

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, January 14, 2014
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 242 Commerce and Tourism / Detert (Similar H 151)	Security of a Protected Consumer's Information; Citing this act as the "Keeping I.D. Safe (KIDS) Act"; authorizing the representative of a protected consumer to place a security freeze on a protected consumer's consumer report or record; prohibiting a consumer reporting agency from stating or implying that a security freeze reflects a negative credit history or rating; requiring a consumer reporting agency to provide a copy of a consumer report or record to a protected consumer or his or her representative upon request; requiring a consumer reporting agency to remove a security freeze under specified conditions, etc. CM 11/04/2013 Fav/CS JU 01/14/2014 Fav/CS GO	Fav/CS Yeas 9 Nays 0
2	SB 220 Thompson (Identical H 105)	Florida Civil Rights Act; Prohibiting discrimination on the basis of pregnancy in public lodging and food service establishments; prohibiting discrimination with regard to employment benefits; prohibiting discrimination on the basis of pregnancy by labor organizations, joint labor-management committees, and employment agencies; prohibiting discrimination on the basis of pregnancy in occupational licensing, certification, and membership organizations, etc. CM 12/09/2013 Favorable JU 01/14/2014 Favorable CA	Favorable Yeas 9 Nays 0
3	SB 280 Garcia (Similar H 109)	Public Records/Participants in Treatment-based Drug Court Programs; Exempting from public records requirements information relating to a participant or a person considered for participation in a treatment- based drug court program and contained in certain records, reports, and evaluations; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 01/14/2014 Favorable GO RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, January 14, 2014, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 142 Hays (Similar H 97)	Sovereign Immunity for Dentists and Dental Hygienists; Requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under specified provisions, as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S., etc. HP 10/08/2013 Favorable JU 01/14/2014 Favorable AHS AP	Favorable Yeas 8 Nays 0

Consideration of Proposed Committee Bill:

5	SPB 7018	OGSR/Inventories of an Estate or Elective Estate; Amending provisions which provides exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding; abrogating the scheduled repeal of the exemptions under the Open Government Sunset Review Act, etc.	Submitted as Committee Bill Yeas 9 Nays 0
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Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 242

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senator Detert

SUBJECT: Security of a Protected Consumer's Information

DATE: January 15, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Fav/CS
2.	Cibula	Cibula	JU	Fav/CS
3.			GO	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 242, the Keeping I.D. Safe (KIDS) Act, enables a guardian or other advocate for a protected consumer to place a security freeze on the protected consumer's consumer report. A protected consumer includes a child who is younger than 16 and others who are represented by a guardian or other advocate, often as the result of mental incapacity. A security freeze generally prohibits a consumer reporting agency from releasing information in a consumer report to a third party without express authorization. A security freeze may prevent an unauthorized person from opening lines of credit in a protected consumer's name and engaging in identity theft.

Under the bill, a guardian or advocate who seeks a security freeze must submit a request to the consumer reporting agency along with proof of authority and identification and a fee of up to \$10. The fee is waived if the representative submits a copy of a valid police report about the unlawful use of the protected consumer's identifying information.

A consumer reporting agency's willful failure to comply with the security freeze will result in an administrative fine of \$500. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable for damages to the protected consumer and the credit reporting agency for at least \$1,000 each. The bill also requires consumer reporting agencies to provide written notice of the availability of a security freezes for protected consumers.

II. Present Situation:

Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹ The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.²

Most significantly, the FCRA regulates the use and dissemination of consumer reports. Consumer reports are used by financial institutions, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services.³ Information included in consumer reports may include a consumer's credit and payment history, demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).⁴

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.⁵ The FACT Act added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs. Among these provisions, the FACT Act established a national fraud alert system, required federal agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft, and required that information placed on a consumer report due to identity theft be blocked from the report.⁶

The FCRA (as amended by the FACT Act) also states that a consumer or the consumer's representative may assert a good-faith suspicion to a consumer reporting agency that he or she has been the victim of identity theft.⁷ This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.⁸ Consumers can also file for an extended fraud alert that lasts up to 7 years.⁹

Security Freezes

In response to concerns regarding identity theft, 49 states, including Florida, have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from

¹ 15 U.S.C. s. 1681 *et seq.*

² Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrreport.pdf>.

³ *Id.*

⁴ *Id.*

⁵ P.L. 108-159, H.R. 2622, 108th Cong. (December 4, 2003).

⁶ *Id.* at s. 112-152. Fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent new credit accounts. *See* 15 U.S.C. s. 1681c-1 and s. 1681m(e).

⁷ 15 U.S.C. s. 1681c-1.

⁸ *Id.* s. 1681c-1(a)(1).

⁹ *Id.* s. 1681c-1(b).

trying to open a new account or new credit.¹⁰ A security freeze restricts a consumer reporting agency from releasing a consumer report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer’s name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a consumer report until the consumer removes it. Generally, a person can temporarily remove the freeze to open a new credit account or apply for a loan. To do this, a consumer provides the consumer reporting agency with a unique personal identifying number to verify the consumer’s identity. States have created exemptions for specified organizations that still can access consumer report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement entities, insurance companies, and subsidiaries and affiliates of companies that have existing accounts with the consumer.¹¹

Florida Statutes Relating to Security Freezes

Section 501.005(2), F.S., allows a consumer to place a “security freeze” on his or her consumer report by sending a written request by certified mail to a consumer reporting agency. Generally, the security freeze prohibits the consumer reporting agency from releasing the consumer’s consumer report or any information contained within the report without the consumer’s authorization.¹² A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze.¹³ However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older or to a victim of identity theft for the placement or removal of a security freeze.¹⁴ Any disclosure by a consumer reporting agency to a resident of this state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.¹⁵

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., is liable to the consumer for actual damages of at least \$100 and not more than \$1,000, plus the costs and attorney’s fees.¹⁶
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., is liable to the consumer for any actual damages of at least \$100 and not more than \$1,000.¹⁷

¹⁰ Consumers Union, *Consumers Union’s Guide to Security Freeze Protection* (December 31, 2011), <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited January 9, 2014).

¹¹ *See, e.g.*, MISS. CODE ANN. s. 75-24-209 (2013); MONT. CODE ANN. s. 30-14-1734 (2013).

¹² Section 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

¹³ Section 501.005(13)(a), F.S.

¹⁴ Section 501.005(13)(b), F.S.

¹⁵ Section 501.005(17), F.S.

¹⁶ Section 501.005(16)(a), F.S.

¹⁷ Section 501.005(16)(d), F.S.

Additionally, any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer of at least \$100 and not more than \$1,000, whichever is greater.¹⁸ Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose is also liable to the agency for actual damages sustained by the agency or \$1,000, whichever is greater.¹⁹ Punitive damages may be assessed for willful violations of s. 501.005, F.S.²⁰ Lastly, if a court finds an unsuccessful pleading or motion was filed in bad faith or for purposes of harassment, the court must award to the prevailing party attorney's fees incurred for the work performed in responding to the pleading or motion.²¹

Child Identity Theft

Although, reliable estimates on the extent of identity theft against minors have not been thoroughly determined, recent studies have begun to shed light on the problem. A 2012 study by AllClear ID found, based on a review of the credit files of 27,000 American children, that more than 10 percent of children are victims of identity theft.²² Similarly, a 2011 study estimated that 140,000 instances of identity fraud are perpetrated on minors in the United States each year.²³ A recent, Florida-specific analysis of identity theft against minors estimated that approximately 52,000 children in Florida will be victims of identity theft.²⁴

While parents typically apply for a Social Security number for their child shortly after birth, credit reporting agencies do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time - usually in the late teenage years.²⁵ When a credit file is first created, the credit bureaus and lenders do not check the validity of the name and date of birth on a new credit application, only that the Social Security number was issued by the Social Security Administration.²⁶ Consequently, a child's unused Social Security number is valuable to a thief because it typically lacks a previous credit history and can be paired with any name and birth date. If the thief is able to provide a valid Social Security number (one that has been issued and is not reported as belonging to a deceased person) and the minimal identification documentation required by that lender, then he or she is approved for the transaction and the fraudulent account is added to the credit file.²⁷ Because parents typically do not monitor their child's credit, a child's identity can be used to obtain goods and services over many years

¹⁸ Section 501.005(16)(b), F.S.

¹⁹ *Id.*

²⁰ Section 501.005(16)(c), F.S.

²¹ Section 501.005(16)(e), F.S.

²² AllClear ID Alert Network, *Child Identity Theft: Report 2012*, <https://www.allclearid.com/themes/allclearid/docs/ChildIDTheftReport2012.pdf>.

²³ ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (July 12, 2011), available at <http://www.idanalytics.com/news-and-events/news-releases/2011/7-12-2011.php> (last visited January 9, 2014).

²⁴ Department of Agriculture and Consumer Services, *Child Identity Fraud in Florida: An Analysis of the Extent of the Crime and Potential Effectiveness of Proposed Policies*, 2 (October 8, 2013) (on file with the Senate Committee on Commerce and Tourism).

²⁵ AllClear ID Alert Network, *supra* note 22.

²⁶ *Id.* at 9.

²⁷ *Id.*

without the parents' knowledge. The identity theft may not be detected until the child becomes an adult, seeks employment, or applies for student or car loans.

Current statutory security freezes only apply to existing consumer reports. Because minors generally do not have credit history they do not have consumer reports and thus cannot get a security freeze.²⁸ A credit history can be established for a minor through a parent adding the minor as a joint account holder. According to Experian, the agency does not knowingly disclose a minor's credit history; however, minors may request a copy of their consumer report after the age of 14.²⁹ Parents or legal guardians may request a consumer report for their minor by providing documentation that they are the parent or guardian. When a minor reaches the age of 18, the consumer report becomes available for access by authorized persons.

In addition to the penalties and remedies under s. 501.005, F.S., relating to consumer reports and security freezes for adults, s. 817.568, F.S., addresses criminal penalties for the unauthorized use of personal identification information. In regards to minors, s. 817.568, F.S., makes it a second-degree felony for:

- Any person to willfully and fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or legal guardian.
- Any person who is a parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

III. Effect of Proposed Changes:

Section 1 identifies the bill as the "Keeping I.D. Safe (KIDS) Act."

Section 2 creates s. 501.0051, F.S., to establish a process to allow the institution of a security freeze for a person younger than 16 years of age or a person represented by a guardian or other advocate.

