

Speaking: ☐ For ☒ Against ☐ Information

Representing NORTH BAY Health Associates

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic _____

Bill Number 1482 *(if applicable)*

Name Deffie Franklin

Amendment Barcode _____ *(if applicable)*

Job Title DIRECTOR OF OPERATIONS

Address 2806 FRITZKE ROAD
Street

DOVER FL 33527
City *State* *Zip*

Phone 813 679 7533

E-mail dkfranklin@rfmsinc.com

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

Representing FLORIDA LIVING OPTIONS / FLORIDA HEALTH CARE ASSOCIATION

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Nursing Homes

Bill Number: SB 1482 *(if applicable)*

Name: Carol Berkowitz

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1812 Riggins Rd
Street

Tallahassee Fl 32308
City *State* *Zip*

Phone: 850.671.3700

E-mail: cberkowitz@LeadingAgeFlorida.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: Leading Age Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic: Skilled Nursing Facilities

Bill Number: SB 1482 *(if applicable)*

Name: Rheb Harbison

Amendment Barcode: *(if applicable)*

Job Title: Senior Government Consultant, Carlton Fields, PA

Address: 215 S. Monroe Street, Suite 500
Street

Tallahassee — *City*
FL — *State*
32301 — *Zip*

Phone: 850-224-1585

E-mail: rharbison@carltonfields.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: The Villages

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic: Skilled Nursing Facilities (legal side of the bill)

Bill Number: SB 1482 *(if applicable)*

Name: Nancy Linnan

Amendment Barcode: *(if applicable)*

Job Title: Attorney, Carlton Fields PA

Address: 215 S. Monroe Street, Suite 500
Street

Tallahassee — *City*
FL — *State*
32301 — *Zip*

Phone: 850-224-1585

E-mail: nlinnan@carltonfields.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: The Villages

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: CON exemption

Bill Number: 1482 (if applicable)

Name: Reggie Bouthillier

Amendment Barcode: (if applicable)

Job Title: Shareholder/ Greenberg Traurig

Address: Street

Tall.
City State Zip

Phone:

E-mail: reggie.bouthillier@gtlaw.com

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

Representing: Top of the World

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic _____ Bill Number 1482 *(if applicable)*

Name Jeff Gregg Amendment Barcode _____ *(if applicable)*

Job Title Dir, Fla Hr for Health & CC

Address AHCA - 2727 Mahan Phone 412 3730
Street

Tallahassee E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing AHCA

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1636

INTRODUCER: Judiciary Committeee; Health Policy Committee; and Senator Flores

SUBJECT: Infants Born Alive

DATE: April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.			AP	
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/CS/SB 1636 amends the Florida Statutes to:

- Create a definition for "born alive" under ch. 390, F.S., relating to termination of pregnancies;
- Grant an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Require healthcare professionals to apply the same level of care towards the infant born alive as they would for an infant born naturally of the same gestational age;
- Require that the infant born alive as part of an attempted abortion be immediately transported and admitted to a hospital;
- Require health care practitioners to report violations to the Department of Health (DOH); and
- Cause violations of these requirements to be punishable as a first degree misdemeanor.
- Require facilities that perform abortions to report monthly the number of infants born alive to the Agency for Health Care Administration (AHCA).

This bill substantially amends sections 390.011, 390.0111, and 390.0112, Florida Statutes.

II. Present Situation:

Case Law on Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*, was decided by the U.S. Supreme Court.[1] Using strict scrutiny, the Court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.[2] Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.[3] The Court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.[4]

In *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.[5]

Abortion in Florida

Article I, Section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."[6]

In *In re T.W.*, the Florida Supreme Court determined that:

> [p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests. . . . Under our Florida Constitution, the state's interest becomes compelling upon viability. . . . Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate termination in the interest of the unborn child so long as the mother's health is not in jeopardy.[7]

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[8] A termination of pregnancy must be

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[1] 410 U.S. 113 (1973).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] 505 U.S. 833 (1992).
[6] *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).
[7] *Id.*
[8] Section 390.011(1), F.S.

performed by a physician[9] licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[10]

A termination of pregnancy may not be performed in the third trimester unless there is a medical emergency.[11] Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.[12] A medical emergency is a situation in which:

- To a reasonable degree of medical certainty, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman,[13] and is a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death; or
- In the good faith clinical judgment of the physician, a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.[14]

Section 390.0111(4), F.S., provides that if a termination of pregnancy is performed during viability, the person who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Viability is defined in this provision to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

Born Alive

The federal Born Alive Infants Protection Act (BAIPA) of 2002 states that in determining the meaning of any Act of Congress or of any ruling, regulation, or interpretation of the various federal administrative bureaus and agencies, the words "person," "human being," "child" and "individual" shall include every infant member of the species homo sapiens who is born alive at any stage of development.[15] The Act defined "born alive" as:

> the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of

[9] Section 390.0111(2), F.S.
[10] Section 390.011(7), F.S.
[11] Section 390.0111(1), F.S.
[12] Section 390.011(7), F.S.
[13] Section 390.0111(1)(a), F.S.
[14] Section 390.01114(2)(d), F.S.
[15] 1 U.S.C. 8(a).

> whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section or induced abortion.[16]

The BAIPA was initially viewed as a symbolic act which did not alter the treatment that physicians already provided to extremely premature infants.[17] A change occurred in 2005 when the U.S. Department of Health and Human Services (HHS) issued a Program Instruction to state and territorial agencies administering or supervising the administration of the federal Child Abuse Prevention and Treatment Act (CAPTA) Program. The Program Instruction stated that regulations affected by the BAIPA were to be enforced under CAPTA.[18] Specifically, states must ensure that implementation of section 106(b)(2)(B) of CAPTA, which requires states to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), applies to born-alive infants.[19] This created an obligation to provide medical services to a born alive infant as well as an obligation to report when such treatment was withheld.[20] Thus, the failure to provide medical services to a born-alive infant may subject a physician to criminal neglect and abuse charges under applicable state law.[21] However, since the applicable portions of CAPTA do not have specific provisions requiring the prosecution of child abusers, it is unclear whether or not BAIPA would apply to the prosecution of physicians who do not treat infants born alive under Florida's child abuse laws.

The federal Emergency Medical Treatment and Labor Act (EMTALA) places potential provider obligations on hospitals and physicians when presented with an individual who may have an emergency medical condition, irrespective of that individual's ability to pay.[22] The Centers for Medicare and Medicaid Services (CMS), a subunit of the HHS, issued its "Guidance on the interaction of the BAIPA and the EMTALA" in 2005. According to the CMS, born alive infants as "individuals" were entitled to protection under the EMTALA.[23] Thus, individuals who failed to provide stabilizing treatment to a born alive infant may be subject to penalties under the EMTALA.[24]

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[16] 1 U.S.C. 8(b).
[17] Am. Acad. of Ped. Neonatal Resuscitation Prog. Steering Comm., *Born-Alive Infants Protection Act of 2001*, *Public Law No. 107-207*, 111 PEDIATRICS 680 (Mar. 2003).
[18] U.S. Department of Health and Human Services, Administration of Children, Youth and Families- Program Instruction; Log No- ACYF-CB-PI-05-01; Issuance Date- April 22, 2005.
[19] *Id.*
[20] Conway, Craig, *What Will Become of the Born-Alive Infants Protection Act?* www.law.uh.edu/healthlaw/perspectives/2009/(CC)%20BAIPA.pdf (last visited on April 5, 2013).
[21] Hermer, Laura, *The "Born-Alive Infants Protection Act" and its Potential Impact on Medical Care and Practice.* www.law.uh.edu/healthlaw/perspectives/2006/(LH)BAIPA.pdf (last visited on April 5, 2013).
[22] *See* Sadath A. Sayeed, *Baby Doe Redux? The Department of Health and Human Services and the Born-Alive Infants Protection Act of 2002: A Cautionary Note on Normative Neonatal Practice*, 116:4 PEDIATRICS e576 (Oct. 2005). http://pediatrics.aappublications.org/content/116/4/e576.full.pdf+html (last visited on April 5, 2013).
[23] *Id.*
[24] *Id.* at n. 21.

Voluntary Surrender of Infants

Florida law provides for the treatment and protection of a surrendered newborn.[25] Under Florida law, a "newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services (EMS) station, or a fire station.[26] Hospitals are authorized to admit and provide all necessary services and care to a surrendered new born infant.[27] Likewise, EMS technicians, paramedics, and firefighters are also authorized to render EMS to a newborn infant.[28] However, EMS technicians, paramedics and firefighters have a secondary obligation of arranging for the immediate transport of the newborn infant to a hospital for admittance.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 390.011, F.S., to define "born alive" as the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, induced abortion, or other method.

Section 2 amends s. 390.0111, F.S., to:

- Grant an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Require healthcare professionals to apply the same level of skill, care, and diligence towards the infant as they would for an infant born naturally at the same gestational age;
- Require that the infant born alive during or immediately after an attempted abortion be immediately transported and admitted to a hospital;[30]
- Require health care practitioners and employees of hospitals, physician's offices, and abortion clinics with knowledge of a violation of these provisions to report the violation to the DOH;
- Cause violations of these requirements to be punishable as a first degree misdemeanor;
- Clarify that these provisions do not preclude the prosecution of a more general offense; and
- Clarify that these provisions do not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive.