Definitions for the terms "consumer reporting agency" and "consumer report" are identical to the definitions in s. 501.005, F.S. The term "protected consumer" means a person younger than 16 years of age or a person represented by a guardian or other advocate pursuant to ch. 39,³⁰ ch. 393,³¹ ch. 744,³² or ch. 914,³³ F.S. A "record" is defined as a compilation of information that identifies a protected consumer and that is created if a consumer does not have a consumer report. The definition of security freeze is similar to the current definition found in s. 501.005,

²⁸ A spokesman for TransUnion and Equifax has explained that a security freeze "applies to a credit file, not a social security number." Carrns, Ann, *Why It's Not Easy to Freeze Your Child's Credit File*, THE NEW YORK TIMES, (September 21, 2011), available at <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/>.

²⁹ See Experian, Credit Reports not Established Based on Age (September 14, 2011), <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html>.

³⁰ Chapter 39, F.S., pertains to proceedings relating to children.

³¹ Chapter 393, F.S., relates to developmental disabilities.

³² Chapter 744, F.S., relates to guardianships.

³³ Chapter 914, F.S., relates to witnesses and criminal proceedings, including guardian ad litem.

F.S., and also includes a notice placed on the protected consumer's record that prohibits the consumer reporting agency from releasing the record except as provided in s. 501.0051, F.S.

Security Freeze

The bill authorizes the representative of a protected consumer to place a security freeze on a protected consumer's consumer report or record by submitting a request to the consumer reporting agency, providing sufficient proof of authority and identification, and paying the agency a maximum fee of \$10. The representative must submit a request to a consumer reporting agency in the manner prescribed by the agency. The fee is waived if the representative submits a copy of a valid investigative report, incident report, or complaint with law enforcement about the unlawful use of the protected consumer's identifying information.

If a consumer report does not exist for a protected consumer, the consumer reporting agency is required to create a consumer record. The consumer reporting agency is required to place a security freeze on a consumer report or record within 30 days³⁴ after confirming the request and must send a written confirmation of the security freeze within 10 business days after creating the security freeze. Once the security freeze is in effect, a consumer reporting agency cannot change the name, address, date of birth, or Social Security number without sending written confirmation to the consumer within 30 days after the change is posted to the consumer report or record. The consumer reporting agency is also required to provide instructions and a unique personal identifier for removing the security freeze. The consumer reporting agency is authorized to charge a fee not to exceed \$10 if the representative loses the personal identifier and a new one must be issued.

The bill also delineates the procedures and documents required of the representative or protected consumer for the removal of the security freeze. A representative must provide sufficient proof of authority and identification, the unique personal identifier, and payment of the \$10 fee. A protected consumer can also request removal of the security freeze by providing proof of identification, payment of the \$10 fee, as well as documentation that the authority for the representative to act on behalf of the protected consumer is no longer valid. The consumer reporting agency must remove the security freeze within 30 days.

Once a security freeze has been created, the consumer reporting agency cannot state or imply to any person that the security freeze reflects a negative credit score, a negative credit history, or a negative credit rating. Certain persons and entities, for specified reasons, are allowed to access a consumer report or record subject to a security freeze. These exemptions are similar to the exemptions found in s. 501.005, F.S. However, the bill also allows access and use of a consumer report or record for personal insurance policy information and noncredit information used for insurance purposes.

The bill requires a consumer reporting agency that violates a security freeze by releasing information without proper authorization to notify the representative of the protected consumer within 5 business days after the discovery or notification of the release. If the security freeze was

³⁴ The bill does not indicate whether these are calendar days or business days. However, because any time period in the bill less than 30 days is specifically identified as "business" days, it is assumed that the 30-day time periods in the bill are calendar days. This reasoning is consistent with the time periods provided in s. 501.005, F.S.

created due to a material misrepresentation, the consumer reporting agency must provide written notification to the representative and protected consumer before removing the security freeze.

Penalties and Remedies

A consumer reporting agency that willfully fails to comply with the bill's requirements is subject to an administrative fine of \$500 imposed by the Department of Agriculture and Consumer Services. The bill provides a private right of action for certain violations. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable to the representative and protected consumer for the greater of \$1,000 or the actual damages sustained. A person who obtains a consumer report or record under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the agency or \$1,000, whichever is greater.

Written Disclosures

The bill requires consumer reporting agencies to provide a written disclosure of the availability of security freezes for protected consumers. The disclosure provides notice that if a person is a custodial parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under ch. 39, ch. 393, ch. 744, or ch. 914, F.S., he or she has the right to place a security freeze on the consumer report of the person in his or her care. If there is no consumer report, the parent, guardian, or advocate may request the creation of a consumer record and the placement of a security freeze on that record. The disclosure warns that using a security freeze may delay or prohibit access to credit, insurance, employment, or other services, and it explains that a security freeze does not apply to entities with which the protected consumer has an existing account. The disclosure provides the procedure for removing the security freeze and releasing the consumer record or report. It also provides notice of the right to bring a civil action.

Section 3 provides that the bill will take effect September 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Credit reporting agencies may incur additional costs to establish security freezes for minors and other individuals covered under the bill. However, the credit reporting agencies will be able to charge up to a \$10 fee in most cases to create a security freeze. Receipt of the fee will help minimize costs to the credit reporting agencies.

With the increasing incidence of child identity theft, the creation of security freezes for consumer reports and records of minors under age 16 and other persons represented by a guardian or advocate may provide additional safeguards against identity theft.³⁵

C. Government Sector Impact:

The Department of Agriculture and Consumer Services believes the bill will have no fiscal impact on the department.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill and s. 501.005, F.S., differ in a number of ways. The bill does not contain the same remedies and penalties found in s. 501.005, F.S., related to adult security freezes. Section 501.005(16)(c), F.S., authorizes the assessment of punitive damages for willful violations of that section. Section 501.005(16)(d), F.S., provides that any person who is negligent in failing to comply with the provisions of that section is liable to the consumer for any actual damages sustained by the consumer because of the failure of at least \$100 and not more than \$1,000. Section 501.005(16)(e), F.S., also allows the court to award reasonable attorney's fees to the prevailing party in an action that is filed in bad faith or for purposes of harassment. The bill does not contain any similar provisions.

The bill provides that a consumer reporting agency has up to 30 days to remove a security freeze following a request for removal by the protected consumer or representative, rather than 3 business days as required for security freezes under s. 501.005, F.S. Additionally, unlike s. 501.005(6), F.S., which allows for temporary holds of a security freeze upon the consumer's request, the bill does not contain a similar provision for temporary holds. The extended time period for removing a security freeze and the lack of temporary hold provision in the bill could

³⁵ Department of Agriculture and Consumer Services, *Senate Bill 242 Agency Analysis* (October 23, 2013) (on file with the Senate Committee on Commerce and Tourism).

³⁶ *Id.*

result in a significant delay for a teenager applying for a car loan, seeking employment, or applying for an apartment lease, even if the parents are co-signing for the loan or lease.

Like s. 501.005, F.S., the bill exempts certain transactions from the security freeze, thereby allowing access to information contained in a consumer report. However, unlike s. 501.005, F.S., the bill also allows the use of the protected consumer report or record by a consumer reporting agency's database or file that is used exclusively for personal insurance policy information and noncredit information used for insurance purposes.

The bill also requires the consumer reporting agency to place a security freeze on a consumer report or record within 30 days after confirming the authenticity of the request. However, s. 501.005(3), F.S., requires a consumer reporting agency to place a security freeze within 5 business days after receiving a request for a security freeze.

Finally, s. 01.005(2)(a), F.S., requires a request for a security freeze be submitted in writing by certified mail to the consumer reporting agency. However, the bill provides that the representative would submit a request to a consumer reporting agency in the manner prescribed by the agency. How each consumer reporting agency will require requests for security freezes to be made is not known.

VIII. Statutes Affected:

This bill creates section 501.0051, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary Committee on January 14, 2014:

The committee substitute:

- Allows a parent of a protected consumer to establish his or her authority to act on behalf of the protected consumer by providing a copy of the protected consumer's birth certificate.
- Removes provisions from the underlying committee substitute which authorized the representative of a protected consumer to obtain the consumer report of the protected consumer during a security freeze.
- Makes technical and grammatical changes.

CS by Commerce and Tourism Committee on November 4, 2013:

The committee substitute:

- Identifies the act as the "Keeping I.D. Safe (KIDS) Act;"
- Removes language that would have allowed a consumer report to be created after a security freeze was initiated;
- Clarifies that when a protected consumer requests to remove a security freeze, he or she must pay a fee not to exceed \$10 to the consumer reporting agency; and

- Clarifies the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the Act.

B. Amendments:

None.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/2014

Meeting Date

Topic Security of a Protected Consumer's Info.

Name Jo Morris

Bill Number SB242

(if applicable)

Job Title Legislative Affairs Director

Amendment Barcode _____

(if applicable)

Address 200 E. Gaines St.

Street

Phone 850-410-9544

Tallahassee FL

State

32399

Zip

E-mail jo.morris@flafr.com

Speaking: For Against Information

Representing Office of Financial Regulation

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)

1/14/14

Meeting Date

Topic Security of a Protected Consumers Info

Bill Number 242

(if applicable)

Name Andy Gonzalez

Amendment Barcode _____

(if applicable)

Job Title ~~Consumer Advocate~~ Legislative Affairs

Address 3692 Coolidge Ct.

Phone (850) 345-7795

Street

Tallahassee

State

FL

Zip

E-mail andy.gonzalez@iscv.com

Speaking:

For

Against

Information

Representing Florida Credit Union 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan. 14, 2014
Meeting Date

Topic "KIDS" Act

Bill Number 242
(if applicable)

Name Grace Lovett

Amendment Barcode _____
(if applicable)

Job Title Dir Legislative Affairs

Address PL 10 The Capitol
Street
Tallahassee FL 32301
City State Zip

Phone 850 617 7700

E-mail grace.lovett@freshfromflorida.com

Speaking: For Against Information

Representing FL Dept. of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-14-14

Meeting Date

Topic Security of a protected Consumers Bill Number SB 242
(if applicable)

Name Cody Schwarz Amendment Barcode _____
(if applicable)

Job Title Legislative Coordinator

Address 215 S Monroe St. #701 Phone 850 728 7583

Street

Tallahassee

FL

32301

City

State

Zip

E-mail CSchwarz@cftlaw.com

Speaking: For Against Information

Representing Florida Police Chiefs Ass.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2014

Meeting Date

Topic Keeping I.D. Safe (KIDS) Act

Bill Number 242
(if applicable)

Name Erin Hellkamp

Amendment Barcode _____
(if applicable)

Job Title Associate Lobbyist

Address 225 South Adams Street, Suite 250

Phone 850-222-7718

Street

Tallahassee

FL

32301

City

State

Zip

E-mail guy@guyspearman.com

Speaking: For Against Information

Representing Florida Sheriffs 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)

1/14/2014
Meeting Date

Topic KIDS Act

Bill Number SB 0242
(if applicable)

Name Bob Lange

Amendment Barcode _____
(if applicable)

Job Title CIO

Address 600 South Calhoun (Holland Building
Street
Tallahassee, FL
City State Zip

Phone 850-487-9990

E-mail bob.lange@gal.fl.gov

Speaking: For Against Information

"Guardian ad Litem Program waiver in support of the bill"

Representing Alan Abramowitz, Exec Director
Guardian ad Litem Program

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

Do NOT Request to speak

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)

1/14/14
Meeting Date

Topic _____

Bill Number 242
(if applicable)

Name Teye (pronounced "Tia") Reeves

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 S. Monroe St.
Street
Tallahassee FL 32301
City State Zip

Phone 850 681 0024

E-mail treeves@flapartners.com

Speaking: For Against Information

Representing AIF

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

Jan 14, 2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic Bill

Bill Number 242
(if applicable)

Name Anthony DiMarco

Amendment Barcode _____
(if applicable)

Job Title EVP

Address 1001 Thomasville Rd

Phone 224-2267

Juli. FL 32303
City State Zip

E-mail adimarco@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers 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)

1/14/14
Meeting Date

Topic KIDS Act

Bill Number SB 242
(if applicable)

Name Aimee Diaz Lyon

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 South Monroe Street #505
Street
Tallahassee FL 32301
City State Zip

Phone 850-205-9000

E-mail _____

Speaking: For Against Information

Representing Consumer Data Industry 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.

By the Committee on Commerce and Tourism; and Senator Detert

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1 A bill to be entitled
2 An act relating to the security of a protected
3 consumer's information; providing a short title;
4 creating s. 501.0051, F.S.; providing definitions;
5 authorizing the representative of a protected consumer
6 to place a security freeze on a protected consumer's
7 consumer report or record; specifying the procedure to
8 request a security freeze; requiring a consumer
9 reporting agency to establish a record if the
10 protected consumer does not have an existing consumer
11 report; prohibiting the use of a consumer record for
12 certain purposes; requiring a consumer reporting
13 agency to place, and to provide written confirmation
14 of, a security freeze within a specified period;
15 prohibiting a consumer reporting agency from stating
16 or implying that a security freeze reflects a negative
17 credit history or rating; requiring a consumer
18 reporting agency to provide a copy of a consumer
19 report or record to a protected consumer or his or her
20 representative upon request; authorizing a consumer
21 reporting agency to charge a fee for a copy of a
22 protected consumer's consumer report or record;
23 specifying the procedure to request a copy of a
24 protected consumer's consumer report or record;
25 requiring a consumer reporting agency to remove a
26 security freeze under specified conditions; specifying
27 the procedure to remove a security freeze; providing
28 applicability; authorizing a consumer reporting agency
29 to charge a fee for placing or removing a security

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30 freeze and for reissuing a unique personal identifier;
31 prohibiting a fee under certain circumstances;
32 requiring written notification upon the change of
33 specified information in a protected consumer's
34 consumer report or record; providing exceptions;
35 requiring a consumer reporting agency to notify a
36 representative and provide specified information if
37 the consumer reporting agency violates a security
38 freeze; providing penalties and civil remedies;
39 providing written disclosure requirements for consumer
40 reporting agencies relating to a protected consumer's
41 security freeze; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. This act may be cited as the "Keeping I.D. Safe
46 (KIDS) Act."

47 Section 2. Section 501.0051, Florida Statutes, is created
48 to read:

49 501.0051 Protected consumer report security freeze.-

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

51 (a) "Consumer report" has the same meaning as provided in
52 15 U.S.C. s. 1681a(d).

53 (b) "Consumer reporting agency" has the same meaning as
54 provided in 15 U.S.C. s. 1681a(f).

55 (c) "Protected consumer" means a person younger than 16
56 years of age at the time a security freeze request is made or a
57 person represented by a guardian or other advocate pursuant to
58 chapter 39, chapter 393, chapter 744, or chapter 914.

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59 (d) "Record" means a compilation of information that:

60 1. Identifies a protected consumer; and

61 2. Is created by a consumer reporting agency exclusively
62 for the purpose of complying with this section.

63 (e) "Representative" means the custodial parent or legal
64 guardian of a protected consumer, including a guardian appointed
65 pursuant to s. 914.17.

66 (f) "Security freeze" means:

67 1. A notice placed on a protected consumer's consumer
68 report which prohibits a consumer reporting agency from
69 releasing the consumer report, the credit score, or any
70 information contained within the consumer report to a third
71 party without the express authorization of the representative;
72 or

73 2. If a consumer reporting agency does not have a consumer
74 report pertaining to the protected consumer, a notice placed on
75 the protected consumer's record which prohibits the consumer
76 reporting agency from releasing the protected consumer's record
77 except as provided in this section.

78 (g) "Sufficient proof of authority" means documentation
79 showing that a representative has authority to act on behalf of
80 a protected consumer. The term includes, but is not limited to,
81 a court order, a copy of a valid power of attorney, or a written
82 notarized statement signed by a representative which expressly
83 describes the authority of the representative to act on behalf
84 of the protected consumer.

85 (h) "Sufficient proof of identification" means
86 documentation identifying a protected consumer or a
87 representative of a protected consumer. The term includes, but

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88 is not limited to, a copy of a social security card, a certified
89 or official copy of a birth certificate, a copy of a valid
90 driver license, or a copy of a government-issued photo
91 identification.

92 (2) A representative may place a security freeze on a
93 protected consumer's consumer report by:

94 (a) Submitting a request to a consumer reporting agency in
95 the manner prescribed by that agency;

96 (b) Providing the agency with sufficient proof of authority
97 and sufficient proof of identification of the representative;
98 and

99 (c) Paying the agency a fee as authorized under this
100 section.

101 (3) If a consumer reporting agency does not have a consumer
102 report pertaining to a protected consumer when the consumer
103 reporting agency receives a request for a security freeze under
104 subsection (2), the consumer reporting agency shall create a
105 record for the protected consumer and place a security freeze on
106 the record. A record may not be created or used to consider the
107 protected consumer's credit worthiness, credit standing, credit
108 capacity, character, general reputation, personal
109 characteristics, or eligibility for other financial services.

110 (4) A consumer reporting agency shall place a security
111 freeze on a consumer report or record within 30 days after
112 confirming the authenticity of a security freeze request made in
113 accordance with this section.

114 (5) The consumer reporting agency shall send a written
115 confirmation of the security freeze to the representative within
116 10 business days after instituting the security freeze on the

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117 consumer report or record and shall provide the representative
118 with instructions for removing the security freeze and a unique
119 personal identifier to be used by the representative when
120 providing authorization for removal of the security freeze.

121 (6) A consumer reporting agency may not state or imply to
122 any person that a security freeze reflects a negative credit
123 score, a negative credit history, or a negative credit rating.

124 (7) During any period that a security freeze is in effect,
125 a consumer reporting agency shall provide a copy of a protected
126 consumer's consumer report or record to the protected consumer
127 or his or her representative upon request. A consumer reporting
128 agency may charge the representative or protected consumer a fee
129 for the copy, not to exceed the amount normally charged by such
130 agency to provide a copy of a consumer report.

131 (a) A representative submitting a request for a copy of a
132 protected consumer's consumer report or record must provide all
133 of the following:

134 1. Sufficient proof of identification of the representative
135 and sufficient proof of authority as determined by the consumer
136 reporting agency.

137 2. The unique personal identifier provided by the consumer
138 reporting agency pursuant to subsection (5).

139 3. A fee as authorized under this section.

140 (b) A protected consumer submitting a request for a copy of
141 his or her consumer report or record must provide sufficient
142 proof of identification of the protected consumer as determined
143 by the consumer reporting agency and pay a fee as authorized
144 under this section.

145 (8) A consumer reporting agency shall remove a security

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146 freeze from a protected consumer's consumer report or record
147 only under either of the following circumstances:

148 (a) Upon the request of a representative or a protected
149 consumer. A consumer reporting agency shall remove a security
150 freeze within 30 days after receiving such a request for removal
151 from a protected consumer or his or her representative.

152 1. A representative submitting a request for removal must
153 provide all of the following:

154 a. Sufficient proof of identification of the representative
155 and sufficient proof of authority as determined by the consumer
156 reporting agency.

157 b. The unique personal identifier provided by the consumer
158 reporting agency pursuant to subsection (5).

159 c. A fee as authorized under this section.

160 2. A protected consumer submitting a request for removal
161 must provide all of the following:

162 a. Sufficient proof of identification of the protected
163 consumer as determined by the consumer reporting agency.

164 b. Documentation that the sufficient proof of authority of
165 the protected consumer's representative to act on behalf of the
166 protected consumer is no longer valid.

167 c. A fee as authorized under this section.

168 (b) If the security freeze was instituted due to a material
169 misrepresentation of fact. If a consumer reporting agency
170 intends to remove a security freeze under this paragraph, the
171 consumer reporting agency must notify the representative and
172 protected consumer in writing before removing the security
173 freeze.

174 (9) This section does not apply to the use of a protected

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175 consumer's consumer report or record by the following persons or
176 for the following reasons:

177 (a) A state agency acting within its lawful investigative
178 or regulatory authority.

179 (b) A state or local law enforcement agency investigating a
180 crime or conducting a criminal background check.

181 (c) A person administering a credit file monitoring
182 subscription service to which the protected consumer or the
183 representative, on behalf of the protected consumer, has
184 subscribed.

185 (d) A person providing the protected consumer's consumer
186 report or record to the protected consumer or the representative
187 upon the request of the protected consumer or representative.

188 (e) Pursuant to a court order lawfully entered.

189 (f) An insurance company for use in setting or adjusting a
190 rate, adjusting a claim, or underwriting for insurance purposes.

191 (g) A consumer reporting agency's database or file that
192 consists entirely of information concerning, and used
193 exclusively for, one or more of the following:

194 1. Criminal record information.

195 2. Personal loss history information.

196 3. Fraud prevention or detection.

197 4. Tenant screening.