Section 3 amends s. 390.0112, F.S., to require medical facilities that terminate pregnancies to add the number of infants born alive during or immediately after an attempted abortion to a monthly report of all abortions currently required to be reported to the AHCA.

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[25] Section 383.50, F.S.
[26] Section 383.50(1), F.S.
[27] Section 383.50(4), F.S.
[28] Section 383.50(3)(a), F.S.
[29] Section 383.50(3)(b), F.S.
[30] Pursuant to s. 390.012(3)(c), F.S., which requires abortion clinics to designate a medical director who is a physician with privileges at a licensed hospital or has a transfer agreement with a licensed hospital in place.

Section 4 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:

The bill may have an indeterminate negative fiscal impact on hospitals by requiring that hospitals provide for medical care for infants who fall under the definition of "born alive."

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the State of Florida by requiring that the State provide for medical care and social services for infants who fall under the definition of "born alive."

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Judiciary on April 15, 2013:
The committee substitute corrects a cross-reference to the definition of the term "born alive."

CS by Health Policy on April 9, 2013:
The committee substitute:

- Clarifies that practitioners must exercise the same efforts to preserve the life and health of an infant born alive as they would for a infant born naturally at the same gestational age;
- Removes provisions related to the presumed surrender of the infant upon transportation to a hospital.
- Clarifies that the provisions in the section 2 of the bill do not preclude prosecution of more general provisions of law.
- Clarifies that the provisions in section 2 of the bill do not affect the legal status or legal rights of the species homo sapiens at any point prior to being born alive.
- Requires health care facilities performing abortions to include the number of infants born alive during or immediately after an attempted abortion in the monthly report of abortions submitted to the AHCA.

B. Amendments:

None.

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

725328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Amendment**
2
3 Delete line 81
4 and insert:
5 born alive as defined in s. 390.011.

By the Committee on Health Policy; and Senator Flores

588-03979-13 20131636c1

A bill to be entitled

An act relating to infants born alive; amending s. 390.011, F.S.; defining the term "born alive"; amending s. 390.0111, F.S.; providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; requiring a health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health; providing a penalty; providing for construction; amending s. 390.0112, F.S.; revising a reporting requirement; providing an effective date.

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

Section 1. Subsections (4) through (8) of section 390.011, Florida Statutes, are renumbered as subsections (5) through (9), respectively, and a new subsection (4) is added to that section to read:

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

(4) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a

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

588-03979-13 20131636c1

beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, induced abortion, or other method.

Section 2. Subsections (12) and (13) of section 390.0111, Florida Statutes, are renumbered as subsections (13) and (14), respectively, subsection (10) is amended, and a new subsection (12) is added to that section to read:

390.0111 Termination of pregnancies.—

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), ~~and~~ (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy procedure in violation of the provisions of this section which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) INFANTS BORN ALIVE.—

(a) An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.

(b) If an infant is born alive during or immediately after an attempted abortion, any health care practitioner present at

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

59 the time shall humanely exercise the same degree of professional
60 skill, care, and diligence to preserve the life and health of
61 the infant as a reasonably diligent and conscientious health
62 care practitioner would render to an infant born alive at the
63 same gestational age in the course of natural birth.
64 (c) An infant born alive during or immediately after an
65 attempted abortion must be immediately transported and admitted
66 to a hospital pursuant to s. 390.012(3)(c) or rules adopted
67 thereunder.
68 (d) A health care practitioner or any employee of a
69 hospital, a physician's office, or an abortion clinic who has
70 knowledge of a violation of this subsection must report the
71 violation to the department.
72 (e) A person who violates this subsection commits a
73 misdemeanor of the first degree, punishable as provided in s.
74 775.082 or s. 775.083. This subsection shall not be construed as
75 a specific provision of law relating to a particular subject
76 matter that would preclude prosecution of a more general
77 offense, regardless of the penalty.
78 (f) This subsection does not affirm, deny, expand, or
79 contract any legal status or legal right applicable to any
80 member of the species homo sapiens at any point prior to being
81 born alive as defined in this subsection.
82 Section 3. Subsection (1) of section 390.0112, Florida
83 Statutes, is amended to read:
84 390.0112 Termination of pregnancies; reporting.—
85 (1) The director of any medical facility in which any
86 pregnancy is terminated shall submit a monthly report to the
87 agency which contains the number of procedures performed, the

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

88 reason for same, ~~and~~ the period of gestation at the time such
89 procedures were performed, and the number of infants born alive
90 during or immediately after an attempted abortion ~~to the agency~~.
91 The agency shall be responsible for keeping such reports in a
92 central place from which statistical data and analysis can be
93 made.
94 Section 4. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Infants Born Alive