198 5. Employment screening.

199 6. Personal insurance policy information.

200 7. Noncredit information used for insurance purposes.

201 (h) A check services company issuing authorizations for the
202 purpose of approving or processing negotiable instruments,
203 electronic funds transfers, or similar methods of payment.

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204 (i) A deposit account information service company issuing
205 reports regarding account closures due to fraud, substantial
206 overdrafts, automatic teller machine abuse, or similar negative
207 information regarding a protected consumer to an inquiring
208 financial institution, as defined in s. 655.005 or in federal
209 law, for use only in reviewing a representative's request for a
210 deposit account for the protected consumer at the inquiring
211 financial institution.

212 (j) A consumer reporting agency that acts only as a
213 reseller of credit information by assembling and merging
214 information contained in the database of another consumer
215 reporting agency or multiple consumer reporting agencies and
216 that does not maintain a permanent database of credit
217 information from which new consumer reports are produced.
218 However, such consumer reporting agency shall honor any security
219 freeze placed or removed by another consumer reporting agency.

220 (k) A fraud prevention services company issuing reports to
221 prevent or investigate fraud.

222 (l) A person or entity, or its affiliates, or a collection
223 agency acting on behalf of the person or entity and with which
224 the protected consumer has an existing account, requesting
225 information in the protected consumer's consumer report or
226 record for the purposes of reviewing or collecting the account.
227 Reviewing the account includes activities related to account
228 maintenance, monitoring, credit line increases, and account
229 upgrades and enhancements.

230 (10) (a) A consumer reporting agency may charge a reasonable
231 fee, not to exceed \$10, to place or remove a security freeze.

232 (b) A consumer reporting agency may charge a reasonable

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233 fee, not to exceed \$10, if the representative fails to retain
234 the original unique personal identifier provided by the consumer
235 reporting agency and the agency must reissue the unique personal
236 identifier or provide a new unique personal identifier to the
237 representative.

238 (c) A consumer reporting agency may not charge a fee under
239 this section to the representative of a protected consumer who
240 is a victim of identity theft if the representative submits, at
241 the time the security freeze is requested, a copy of a valid
242 investigative report, an incident report, or a complaint with a
243 law enforcement agency about the unlawful use of the protected
244 consumer's identifying information by another person.

245 (11) If a security freeze is in effect, a consumer
246 reporting agency must send written confirmation to a protected
247 consumer's representative of a change to any of the following
248 official information in the protected consumer's consumer report
249 or record within 30 days after the change is posted:

250 (a) The protected consumer's name.

251 (b) The protected consumer's address.

252 (c) The protected consumer's date of birth.

253 (d) The protected consumer's social security number.

254

255 Written confirmation is not required for technical corrections
256 of a protected consumer's official information, including name
257 and street abbreviations, complete spellings, or transposition
258 of numbers or letters. In the case of an address change, the
259 written confirmation must be sent to the representative and to
260 the protected consumer's new address and former address.

261 (12) If a consumer reporting agency violates a security

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262 freeze placed in accordance with this section by releasing
263 information subject to a security freeze without proper
264 authorization, the consumer reporting agency shall, within 5
265 business days after discovering or being notified of the release
266 of information, notify the representative of the protected
267 consumer in writing. The notice shall state the specific
268 information released and provide the name, address, and other
269 contact information of the recipient of the information.

270 (13) A consumer reporting agency that willfully fails to
271 comply with any requirement imposed under this section is
272 subject to an administrative fine in the amount of \$500, imposed
273 by the Department of Agriculture and Consumer Services pursuant
274 to the administrative procedures established in chapter 120.

275 (14) In addition to any other penalties or remedies
276 provided under law, the following persons who are aggrieved by a
277 violation of this section may bring a civil action as follows:

278 (a) A person who obtains a protected consumer's consumer
279 report or record from a consumer reporting agency under false
280 pretenses or who knowingly obtains a protected consumer's
281 consumer report or record without a permissible purpose is
282 liable to the representative and protected consumer for actual
283 damages sustained by the protected consumer or \$1,000, whichever
284 is greater.

285 (b) A person who obtains a protected consumer's consumer
286 report or record from a consumer reporting agency under false
287 pretenses or who knowingly obtains a protected consumer's
288 consumer report or record without a permissible purpose is
289 liable to the consumer reporting agency for actual damages
290 sustained by the consumer reporting agency or \$1,000, whichever

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291 is greater.

292 (15) A written disclosure by a consumer reporting agency,
293 pursuant to 15 U.S.C. s. 1681g, to a representative and
294 protected consumer residing in this state must include a written
295 summary of all rights that the representative and protected
296 consumer have under this section and, in the case of a consumer
297 reporting agency that compiles and maintains records on a
298 nationwide basis, a toll-free telephone number that the
299 representative can use to communicate with the consumer
300 reporting agency. The information provided in paragraph (b) must
301 be in at least 12-point boldfaced type. The written summary of
302 rights required under this section is sufficient if it is
303 substantially in the following form:

304 (a) If you are the custodial parent or legal guardian of a
305 minor younger than 16 years of age or a guardian or advocate of
306 an incapacitated, disabled, or protected person under chapter
307 39, chapter 393, chapter 744, or chapter 914, Florida Statutes,
308 you have the right to place a security freeze on the consumer
309 report of the person you are legally authorized to care for. If
310 no consumer report exists, you have the right to request that a
311 record be created and a security freeze be placed on the record.
312 A record with a security freeze is intended to prevent the
313 opening of credit accounts until the security freeze is removed.

314 (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO
315 CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN A
316 CONSUMER REPORT OR RECORD MAY DELAY, INTERFERE WITH, OR PROHIBIT
317 THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION
318 REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT
319 SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,

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320 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET
321 CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN
322 EXTENSION OF CREDIT AT POINT OF SALE.

323 (c) To remove the security freeze on the protected
324 consumer's record or report, you must contact the consumer
325 reporting agency and provide all of the following:

326 1. Proof of identification as required by the consumer
327 reporting agency.

328 2. Proof of authority over the protected consumer as
329 required by the consumer reporting agency.

330 3. The unique personal identifier provided by the consumer
331 reporting agency.

332 4. Payment of a fee.

333 (d) A consumer reporting agency must, within 30 days after
334 receiving the above information, authorize the removal of the
335 security freeze.

336 (e) A security freeze does not apply to a person or entity,
337 or its affiliates, or a collection agency acting on behalf of
338 the person or entity and with which the protected consumer has
339 an existing account, which requests information in the protected
340 consumer's consumer report or record for the purposes of
341 reviewing or collecting the account. Reviewing the account
342 includes activities related to account maintenance, monitoring,
343 credit line increases, and account upgrades and enhancements.

344 (f) You have the right to bring a civil action as
345 authorized by section 501.0051, Florida Statutes, which governs
346 the security of protected consumer information.

347 Section 3. This act shall take effect September 1, 2014.

348



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Keeping I.D. Safe
(KIDS) Act."

Section 2. Section 501.0051, Florida Statutes, is created
to read:

501.0051 Protected consumer report security freeze.—

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

(a) "Consumer report" has the same meaning as provided in



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12 15 U.S.C. s. 1681a(d).

13 (b) "Consumer reporting agency" has the same meaning as
14 provided in 15 U.S.C. s. 1681a(f).

15 (c) "Protected consumer" means a person younger than 16
16 years of age at the time a security freeze request is made or a
17 person represented by a guardian or other advocate pursuant to
18 chapter 39, chapter 393, chapter 744, or chapter 914.

19 (d) "Record" means a compilation of information that:

20 1. Identifies a protected consumer; and

21 2. Is created by a consumer reporting agency exclusively
22 for the purpose of complying with this section.

23 (e) "Representative" means the parent or legal guardian of
24 a protected consumer, including a guardian appointed pursuant to
25 s. 914.17.

26 (f) "Security freeze" means:

27 1. A notice placed on a protected consumer's consumer
28 report which prohibits a consumer reporting agency from

29 releasing the consumer report, the credit score, or any
30 information contained within the consumer report to a third

31 party without the express authorization of the representative;
32 or

33 2. If a consumer reporting agency does not have a consumer
34 report pertaining to a protected consumer, a notice placed on a
35 protected consumer's record which prohibits the consumer
36 reporting agency from releasing the protected consumer's record
37 except as provided in this section.

38 (g) "Sufficient proof of authority" means documentation
39 showing that a representative has authority to act on behalf of
40 a protected consumer. The term includes, but is not limited to,



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41 a court order, a copy of a valid power of attorney, or a written
42 notarized statement signed by the representative which expressly
43 describes the authority of the representative to act on behalf
44 of the protected consumer. A representative who is a parent may
45 establish sufficient proof of authority by providing a certified
46 or official copy of the protected consumer's birth certificate.

47 (h) "Sufficient proof of identification" means
48 documentation identifying a protected consumer or a
49 representative. The term includes, but is not limited to, a copy
50 of a social security card, a certified or official copy of a
51 birth certificate, a copy of a valid driver license, or a copy
52 of a government-issued photo identification.

53 (2) A representative may place a security freeze on a
54 protected consumer's consumer report by:

55 (a) Submitting a request to a consumer reporting agency in
56 the manner prescribed by that agency;

57 (b) Providing the agency with sufficient proof of authority
58 and sufficient proof of identification of the representative;
59 and

60 (c) Paying the agency a fee as authorized under this
61 section.

62 (3) If a consumer reporting agency does not have a consumer
63 report pertaining to a protected consumer when the consumer
64 reporting agency receives a request for a security freeze under
65 subsection (2), the consumer reporting agency shall create a
66 record for the protected consumer and place a security freeze on
67 the record. A record may not be created or used to consider the
68 protected consumer's credit worthiness, credit standing, credit
69 capacity, character, general reputation, personal



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70 characteristics, or eligibility for other financial services.

71 (4) A consumer reporting agency shall place a security
72 freeze on a consumer report or record within 30 days after
73 confirming the authenticity of a security freeze request made in
74 accordance with this section.

75 (5) The consumer reporting agency shall send a written
76 confirmation of the security freeze to the representative within
77 10 business days after instituting the security freeze on the
78 consumer report or record and shall provide the representative
79 with instructions for removing the security freeze and a unique
80 personal identifier to be used by the representative when
81 providing authorization for removal of the security freeze.

82 (6) A consumer reporting agency may not state or imply to
83 any person that a security freeze reflects a negative credit
84 score, a negative credit history, or a negative credit rating.

85 (7) A consumer reporting agency shall remove a security
86 freeze from a protected consumer's consumer report or record
87 only under either of the following circumstances:

88 (a) Upon the request of a representative or a protected
89 consumer. A consumer reporting agency shall remove a security
90 freeze within 30 days after receiving a request for removal from
91 a protected consumer or his or her representative.

92 1. A representative submitting a request for removal must
93 provide all of the following:

94 a. Sufficient proof of identification of the representative
95 and sufficient proof of authority as determined by the consumer
96 reporting agency.

97 b. The unique personal identifier provided by the consumer
98 reporting agency pursuant to subsection (5).



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99 c. A fee as authorized under this section.

100 2. A protected consumer submitting a request for removal
101 must provide all of the following:

102 a. Sufficient proof of identification of the protected
103 consumer as determined by the consumer reporting agency.

104 b. Documentation that the sufficient proof of authority of
105 the protected consumer's representative to act on behalf of the
106 protected consumer is no longer valid.

107 c. A fee as authorized under this section.

108 (b) If the security freeze was instituted due to a material
109 misrepresentation of fact. A consumer reporting agency that
110 intends to remove a security freeze under this paragraph shall
111 notify the representative and protected consumer in writing
112 before removing the security freeze.

113 (8) This section does not apply to the use of a protected
114 consumer's consumer report or record by the following persons or
115 for the following reasons:

116 (a) A state agency acting within its lawful investigative
117 or regulatory authority.

118 (b) A state or local law enforcement agency investigating a
119 crime or conducting a criminal background check.

120 (c) A person administering a credit file monitoring
121 subscription service to which the protected consumer or the
122 representative, on behalf of the protected consumer, has
123 subscribed.

124 (d) A person providing the protected consumer's consumer
125 report or record to the protected consumer or representative
126 upon the request of the protected consumer or representative.

127 (e) Pursuant to a court order lawfully entered.



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128 (f) An insurance company for use in setting or adjusting a
129 rate, adjusting a claim, or underwriting for insurance purposes.

130 (g) A consumer reporting agency's database or file that
131 consists entirely of information concerning, and used
132 exclusively for, one or more of the following:

133 1. Criminal record information.

134 2. Personal loss history information.

135 3. Fraud prevention or detection.

136 4. Tenant screening.

137 5. Employment screening.

138 6. Personal insurance policy information.

139 7. Noncredit information used for insurance purposes.

140 (h) A check services company issuing authorizations for the
141 purpose of approving or processing negotiable instruments,
142 electronic funds transfers, or similar methods of payment.

143 (i) A deposit account information service company issuing
144 reports regarding account closures due to fraud, substantial
145 overdrafts, automatic teller machine abuse, or similar negative
146 information regarding a protected consumer to an inquiring
147 financial institution, as defined in s. 655.005 or in federal
148 law, for use only in reviewing a representative's request for a
149 deposit account for the protected consumer at the inquiring
150 financial institution.

151 (j) A consumer reporting agency that acts only as a
152 reseller of credit information by assembling and merging
153 information contained in the database of another consumer
154 reporting agency or multiple consumer reporting agencies and
155 that does not maintain a permanent database of credit
156 information from which new consumer reports are produced.



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157 However, such consumer reporting agency shall honor any security
158 freeze placed or removed by another consumer reporting agency.

159 (k) A fraud prevention services company issuing reports to
160 prevent or investigate fraud.

161 (l) A person or entity, or its affiliates, or a collection
162 agency acting on behalf of the person or entity, with which the
163 protected consumer has an existing account, requesting
164 information in the protected consumer's consumer report or
165 record for the purposes of reviewing or collecting the account.
166 Reviewing the account includes activities related to account
167 maintenance, monitoring, credit line increases, and account
168 upgrades and enhancements.

169 (9) (a) A consumer reporting agency may charge a reasonable
170 fee, not to exceed \$10, to place or remove a security freeze.

171 (b) A consumer reporting agency may also charge a
172 reasonable fee, not to exceed \$10, if the representative fails
173 to retain the original unique personal identifier provided by
174 the consumer reporting agency and the agency must reissue the
175 unique personal identifier or provide a new unique personal
176 identifier to the representative.

177 (c) A consumer reporting agency may not charge a fee under
178 this section to the representative of a protected consumer who
179 is a victim of identity theft if the representative submits, at
180 the time the security freeze is requested, a copy of a valid
181 investigative report, an incident report, or a complaint with a
182 law enforcement agency about the unlawful use of the protected
183 consumer's identifying information by another person.

184 (10) If a security freeze is in effect, a consumer
185 reporting agency must send written confirmation to a protected



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186 consumer's representative of a change to any of the following
187 official information in the protected consumer's consumer report
188 or record within 30 days after the change is posted:

- 189 (a) The protected consumer's name.
190 (b) The protected consumer's address.
191 (c) The protected consumer's date of birth.
192 (d) The protected consumer's social security number.

193
194 Written confirmation is not required for technical corrections
195 of a protected consumer's official information, including name
196 and street abbreviations, complete spellings, or transposition
197 of numbers or letters. In the case of an address change, the
198 written confirmation must be sent to the representative and to
199 the protected consumer's new address and former address.

200 (11) If a consumer reporting agency violates a security
201 freeze placed in accordance with this section by releasing
202 information subject to a security freeze without proper
203 authorization, the consumer reporting agency shall, within 5
204 business days after discovering or being notified of the release
205 of information, notify the representative of the protected
206 consumer in writing. The notice must state the specific
207 information released and provide the name, address, and other
208 contact information of the recipient of the information.

209 (12) A consumer reporting agency that willfully fails to
210 comply with any requirement imposed under this section is
211 subject to an administrative fine in the amount of \$500, imposed
212 by the Department of Agriculture and Consumer Services pursuant
213 to the administrative procedures established in chapter 120.

214 (13) In addition to any other penalties or remedies



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215 provided under law, the following persons who are aggrieved by a
216 violation of this section may bring a civil action as follows:

217 (a) A person who obtains a protected consumer's consumer
218 report or record from a consumer reporting agency under false
219 pretenses or who knowingly obtains a protected consumer's
220 consumer report or record without a permissible purpose is
221 liable to the representative and protected consumer for actual
222 damages sustained by the protected consumer or \$1,000, whichever
223 is greater.

224 (b) A person who obtains a protected consumer's consumer
225 report or record from a consumer reporting agency under false
226 pretenses or who knowingly obtains a protected consumer's
227 consumer report or record without a permissible purpose is
228 liable to the consumer reporting agency for actual damages
229 sustained by the consumer reporting agency or \$1,000, whichever
230 is greater.

231 (14) A written disclosure by a consumer reporting agency,
232 pursuant to 15 U.S.C. s. 1681g, to a representative and
233 protected consumer residing in this state must include a written
234 summary of all rights that the representative and protected
235 consumer have under this section and, in the case of a consumer
236 reporting agency that compiles and maintains records on a
237 nationwide basis, a toll-free telephone number that the
238 representative can use to communicate with the consumer
239 reporting agency. The information provided in paragraph (b) must
240 be in at least 12-point boldfaced type. The written summary of
241 rights required under this section is sufficient if it is
242 substantially in the following form:

243 (a) If you are the parent or legal guardian of a minor



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244 younger than 16 years of age or a guardian or advocate of an
245 incapacitated, disabled, or protected person under chapter 39,
246 chapter 393, chapter 744, or chapter 914, Florida Statutes, you
247 have the right to place a security freeze on the consumer report
248 of the person you are legally authorized to care for. If no
249 consumer report exists, you have the right to request that a
250 record be created and a security freeze be placed on the record.
251 A record with a security freeze is intended to prevent the
252 opening of credit accounts until the security freeze is removed.

253 (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO
254 CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN A
255 CONSUMER REPORT OR RECORD MAY DELAY, INTERFERE WITH, OR PROHIBIT
256 THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION
257 REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT
258 SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,
259 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET
260 CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN
261 EXTENSION OF CREDIT AT POINT OF SALE.

262 (c) To remove the security freeze on the protected
263 consumer's record or report, you must contact the consumer
264 reporting agency and provide all of the following:

265 1. Proof of identification as required by the consumer
266 reporting agency.

267 2. Proof of authority over the protected consumer as
268 required by the consumer reporting agency.

269 3. The unique personal identifier provided by the consumer
270 reporting agency.

271 4. Payment of a fee.

272 (d) A consumer reporting agency must, within 30 days after



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273 receiving the above information, authorize the removal of the
274 security freeze.

275 (e) A security freeze does not apply to a person or entity,
276 or its affiliates, or a collection agency acting on behalf of
277 the person or entity, with which the protected consumer has an
278 existing account, which requests information in the protected
279 consumer's consumer report or record for the purposes of
280 reviewing or collecting the account. Reviewing the account
281 includes activities related to account maintenance, monitoring,
282 credit line increases, and account upgrades and enhancements.

283 (f) You have the right to bring a civil action as
284 authorized by section 501.0051, Florida Statutes, which governs
285 the security of protected consumer information.

286 Section 3. This act shall take effect September 1, 2014.

287
288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause
291 and insert:

292 A bill to be entitled
293 An act relating to the security of a protected
294 consumer's information; providing a short title;
295 creating s. 501.0051, F.S.; providing definitions;
296 authorizing the representative of a protected consumer
297 to place a security freeze on a protected consumer's
298 consumer report or record; specifying the procedure to
299 request a security freeze; requiring a consumer
300 reporting agency to establish a record if the
301 protected consumer does not have an existing consumer



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302 report; prohibiting the use of a consumer record for
303 certain purposes; requiring a consumer reporting
304 agency to place, and to provide written confirmation
305 of, a security freeze within a specified period;
306 prohibiting a consumer reporting agency from stating
307 or implying that a security freeze reflects a negative
308 credit history or rating; requiring a consumer
309 reporting agency to remove a security freeze under
310 specified conditions; specifying the procedure to
311 remove a security freeze; providing applicability;
312 authorizing a consumer reporting agency to charge a
313 fee for placing or removing a security freeze and for
314 reissuing a unique personal identifier; prohibiting a
315 fee under certain circumstances; requiring written
316 notification upon the change of specified information
317 in a protected consumer's consumer report or record;
318 providing exceptions; requiring a consumer reporting
319 agency to notify a representative and provide
320 specified information if the consumer reporting agency
321 violates a security freeze; providing penalties and
322 civil remedies; providing written disclosure
323 requirements for consumer reporting agencies relating
324 to a protected consumer's security freeze; providing
325 an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 220

INTRODUCER: Senator Thompson

SUBJECT: Florida Civil Rights Act

DATE: January 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>CA</u>	_____

I. Summary:

SB 220 amends the Florida Civil Rights Act (FCRA) by expressly prohibiting discrimination because of pregnancy. The FCRA currently prohibits discrimination based on race, creed, color, sex, physical disability, or national origin in the areas of education, employment, housing, and public accommodation. Courts are split regarding whether a cause of action may exist for pregnancy discrimination under state law.