Bill Number: 1636 *(if applicable)*

Name: Sheila Hopkins

Amendment Barcode: *(if applicable)*

Job Title: Director of Social Concerns / Respect Life

Address: 201 W. Park Ave.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 205-6826

E-mail: shopkins@flacathconf.org

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

Representing: Fl. Conference of Catholic Bishops

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/2013
Meeting Date

Topic _____ Bill Number 1636 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: [✓] For [ ] Against [✓] Information

Representing JUSTICE-2-JESUS

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/13
Meeting Date

Topic: Infants Born Alive

Bill Number: 1636 *(if applicable)*

Name: Sara Johnson

Amendment Barcode: *(if applicable)*

Job Title: Legislative Assistant to the President

Address: 4853 S. Orange Ave
Street

Orlando, FL 32806
City, State, Zip

Phone: 850-567-8143

E-mail: sarajoflfamily.org

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1166

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Adverse Possession

DATE: April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	**Fav/CS**
2.			BI	
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 1166 addresses the problem of individuals squatting illegally on property without disrupting the legitimate purposes of adverse possession. The bill modifies the laws on adverse possession to:

- Require any person to pay at least 2-years of real estate taxes on the property before attempting to file a claim for "adverse possession" on the property.
- Revise the form of returns filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.
- Subjects a person to criminal penalties for trespassing if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a "stay period" in a pending action for foreclosure.
- Subjects a person to criminal penalties for theft if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a "stay period" in a pending action for foreclosure and then offers the property for lease to another.

This bill substantially amends section 95.18, Florida Statutes.

II. Present Situation:

Adverse Possession in Florida

Adverse possession is defined as "[a] method of acquisition of title to real property by possession for a statutory period under certain conditions."[1] The doctrine of adverse possession "dates back at least to sixteenth century England and has been an element of American law since the country's founding."[2] The first adverse possession statute appeared in the United States in North Carolina in 1715.[3]

In Florida, to acquire title by adverse possession without color of title (without having a deed or other recorded document), s. 95.18, F.S., requires a claimant to:

- Show open, continuous, and hostile possession;
- Pay all taxes for a period of 7 years;
- File a return of the land for taxes with the county property appraiser;
- Protect the property by an enclosure or cultivate it; and
- Maintain and occupy the land.

To gain title to the property a person must file a return with the property appraiser within 1 year of entry onto the property, and pay all property taxes and any assessed liens during the possession of the property for 7 consecutive years.[4] The return must include the name and address of the adverse possessor, the date that the person claims to have entered into possession of the property, a legal description of the property and a notarized attestation clause that the adverse possessor affirms that the facts in the return are true.[5] The adverse possessor may demonstrate possession of the property by showing that that he or she:

- Protected the property by a substantial enclosure;
- Cultivated or improved the property; or
- Occupied and maintained the property.[6]

The property appraiser must also notify the owner of record of the filing of the return for adverse possession.[7]

Florida also provides for an additional method of acquiring property through adverse possession if they are making a claim on property under color of title. An adverse possessor may claim property under color of title if he or she can demonstrate that the claim to title is derived from a recorded written document and that he or she has been in possession of the property for at least 7

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[1] BLACK'S LAW DICTIONARY 53 (6th ed. 1990).
[2] Alexandra B. Klass, *Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession*, 77 U. COLO. L. REV. 283, 286 (Spring 2006).
[3] Brian Gardiner, *Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).
[4] Section 95.18(1), F.S.
[5] Section 95.18(3), F.S.
[6] Section 95.18(2), F.S.
[7] Section 95.18(4), F.S.

years.[8] In such a case whether or not the recorded document is legally valid or is fraudulent or faulty is irrelevant. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.[9]

Courts have noted that "[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession."[10] The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.[11] Therefore, the adverse possession claim cannot be "established by loose, uncertain testimony which necessitates resort to mere conjecture."[12]

Abuse of Adverse Possession in Florida

As a result of the housing crisis in Florida, the increased number of vacant homes under foreclosure has led to a rise in the number of individuals who squat on foreclosed property and attempt to gain title through adverse possession.[13] In some cases individuals are forming companies that lay claim to multiple properties. Often these individuals are not fulfilling the requirements of adverse possession, such as occupying the property in an open and notorious manner.[14]

III. Effect of Proposed Changes:

This bill revises the procedures a person must follow and the conditions that must be satisfied to take title to property through adverse possession. Under the bill, a person must pay municipal, county, and state taxes for at least 2 years prior to filing a return with the property appraiser, giving additional time for the current owner to pay the taxes and assert control over the property.

The bill revises the form of the return filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.

The bill defines a "stay period" as the time during which real property sought to be adversely possessed is subject to a pending action to foreclose a mortgage or to foreclose a lien by a community association. During this stay period, the 7-year time period required for a property to be adversely possessed does not run.

In addition, the bill subjects a person to criminal penalties for trespassing for attempting to occupy or occupying a structure on the basis of adverse possession while the property is under a stay period. If that person then offers the property for lease to another, the bill subjects the person to criminal penalties for theft.

---

[8] Section 95.16, F.S.
[9] Section 95.16, F.S.
[10] *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007).
[11] *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).
[12] *Id*. (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).
[13] Martha Brannigan, *Miami-Dade Property Appraiser Targets Squatters*, Miami Herald, April 4, 2013 *available at* http://www.miamiherald.com/2013/04/02/3320065/miami-dade-property-appraiser.html.
[14] *Id*.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/SB 1166 by Judiciary on April 15, 2013:
The Committee Substitute replaced the text of the bill and modifies the laws on adverse possession to:

- Require any person to pay at least 2-years of real estate taxes on the property before filing a claim for adverse possession of a property.

- Revise the form of the return filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.
- Subjects a person to criminal penalties for trespassing if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a "stay period" in a pending action for foreclosure.
- Subjects a person to criminal penalties for theft if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a "stay period" pending action for foreclosure of the property and then offers the property for lease to another.

B. Amendments:

None.

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

707556

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (3) of section 95.18, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

95.18 Real property actions; adverse possession without color of title.—

(1) When the occupant has~~, or those under whom the occupant claims have,~~ been in actual continued possession ~~occupation~~ of real property for 7 years under a claim of title exclusive of any other right in a manner consistent with subsection (9), but

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14 not founded on a written instrument, judgment, or decree, or
15 when those under whom the occupant claims meet these criteria,
16 the property actually possessed ~~occupied~~ is held adversely if
17 the person claiming adverse possession:
18 (a) Paid, subject to s. 197.3335, all taxes and matured
19 installments of special improvement liens levied against the
20 property by the state, county, and municipality for at least 2
21 consecutive years prior to making a return described in
22 subsection (3); and
23 (b) Promptly made a return, as required under subsection
24 (3), of the property by proper legal description to the property
25 appraiser of the county where it is located within 1 year after
26 complying with paragraph (a) ~~entering into possession~~ and has
27 subsequently paid, subject to s. 197.3335, all taxes and matured
28 installments of special improvement liens levied against the
29 property by the state, county, and municipality.
30 (3) A person claiming adverse possession under this section
31 must make a return of the property by providing to the property
32 appraiser a uniform return on a form provided by the Department
33 of Revenue. The return must include all of the following:
34 (a) The name and address of the person claiming adverse
35 possession.
36 (b) The date that the person claiming adverse possession
37 entered into possession of the property.
38 (c) A full and complete legal description of the property
39 that is subject to the adverse possession claim.
40 (d) A notarized attestation clause that states:
41
42 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ

707556

43 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT
44 ARE TRUE AND CORRECT.
45
46 (e) A description of the use of the property by the person
47 claiming adverse possession.
48 (f) A receipt to be completed by the property appraiser.
49 (g) Dates of payment of the annual tax assessments for the
50 property subject to the adverse possession claim for at least 2
51 consecutive years preceding the making of the return.
52 (h) The following notice provision at the top of the first
53 page, printed in no less than 12 point, capitalized, boldfaced
54 type:
55
56 FILING THIS RETURN DOES NOT ENTITLE THE CLAIMANT TO
57 IMMEDIATE POSSESSION OR OWNERSHIP OF THE REAL PROPERTY
58 DESCRIBED BELOW. THIS RETURN DOES NOT OPERATE AS A
59 CLOUD ON TITLE AND MUST BE REFILED EVERY 3 MONTHS TO
60 REMAIN EFFECTIVE.
61
62 The property appraiser shall refuse to accept a return if it is
63 not the uniform return created by the Department of Revenue ~~does~~
64 ~~not comply with this subsection~~. The executive director of the
65 Department of Revenue is authorized, and all conditions are
66 deemed met, to adopt emergency rules under ss. 120.536(1) and
67 120.54(4) for the purpose of implementing this subsection. The
68 emergency rules shall remain in effect for 6 months after
69 adoption and may be renewed during the pendency of procedures to
70 adopt rules addressing the subject of the emergency rules.
71 (9) For purposes of computing the time periods specified in