The definition of the term “pregnancy” in the bill is the substance of the definition of the same term in the federal Pregnancy Discrimination Act, incorporated into Title VII of the federal Civil Rights Act (Title VII) in 1978. “Pregnancy” means a woman affected by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Existing law prohibits an employer from discriminating against a member of a protected class with respect to compensation, terms, conditions, or privileges of employment. The bill adds the term “benefits” to this list. However, discrimination with respect to benefits may already be covered by terms or conditions of employment.

By ensuring a state cause of action for pregnancy discrimination claims, plaintiffs will have more time to file suit than under federal law. After the Equal Opportunity Employment Commission concludes an investigation of a complaint and issues a “right-to-sue” letter, the plaintiff has 90 days to file an action in federal court. Plaintiffs having pregnancy discrimination cases in state court would have up to a year to file after a determination of reasonable cause by the Florida Commission on Human Relations (FCRA). Also, plaintiffs filing against a small-sized employer may be able to recoup greater punitive damages in state court, due to the difference in caps on punitive damages in state and federal court.

As stated above, case law indicates a conflict among circuits on whether under the FCRA a plaintiff may bring a state claim for pregnancy discrimination. The Florida Supreme Court

recently heard oral arguments on the issue. The Court's forthcoming decision will likely determine whether the cause of action exists under Florida law.

II. Present Situation:

Title VII Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1962 (Title VII) prohibits discrimination based on race, color, religion, national origin, or sex. Title VII applies to employers with 15 or more employees and outlines a number of unlawful employment practices. Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.²

Pregnancy Discrimination Act³

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert* that Title VII did not provide protection based on pregnancy discrimination.⁴ In response, in 1978, Congress passed the Pregnancy Discrimination Act (PDA). The PDA amended Title VII to expressly provide that discrimination because of sex includes discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁵

Americans with Disabilities Act⁶

The Americans with Disabilities Act (ADA) prohibits discrimination based on disability in employment, public accommodation, and telecommunications. The ADA defines disability as a "physical or mental impairment that substantially limits one or more major life activities ... ; a record of such an impairment; or ... being regarded as having such an impairment."⁷ Although pregnancy is not generally considered a disability, complications arising out of pregnancy may afford an individual protections provided under the ADA.⁸

Family and Medical Leave Act⁹

The Family and Medical Leave Act (FMLA) provides that employees of certain covered employers are entitled to take up to 12 weeks of unpaid leave a year for a serious illness, injury, or other health condition that involves continuing treatment by a health care provider. The FMLA also guarantees that employees can return to the same or an equivalent position. To apply, the FMLA sets certain threshold requirements regarding a minimum number of employees

¹ 42 U.S.C. 2000e et. seq.

² 42 U.S.C. 2000e-2.

³ Pub. L. No. 95-555, 92 Stat. 2076.

⁴ 429 U.S. 125, 145-146 (1976).

⁵ The PDA provides that individuals qualifying for protection on the basis of pregnancy must be treated the same for employment purposes, including the receipt of benefits, as any other person who does not have that condition but is similarly able or unable to work.

⁶ 42 U.S.C. s. 101.

⁷ 42 U.S.C. s. 12102.

⁸ Michael E. Barnsback, *Complying with Employment Regulations*, 2013 WL 418827, p. 9 (2013).

⁹ 29 U.S.C. s. 2611 (11)(1993).

and time worked in that position.¹⁰ In addition to providing coverage for birth or adoption, the FMLA authorizes leave for prenatal care, incapacity related to pregnancy, and any serious health condition following childbirth.¹¹

Florida Civil Rights Act

The 1992 Florida Legislature enacted the Florida Civil Rights Act (FCRA) to protect persons from discrimination in education, employment, housing, and public accommodations. In addition to the classes of race, color, religion, sex, and national origin protected in federal law, the FCRA includes as a protected class age, handicap, or marital status.¹²

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, are considered unlawful employment practices.¹³ Unlike Title VII, the FCRA has not been amended to expressly prohibit pregnancy discrimination.

Courts interpreting the FCRA typically follow federal precedent because the FCRA is generally patterned after Title VII. Still, differences between state and federal law persist. As noted above, the FCRA includes age, handicap, and marital status as protected categories. Although Title VII does not include these statuses, other federal laws address age and disability, albeit in a different manner.¹⁴

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a form of sex discrimination, the FCRA does not. The fact that the FCRA is modeled after Title VII but failed to include this provision has caused division among both federal and state courts as to whether the Legislature intended to provide protection on the basis of pregnancy status. Without guidance from the Florida Supreme Court, the ability to bring a claim based on pregnancy discrimination varies among jurisdictions.

The case of *O'Loughlin v. Pinchback* represents the first time that a Florida district court of appeal reviewed a claim of pregnancy discrimination in the context of the FCRA (then known as the Florida Human Rights Act).¹⁵ In this case, the plaintiff alleged that her employer unlawfully terminated her from her position as a correctional officer based on her pregnancy. The First District Court of Appeal indicated as an initial matter that Florida styled its anti-discrimination law on the federal model.¹⁶ Although the Legislature did not amend Florida law to conform to Title VII as amended by the Pregnancy Discrimination Act (PDA), the court held that both

¹⁰ The FMLA applies to private employers with at least 50 employees and all public employers. To be eligible for FMLA leave, an individual must have worked for the employer for at least 12 months and must have worked at least 1,250 hours during the 12 months prior to the leave.

¹¹ For more information, see U.S. Dept. of Labor, *FMLA Frequently Asked Questions*, <http://www.dol.gov/whd/fmla/fmla-faqs.htm> (last visited January 7, 2014).

¹² Section 760.10(1)(a), F.S.

¹³ Section 760.10(2) through (8), F.S.

¹⁴ Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 FLA. B.J. 36, 36 (December 2013).

¹⁵ 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

¹⁶ *Id.* at 791.

federal and state law should be read in concert to provide the maximum protection against discrimination. Therefore, Title VII as amended by the PDA preempts Florida law “to the extent that Florida’s law offers less protection to its citizens than does the corresponding federal law.”¹⁷ Therefore, the *O’Loughlin* court found that pregnancy discrimination is prohibited by state law.

Other courts have interpreted the issue of pregnancy discrimination in state law differently. In *Carsillo v. City of Lake Worth*, the Fourth District Court of Appeal opined that the FCRA includes pregnancy because Congress originally intended Title VII to include pregnancy, and the PDA merely clarified that intent.¹⁸ The court concluded it unnecessary for Florida to amend its statute in light of this interpretation. The Florida Supreme Court declined to hear the appeal.¹⁹

However, the Third District Court of Appeal court reached an opposite finding. In *Delva v. Continental Group, Inc.*, the court did not look beyond the plain language of the FCRA, and found that no remedy exists for a pregnancy claim in state court under Florida law.²⁰ The court certified the conflict with the *Carsillo* case to the Florida Supreme Court. The Court held oral arguments November 7, 2013.²¹ To date, the Court has not released a decision.

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is prohibited by its provisions.²² Like the state courts, the federal courts finding that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy discrimination did so primarily because the Legislature has not amended the FCRA to expressly include pregnancy as a protected class.

Procedure for Filing Claims of Discrimination

A Florida employee may file a charge of an unlawful employment practice with either the federal Equal Employment Opportunities Commission (EEOC) or the Florida Commission on Human Relations (FCHR).

For a charge filed with the EEOC, the EEOC must investigate and make a reasonable cause determination within 120 days after the date of the filing.²³ If the EEOC finds an absence of reasonable cause, the EEOC will dismiss the charge. If the EEOC finds reasonable cause, the

¹⁷ *Id.* at 792.

¹⁸ *Carsillo v. City of Lake Worth*, 995 So.2d 1118, 1121 (Fla. 4th DCA 2008).

¹⁹ 20 So.3d 848 (Fla. 2009).

²⁰ *Delva v. Continental Group, Inc.*, 96 So.3d 956, 958 (Fla. 3d DCA 2012), *reh’g denied*.

²¹ Appellants filed *Delva v. Continental Group, Inc.* with the Florida Supreme Court on October 16, 2012. The Court assigned *Delva* case number SC12-2315.

²² Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, 1187 (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323, 1327 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325, 1336 (S.D. Fla. 2011). Federal courts finding FCRA protects against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202, p. 6 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476, p. 2 (M.D. Fla. 2009), *Constable v. Agilysys, Inc.*, 2011 WL 2446605, p. 6 (M.D. Fla. 2011), and *Glass v. Captain Katanna’s, Inc.*, 2013 WL 3017010, p. 8 (M.D. Fla. 2013).

²³ 42 U.S.C. s. 2000e-5(b).

EEOC must engage in informal conferencing, conciliation, and persuasion to remedy the unlawful employment practice.²⁴

For a charge filed with the FCHR, the FCHR must make a reasonable cause determination within 180 days after the filing of the complaint.²⁵ If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.²⁶

After the EEOC concludes its investigation and issues a “right-to-sue” letter to the plaintiff, the plaintiff must file a claim in federal court under Title VII within 90 days of receipt of the letter.²⁷

A plaintiff is required to file a state claim in civil court under the Florida Civil Rights Act within 1 year of the determination of reasonable cause by the FCHR.²⁸

Remedies

Both state and federal law authorize awards of back pay, compensatory damages, and punitive damages.²⁹

In federal court, punitive damages vary depending on the size of the employer. In cases that qualify for punitive damages, the sum of both compensatory and punitive damages is capped at:

- \$50,000 for an employer that has 15 to 100 employees in at least 20 calendar weeks in the current or preceding calendar year;
- \$100,000 for an employer that has between 101 and 200 employees;
- \$200,000 for an employer that has between 201 and 500 employees; and
- \$300,000 for an employer that has more than 500 employees.