707556

72 subsection (1), no time shall be included for a "stay period,"
73 which, for purposes of this subsection, means the time during
74 which any real property sought to be adversely possessed is or
75 was subject to a pending action to foreclose a mortgage or to
76 foreclose a lien pursuant to chapter 718, chapter 719, chapter
77 720, or chapter 723.
78 (a) A person who occupies or attempts to occupy a
79 residential structure solely by claim of adverse possession
80 under this section after a stay period has commenced and while
81 it remains in effect commits trespass under s. 810.08.
82 (b) A person who occupies or attempts to occupy a
83 residential structure solely by claim of adverse possession
84 under this section after a stay period has commenced and while
85 it remains in effect and offers the property for lease to
86 another commits theft under s. 812.014.
87 Section 2. This act shall take effect July 1, 2013.
88
89 ========== T I T L E A M E N D M E N T ==========
90 And the title is amended as follows:
91 Delete everything before the enacting clause
92 and insert:
93 A bill to be entitled
94 An act relating to adverse possession; amending s.
95 95.18, F.S.; revising terminology; requiring certain
96 conditions to be met before real property is legally
97 adversely possessed without color of title; requiring
98 a person claiming adverse possession to make a return
99 of the property by providing the return to the
100 property appraiser using a uniform return; specifying

707556

101 the contents of the return; requiring the return to
102 contain a notice; providing criminal penalties;
103 providing an effective date.

By Senator Bradley

7-01177-13 20131166__

A bill to be entitled

An act relating to adverse possession; amending s. 95.18, F.S.; revising terminology; requiring certain conditions to be met before real property is legally adversely possessed without color of title; requiring a person claiming adverse possession to provide to the property appraiser certain attestations from the owner of the property on a uniform return; providing an effective date.

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

Section 1. Subsections (1), (2), and (3) of section 95.18, Florida Statutes, are amended to read:

95.18 Real property actions; adverse possession without color of title.—

(1) When the adverse possessor ~~occupant~~ has, or those under whom the adverse possessor ~~occupant~~ claims have, been in actual continued control ~~occupation~~ of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, the property, when actually controlled through maintenance or improvement of the exterior of any structure or the land, ~~occupied~~ is held adversely if the person claiming adverse possession made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 1 year after entering into possession and has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against

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

7-01177-13 20131166__

the property by the state, county, and municipality, as well as all mortgages and liens upon the property. All municipal, county, and state taxes must have accrued against the property, without payment, for at least 2 years. A person or entity may not apply for adverse possession for more than one property in this state at the same time. The adverse possessor, or those persons under whom the possessor claims a possessory right, may not enter any structure on the possessed property until the end of the adverse possession period and after a deed has been issued to the possessor.

(2) For the purpose of this section, property is deemed to be possessed if the property has been:

(a) Protected by substantial enclosure;

(b) Cultivated or improved in a usual manner; or

(c) Maintained without entering any of the structures ~~Occupied and maintained~~.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

(a) The name and address of the person claiming adverse possession.

(b) The date that the person claiming adverse possession entered into controlled possession of the property.

(c) A full and complete legal description of the property that is subject to the adverse possession claim.

(d) A notarized attestation from the owner or entity currently listed as the owner affirming that the property is known to be adversely possessed. In order to assist the property

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

59 appraiser in satisfying his or her legal obligations under
60 subsection (4), the notarized attestation must include the
61 owner's current mailing address and telephone number.
62 (e) ~~(d)~~ A notarized attestation clause that states:
63
64 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
65 FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND
66 CORRECT.
67
68 (f) ~~(e)~~ A description of the use of the property by the
69 person claiming adverse possession.
70 (g) ~~(f)~~ A receipt to be completed by the property appraiser.
71
72 The property appraiser shall refuse to accept a return if it
73 does not comply with this subsection. The executive director of
74 the Department of Revenue is authorized, and all conditions are
75 deemed met, to adopt emergency rules under ss. 120.536(1) and
76 120.54(4) for the purpose of implementing this subsection. The
77 emergency rules shall remain in effect for 6 months after
78 adoption and may be renewed during the pendency of procedures to
79 adopt rules addressing the subject of the emergency rules.
80 Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.15.13
Meeting Date

Topic: Adverse Possession

Bill Number: SB 1166 *(if applicable)*

Name: Trey Goldman

Amendment Barcode: *(if applicable)*

Job Title: Legislative Counsel

Address: 200 S. Monroe St
Street

TLH, FL 32301
City, State, Zip

Phone: 850/224-1400

E-mail: treyg@floridarealtors.org

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

Representing: Florida Realtors

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 15
Meeting Date

Topic: Adverse Possession (Strike-all)

Bill Number: 1116 *(if applicable)*

Name: Lauren Jackson

Amendment Barcode: 7075560 *(if applicable)*

Job Title:

Address:
Street

City *State* *Zip*

Phone: 931-265-8999

E-mail:

Speaking: [x] For [ ] Against [ ] Information - waive in support

Representing: Broward Co Property Appraiser

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1634

INTRODUCER: Ethics and Elections Committee and Senator Lee

SUBJECT: Legislative Lobbying Expenditures

DATE: April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Shankle	Cibula	JU	**Pre-meeting**
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 1634 amends the legislative expenditure ban in s. 11.045, F.S., by providing that a legislator or legislative employee may, under certain circumstances, accept individual servings of nonalcoholic beverages.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization to accept a meal, beverages, or event or meeting registration fee under certain circumstances. The bill requires each house of the Legislature to adopt procedures by rule for reporting the acceptance of a meal, beverage, or event or meeting registration fee. The rules must require legislators to file reports within 15 days after attending the scheduled meeting. Such reports must contain:

- The date of the event;
- The name of the organization hosting the event;
- The topic or topics about which the member or employee spoke;
- The value of the meal accepted.

The reports must be made publicly available on the website of the respective house of the Legislature. Finally, this bill clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the legislative expenditure ban in s. 11.045, F.S.

This bill substantially amends section 11.045 of the Florida Statutes.

II. Present Situation:

Section 11.045, F.S., requires legislative lobbyists to register, requires legislative lobbyists to file compensation reports, and contains the legislative expenditure ban. The legislative expenditure ban prohibits a lobbyist or principal from, directly or indirectly, making expenditures, with limited exceptions, to a member or employee of the Legislature. Similarly, members and employees of the Legislature may not, directly or indirectly, accept such expenditures from a lobbyist or principal.[1]

For purposes of this statute, the term "expenditure" means:

> A payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).[2]

The following penalties can be imposed for violation of the legislative expenditure ban:

- A fine of not more than $5,000;
- Reprimand;
- Censure;
- Probation; or
- Prohibition on lobbying for a period not to exceed 24 months.[3]

III. Effect of Proposed Changes:

The bill allows a member or employee of the Legislature to accept individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to attendees of a meeting.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization to accept a meal, beverages, or event or meeting registration fee under certain circumstances. The member or employee of the

[1] Section 11.045(4)(a), F.S., currently only exempts "floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of session."
[2] Section 11.045(1)(c), F.S.
[3] Section 11.045(7), F.S.

Legislature must be a featured speaker, moderator, or participant of a panel discussion at the event. He or she must not have solicited for the meal, beverages, or event or meeting registration fee. Additionally, for purposes of this exemption, the established membership organization cannot have a membership that is primarily composed of lobbyists.

If a member or employee accepts a meal, beverages, or event or meeting registration fee at such an event, he or she must file a report with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after attending the meeting. The report must contain, at a minimum, the date of the event, the name of the organization hosting the event, the topic or topics about which the member or employee spoke, and the value of the meal accepted. The bill clarifies that this report also satisfies the reporting requirement of s. 112.3149(6), F.S., concerning expenses related to the honorarium event. Each house of the Legislature must establish rules for such reporting and provide for publication of the reports on its website.

The bill creates a new exemption from the definition of "expenditure" for a "government-to-government use." A "government-to-government use" is the "use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist."

Finally, the bill provides that the changes made to s. 11.045(4), F.S., will expire on June 30, 2015, and the law will revert to the statutory language in effect on April 7, 2012.

The bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The "old" gifts law in s. 112.3148, F.S., which predates the legislative expenditure ban, prohibits certain gifts in excess of $100 to reporting individuals (anyone required to file financial disclosure, including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, or municipal government (and certain other governmental organizations) valued at more than $100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a CE Form 10. Because both s. 11.045, F.S., and s. 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10.

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 Ethics and Elections on April 1, 2013:
The CS differs from the original bill in that it removes the provisions relating to "widely attended events;" the process for approval of "widely attended events;" and the reporting requirements associated with "widely attended events." It also clarifies that the membership of an established membership organization cannot be composed primarily of lobbyists. The CS also requires specific items to be reported when a member or employee attends a scheduled meeting of an established membership organization. Finally, it also permits a governmental entity to provide use of a public facility or public property to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist.

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senators Lee and Joyner

582-03314A-13 20131634c1

A bill to be entitled

An act relating to legislative lobbying expenditures; amending s. 11.045, F.S., and reenacting subsections (4)-(8), relating to lobbying before the Legislature; revising the term "expenditure" to exclude the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements; providing exceptions when a member or an employee of the Legislature may accept certain expenditures made by a lobbyist or a principal; providing for the future expiration and the reversion as of a specified date of statutory text; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 11.045, Florida Statutes, is amended, subsection (4) of that section is reenacted and amended, and subsections (5) through (8) of that section are reenacted, to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(c) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include:

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1. Contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

2. A government-to-government use, which is the use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register any person as a lobbyist pursuant to this section.