In state court, punitive damages are capped at \$100,000 regardless of the size of the employer.³⁰

EEOC and FCHR Workshare Agreement

The EEOC and the FCHR are working together pursuant to a worksharing agreement (Agreement), the purpose of which is to effectuate Title VII, in addition to other specified federal laws.³¹ The Agreement requires the FCHR to “take all charges alleging a violation of Title VII ...” where both the EEOC and the FCHR have mutual jurisdiction, or where only the EEOC has jurisdiction³² To continue the agreement, the FCHR is required to annually represent in writing that “there have been no substantive changes in the processes, procedures, statutes,

²⁴ *Id.*

²⁵ Section 760.11(3), F.S.

²⁶ Section 760.11(4), F.S.

²⁷ 42 U.S.C. s. 2000e-5(f)(1).

²⁸ Section 760.11(5), F.S.; 42 U.S.C. s. 2000e-5(g)(1) and s. 1981a.

²⁹ *Id.*

³⁰ *Id.*

³¹ Florida Commission on Human Relations and Equal Employment Opportunity Commission, *FY 2011 EEOC/FEPA Model Worksharing Agreement*, as extended through FY 2013 (on file with the Senate Judiciary Committee).

³² *Id.* at 2.

policies or regulations that would adversely affect or substantially alter the work sharing arrangement ...”

III. Effect of Proposed Changes:

This bill adds the condition of pregnancy as a protected class under the Florida Civil Rights Act of 1992 (FCRA). The definition of the term “pregnancy” is the substance of the definition under the federal Pregnancy Discrimination Act. Pregnancy means a woman affected by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Pregnancy is afforded the same protection as other statuses or classes identified in the FCRA. A woman affected by pregnancy may not be discriminated against:

- By public lodging and food service establishments;
- With respect to education, housing, or public accommodation; or
- With respect to employment, provided that any discriminatory act constitutes an unlawful employment practice.³³

In addition to compensation, terms, conditions, or privileges of employment, the bill adds discrimination with respect to “benefits” to the list of “unlawful employment practices” specified in existing law. The extent to which the bill prohibits conduct not already prohibited under existing law is not clear.

By ensuring a state cause of action for pregnancy discrimination claims, plaintiffs will have more time to file suit. As described in the Present Situation, after receiving a “right-to-sue” letter from the federal Equal Employment Opportunity Commission, a plaintiff must file a case in federal court within 90 days. A plaintiff has up to 1 year to file a civil action in state court after the FCHR issues its reasonable cause determination.

Additionally, a state cause of action in some cases will allow for greater remedies than the remedies authorized by federal law. Under federal law, the sum of compensatory and punitive damages against an employer having between 15 and 100 employees may not exceed \$50,000. Under a state claim, punitive damages may reach \$100,000, regardless of the size of the employer. However, federal law authorizes the sum of compensatory and punitive damages of up to \$300,000 for discrimination by larger employers.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³³ Unlawful employment practices include discharging or failing to or refusing to hire a person, or discriminating in compensation, benefits, terms, conditions, or privileges of employment; and limiting or classifying an employee or applicant in such a way as to deprive the person of employment opportunities (ss. 760.10(1) and (2), F.S.) The prohibition on unlawful employment practices applies also to employment agencies and labor organizations. (ss. 760.10 (3) and (4), F.S.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

This bill will ensure plaintiffs have access to state court to pursue pregnancy discrimination claims.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If the Florida Supreme court upholds the *Delva v. Continental Group, Inc.*³⁴ case and this bill does not become law, plaintiffs in pregnancy discrimination cases will be limited to redress in federal court. Any prohibition on the ability of the Florida Commission on Human Relations (FCHR) to continue to process pregnancy discrimination claims may take the FCHR out of conformity with the worksharing agreement. If so, federal funding for the FCHR may potentially be jeopardized.

VIII. Statutes Affected:

This bill substantially amends ss. 509.092, 760.01, 760.02, 760.05, 760.07, 760.08, and 760.10, F.S. This bill reenacts s. 760.11(1), F.S., for the purpose of incorporating the amendments made to s. 760.10, F.S.

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

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

None.

³⁴ 96 So.3d 956 (Fla. 3d DCA 2012).

B. Amendments:

None.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-14-14
Meeting Date

Topic Pregnancy Discrimination

Bill Number SB 220
(if applicable)

Name Barbara DeVane

Amendment Barcode _____
(if applicable)

Job Title Ms

Address 675 E. Broadway
Street
Tallahassee FL 32308
City State Zip

Phone 850-222-3969

E-mail barbaradevane1@yahoo.com

Speaking: For Against Information

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2014
Meeting Date

Topic Pregnancy Legislation

Bill Number 220
(if applicable)

Name Michelle Wilson

Amendment Barcode _____
(if applicable)

Job Title Exec. Director

Address 2009 Apalachee Pkwy Suite 100
Street
Tallah, FL 32301
City State Zip

Phone (850) 488-7082

E-mail ~~miel2366@yahoo.com~~
michelle.wilson@fchr.
myflorida.com

Speaking: For Against Information

Representing Florida Commission on Human Relations

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.

By Senator Thompson

12-00174A-14

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1 A bill to be entitled
2 An act relating to the Florida Civil Rights Act;
3 amending s. 509.092, F.S.; prohibiting discrimination
4 on the basis of pregnancy in public lodging and food
5 service establishments; amending s. 760.01, F.S.;
6 revising the general purpose of the Florida Civil
7 Rights Act of 1992; amending s. 760.02, F.S.;
8 providing a definition for the term "pregnancy";
9 amending s. 760.05, F.S.; revising the function of the
10 Florida Commission on Human Relations; amending s.
11 760.07, F.S.; providing civil and administrative
12 remedies for discrimination on the basis of pregnancy;
13 amending s. 760.08, F.S.; prohibiting discrimination
14 on the basis of pregnancy in places of public
15 accommodation; amending s. 760.10, F.S.; prohibiting
16 discrimination with regard to employment benefits;
17 prohibiting employment discrimination on the basis of
18 pregnancy; prohibiting discrimination on the basis of
19 pregnancy by labor organizations, joint labor-
20 management committees, and employment agencies;
21 prohibiting discrimination on the basis of pregnancy
22 in occupational licensing, certification, and
23 membership organizations; providing an exception to
24 unlawful employment practices based on pregnancy;
25 reenacting s. 760.11(1), F.S., relating to
26 administrative and civil remedies for violations of
27 the Florida Civil Rights Act of 1992, to incorporate
28 the amendments made to s. 760.10(5), F.S., in a
29 reference thereto; providing an effective date.

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

Section 1. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

Section 2. Subsection (2) of section 760.01, Florida Statutes, is amended to read:

760.01 Purposes; construction; title.—

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Subsection (12) is added to section 760.02,

12-00174A-14

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59 Florida Statutes, to read:

60 760.02 Definitions.—For the purposes of ss. 760.01-760.11
61 and 509.092, the term:

62 (12) "Pregnancy" means a woman affected by pregnancy,
63 childbirth, or a medical condition related to pregnancy or
64 childbirth.

65 Section 4. Section 760.05, Florida Statutes, is amended to
66 read:

67 760.05 Functions of the commission.—The commission shall
68 promote and encourage fair treatment and equal opportunity for
69 all persons regardless of race, color, religion, sex, pregnancy,
70 national origin, age, handicap, or marital status and mutual
71 understanding and respect among all members of all economic,
72 social, racial, religious, and ethnic groups; and shall endeavor
73 to eliminate discrimination against, and antagonism between,
74 religious, racial, and ethnic groups and their members.

75 Section 5. Section 760.07, Florida Statutes, is amended to
76 read:

77 760.07 Remedies for unlawful discrimination.—Any violation
78 of any Florida statute making unlawful discrimination because of
79 race, color, religion, gender, pregnancy, national origin, age,
80 handicap, or marital status in the areas of education,
81 employment, housing, or public accommodations gives rise to a
82 cause of action for all relief and damages described in s.
83 760.11(5), unless greater damages are expressly provided for. If
84 the statute prohibiting unlawful discrimination provides an
85 administrative remedy, the action for equitable relief and
86 damages provided for in this section may be initiated only after
87 the plaintiff has exhausted his or her administrative remedy.

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88 The term "public accommodations" does not include lodge halls or
89 other similar facilities of private organizations which are made
90 available for public use occasionally or periodically. The right
91 to trial by jury is preserved in any case in which the plaintiff
92 is seeking actual or punitive damages.

93 Section 6. Section 760.08, Florida Statutes, is amended to
94 read:

95 760.08 Discrimination in places of public accommodation.—

96 All persons are ~~shall be~~ entitled to the full and equal
97 enjoyment of the goods, services, facilities, privileges,
98 advantages, and accommodations of any place of public
99 accommodation, ~~as defined in this chapter,~~ without
100 discrimination or segregation on the ground of race, color,
101 national origin, sex, pregnancy, handicap, familial status, or
102 religion.

103 Section 7. Subsections (1) and (2), paragraphs (a) and (b)
104 of subsection (3), subsections (4) through (6), and paragraph
105 (a) of subsection (8) of section 760.10, Florida Statutes, are
106 amended to read:

107 760.10 Unlawful employment practices.—

108 (1) It is an unlawful employment practice for an employer:

109 (a) To discharge or to fail or refuse to hire any
110 individual, or otherwise to discriminate against any individual
111 with respect to compensation, benefits, terms, conditions, or
112 privileges of employment, because of such individual's race,
113 color, religion, sex, pregnancy, national origin, age, handicap,
114 or marital status.

115 (b) To limit, segregate, or classify employees or
116 applicants for employment in any way which would deprive or tend

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117 to deprive any individual of employment opportunities, or
118 adversely affect any individual's status as an employee, because
119 of such individual's race, color, religion, sex, pregnancy,
120 national origin, age, handicap, or marital status.

121 (2) It is an unlawful employment practice for an employment
122 agency to fail or refuse to refer for employment, or otherwise
123 to discriminate against, any individual because of race, color,
124 religion, sex, pregnancy, national origin, age, handicap, or
125 marital status or to classify or refer for employment any
126 individual on the basis of race, color, religion, sex,
127 pregnancy, national origin, age, handicap, or marital status.

128 (3) It is an unlawful employment practice for a labor
129 organization:

130 (a) To exclude or to expel from its membership, or
131 otherwise to discriminate against, any individual because of
132 race, color, religion, sex, pregnancy, national origin, age,
133 handicap, or marital status.