(4)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other ~~provision of~~ law to the contrary, no lobbyist or principal may ~~shall~~ make, directly or indirectly, and no member or employee of the Legislature may ~~shall~~ knowingly accept, directly or indirectly, any expenditure, except:

1. Floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

2. Individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to the attendees of a meeting.

3. A member or employee of the Legislature, who attends a scheduled meeting of an established membership organization whose membership is not primarily composed of lobbyists, which is also a principal, as a featured speaker, moderator, or participant and provides a speech, address, oration, or other

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59 oral presentation, may accept a meal, beverage, or event or
60 meeting registration fee. Such meal, beverage, and event or
61 meeting registration fee are expenses related to an honorarium
62 event under s. 112.3149.
63 (b) A ~~No~~ person may not ~~shall~~ provide compensation for
64 lobbying to any individual or business entity that is not a
65 lobbying firm.
66 (c) A member or employee of the Legislature who attends a
67 meeting and accepts a meal, beverage, or event or meeting
68 registration fee as permitted in subparagraph (a)3., is required
69 to file a report with the Secretary of the Senate or the Clerk
70 of the House of Representatives no later than 15 days after
71 attending the meeting. The report must contain, at a minimum,
72 the date of the event, the name of the organization hosting the
73 event, the topic or topics about which the member or employee
74 spoke, and the value of the meal accepted. Each house of the
75 Legislature shall establish by rule procedures for such
76 reporting and for the publication of such reports on its
77 website. Reports required to be filed by this subsection satisfy
78 the disclosure requirements in s. 112.3149(6).
79 (5) Each house of the Legislature shall provide by rule a
80 procedure by which a person, when in doubt about the
81 applicability and interpretation of this section in a particular
82 context, may submit in writing the facts for an advisory opinion
83 to the committee of either house and may appear in person before
84 the committee. The rule shall provide a procedure by which:
85 (a) The committee shall render advisory opinions to any
86 person who seeks advice as to whether the facts in a particular
87 case would constitute a violation of this section.

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88 (b) The committee shall make sufficient deletions to
89 prevent disclosing the identity of persons in the decisions or
90 opinions.
91 (c) All advisory opinions of the committee shall be
92 numbered, dated, and open to public inspection.
93 (6) Each house of the Legislature shall provide by rule for
94 keeping all advisory opinions of the committees relating to
95 lobbying firms, lobbyists, and lobbying activities. The rule
96 shall also provide that each house keep a current list of
97 registered lobbyists along with reports required of lobbying
98 firms under this section, all of which shall be open for public
99 inspection.
100 (7) Each house of the Legislature shall provide by rule
101 that a committee of either house investigate any person upon
102 receipt of a sworn complaint alleging a violation of this
103 section, s. 112.3148, or s. 112.3149 by such person; also, the
104 rule shall provide that a committee of either house investigate
105 any lobbying firm upon receipt of audit information indicating a
106 possible violation other than a late-filed report. Such
107 proceedings shall be conducted pursuant to the rules of the
108 respective houses. If the committee finds that there has been a
109 violation of this section, s. 112.3148, or s. 112.3149, it shall
110 report its findings to the President of the Senate or the
111 Speaker of the House of Representatives, as appropriate,
112 together with a recommended penalty, to include a fine of not
113 more than $5,000, reprimand, censure, probation, or prohibition
114 from lobbying for a period of time not to exceed 24 months. Upon
115 the receipt of such report, the President of the Senate or the
116 Speaker of the House of Representatives shall cause the

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117 committee report and recommendations to be brought before the
118 respective house and a final determination shall be made by a
119 majority of said house.
120 (8) Any person required to be registered or to provide
121 information pursuant to this section or pursuant to rules
122 established in conformity with this section who knowingly fails
123 to disclose any material fact required by this section or by
124 rules established in conformity with this section, or who
125 knowingly provides false information on any report required by
126 this section or by rules established in conformity with this
127 section, commits a noncriminal infraction, punishable by a fine
128 not to exceed $5,000. Such penalty shall be in addition to any
129 other penalty assessed by a house of the Legislature pursuant to
130 subsection (7).
131 Section 2. The amendment to s. 11.045(4), Florida Statutes,
132 shall expire June 30, 2015, and the text of that subsection
133 shall revert to that in existence on April 7, 2012, except that
134 any amendments to such text enacted other than by this act shall
135 be preserved and continue to operate to the extent that such
136 amendments are not dependent upon portions of text which expire
137 pursuant to this section.
138 Section 3. This act shall take effect July 1, 2013.

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