134 (b) To limit, segregate, or classify its membership or
135 applicants for membership, or to classify or fail or refuse to
136 refer for employment any individual, in any way which would
137 deprive or tend to deprive any individual of employment
138 opportunities, or adversely affect any individual's status as an
139 employee or as an applicant for employment, because of such
140 individual's race, color, religion, sex, pregnancy, national
141 origin, age, handicap, or marital status.

142 (4) It is an unlawful employment practice for any employer,
143 labor organization, or joint labor-management committee
144 controlling apprenticeship or other training or retraining,
145 including on-the-job training programs, to discriminate against

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146 any individual because of race, color, religion, sex, pregnancy,
147 national origin, age, handicap, or marital status in admission
148 to, or employment in, any program established to provide
149 apprenticeship or other training.

150 (5) Whenever, in order to engage in a profession,
151 occupation, or trade, it is required that a person receive a
152 license, certification, or other credential, become a member or
153 an associate of any club, association, or other organization, or
154 pass any examination, it is an unlawful employment practice for
155 any person to discriminate against any other person seeking such
156 license, certification, or other credential, seeking to become a
157 member or associate of such club, association, or other
158 organization, or seeking to take or pass such examination,
159 because of such other person's race, color, religion, sex,
160 pregnancy, national origin, age, handicap, or marital status.

161 (6) It is an unlawful employment practice for an employer,
162 labor organization, employment agency, or joint labor-management
163 committee to print, or cause to be printed or published, any
164 notice or advertisement relating to employment, membership,
165 classification, referral for employment, or apprenticeship or
166 other training, indicating any preference, limitation,
167 specification, or discrimination, based on race, color,
168 religion, sex, pregnancy, national origin, age, absence of
169 handicap, or marital status.

170 (8) Notwithstanding any other provision of this section, it
171 is not an unlawful employment practice under ss. 760.01-760.10
172 for an employer, employment agency, labor organization, or joint
173 labor-management committee to:

174 (a) Take or fail to take any action on the basis of

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175 religion, sex, pregnancy, national origin, age, handicap, or
176 marital status in those certain instances in which religion,
177 sex, condition of pregnancy, national origin, age, absence of a
178 particular handicap, or marital status is a bona fide
179 occupational qualification reasonably necessary for the
180 performance of the particular employment to which such action or
181 inaction is related.

182 Section 8. For the purpose of incorporating the amendment
183 made by this act to section 760.10(5), Florida Statutes, in a
184 reference thereto, subsection (1) of section 760.11, Florida
185 Statutes, is reenacted to read:

186 760.11 Administrative and civil remedies; construction.—

187 (1) Any person aggrieved by a violation of ss. 760.01-
188 760.10 may file a complaint with the commission within 365 days
189 of the alleged violation, naming the employer, employment
190 agency, labor organization, or joint labor-management committee,
191 or, in the case of an alleged violation of s. 760.10(5), the
192 person responsible for the violation and describing the
193 violation. Any person aggrieved by a violation of s. 509.092 may
194 file a complaint with the commission within 365 days of the
195 alleged violation naming the person responsible for the
196 violation and describing the violation. The commission, a
197 commissioner, or the Attorney General may in like manner file
198 such a complaint. On the same day the complaint is filed with
199 the commission, the commission shall clearly stamp on the face
200 of the complaint the date the complaint was filed with the
201 commission. In lieu of filing the complaint with the commission,
202 a complaint under this section may be filed with the federal
203 Equal Employment Opportunity Commission or with any unit of

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204 government of the state which is a fair-employment-practice
205 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the
206 complaint is filed is clearly stamped on the face of the
207 complaint, that date is the date of filing. The date the
208 complaint is filed with the commission for purposes of this
209 section is the earliest date of filing with the Equal Employment
210 Opportunity Commission, the fair-employment-practice agency, or
211 the commission. The complaint shall contain a short and plain
212 statement of the facts describing the violation and the relief
213 sought. The commission may require additional information to be
214 in the complaint. The commission, within 5 days of the complaint
215 being filed, shall by registered mail send a copy of the
216 complaint to the person who allegedly committed the violation.
217 The person who allegedly committed the violation may file an
218 answer to the complaint within 25 days of the date the complaint
219 was filed with the commission. Any answer filed shall be mailed
220 to the aggrieved person by the person filing the answer. Both
221 the complaint and the answer shall be verified.

222 Section 9. This act shall take effect July 1, 2014.

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 280

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: January 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 280 creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.¹ Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a

¹ Section 397.334(1), F.S.

program.² As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.³ Records of the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.⁴

Confidentiality of Treatment-based Drug Court Program Records

There is no existing public records exemption for records relating to participation in a treatment-based drug court program. A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.⁵ Under existing law, drug court-related records contained in court files are not confidential, and a motion to make the records confidential must be filed, a hearing on the motion must be held, and the court must issue an order granting or denying the motion.⁶ This motion driven process has a significant impact on judicial and court workload.⁷

Nevertheless, federal law may restrict the disclosure of some records relating to participants in a treatment-based drug court program. Specifically, federal law prohibits the disclosure of information that:

- Identifies a person who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program. Such individuals include any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a treatment program.
- Is information obtained by a federally assisted drug abuse or alcohol abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.⁸

An alcohol abuse or drug abuse program is considered to be federally assisted if it is:

- Conducted in whole or in part by any department or agency of the United States;
- Carried out under a license or other authorization granted by any department or agency of the United States;
- Supported by funds provided by any department or agency of the United States; or
- Assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.⁹

² Section 397.334(2), F.S.

³ Section 397.334(4), F.S.

⁴ Section 397.334(5), F.S.

⁵ *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011).

⁶ Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ See 42 C.F.R. ss. 2.11-2.12.

⁹ 42 C.F.R. s. 2.12(b).

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹⁰ The records of the legislative, executive, and judicial branches are specifically included.¹¹

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹²

Only the Legislature may create an exemption to public records requirements.¹³ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁴

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ It requires the automatic repeal of such exemptions on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁶

III. Effect of Proposed Changes:

The bill provides that information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records, reports, and evaluations is confidential and exempt from public records disclosure requirements:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

¹⁰ FLA. CONST., Art. I, s. 24(a).

¹¹ *Id.*

¹² Section 119.07(1)(a), F.S.

¹³ FLA. CONST., Art I s. 24(c).

¹⁴ *Id.*

¹⁵ Section 119.15, F.S.

¹⁶ *Id.*

The bill provides that the public records exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2019, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the Florida Constitution.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to be a mandate. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority counties or municipalities have to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption. To become law, bills creating a public records exemption must be approved by a two-thirds vote of the members present and voting in each house of the Legislature.

According to the public necessity statement included in the bill, maintaining the confidentiality of records is necessary to encourage individuals to participate in treatment-based drug court programs.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Information relating to a person's participation in a treatment-based drug court program will be kept confidential.

C. Government Sector Impact:

By maintaining the confidentiality of records relating to a person's participation in a treatment-based drug court program, more people may be willing to participate. The exemption for drug court-related records will eliminate the need for motions, hearings, and orders to protect these records from disclosure. The precise impact will depend upon the number of motions and hearings that will be eliminated. The fiscal impact on the

expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the decreased court workload.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is a recommendation of the Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and is part of the 2014 legislative agenda for the judicial branch.¹⁸

VIII. Statutes Affected:

This bill substantially amends section 387.334, Florida Statutes.
The bill creates one undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, *supra* note 6.

¹⁸ Office of the State Courts Administrator, *supra* note 6.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/2014

Meeting Date

Topic Public Records

Name Robert Trammell

Job Title General Counsel-Florida Public Defender Association, Inc.

Address 103 North Gadsden Street

Street

Tallahassee

City

Florida

State

32301

Zip

Bill Number 280

(if applicable)

Amendment Barcode _____

(if applicable)

Phone 850-488-6850

E-mail roberttrammell45@gmail.com

Speaking: For Against Information

Representing Florida Public Defender Association, Inc.

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)

14 Jan 14

Meeting Date

Topic Public Records/Tx-Based Drug Court Pgm Bill Number SB 280
(if applicable)

Name Jill Gran Amendment Barcode _____
(if applicable)

Job Title Legislative

Address 2808 Mehan Dr Phone 878 2196
Street

Tallahassee FL 32308
City State Zip

E-mail jill@fadaa.org

Speaking: For Against Information

Representing Florida Alcohol & Drug Abuse Association

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/14/14

Meeting Date

Topic Public Records/Drug Courts

Bill Number SB 280 (if applicable)

Name Lisa Goodner

Amendment Barcode (if applicable)

Job Title State Courts Administrator

Address 500 South Duval St.

Phone 850-922-5081

Street Tallahassee, FL 32399 City State Zip

E-mail goodnerl@flcourts.org

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

Representing State Courts System

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR RENE GARCIA

38th District

January 14, 2014

The Honorable Tom Lee
Chair, Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

Due to a scheduling conflict, I will not be able to present my bill *SB 280 Public Records/Participants in Treatment-based Drug Court Programs*, at your committee meeting on Tuesday, January 14, 2014. I ask that you allow a member of my staff *David Marin* to present the bill on my behalf. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

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

State Senator René García
District 38
RG:dm

CC: Tom Cibula, Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

By Senator Garcia

38-00336-14

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 397.334, F.S.; exempting from public records
4 requirements information relating to a participant or
5 a person considered for participation in a treatment-
6 based drug court program and contained in certain
7 records, reports, and evaluations; providing for
8 future repeal and legislative review of the exemption
9 under the Open Government Sunset Review Act; providing
10 a statement of public necessity; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (10) is added to section 397.334,
16 Florida Statutes, to read:

17 397.334 Treatment-based drug court programs.—

18 (10) (a) Information relating to a participant or a person
19 considered for participation in a treatment-based drug court
20 program which is contained in the following records, reports,
21 and evaluations is confidential and exempt from s. 119.07(1) and
22 s. 24(a), Art. I of the State Constitution:

23 1. Records relating to initial screenings for participation
24 in the program.

25 2. Records relating to substance abuse screenings.

26 3. Behavioral health evaluations.

27 4. Subsequent treatment status reports.

28 (b) This subsection is subject to the Open Government
29 Sunset Review Act in accordance with s. 119.15 and shall stand

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30 repealed on October 2, 2019, unless reviewed and saved from
31 repeal through reenactment by the Legislature.

32 Section 2. The Legislature finds that it is a public
33 necessity that information relating to a participant or person
34 considered for participation in a treatment-based drug court
35 program under s. 397.334, Florida Statutes, which is contained
36 in certain records, reports, and evaluations be made
37 confidential and exempt from s. 119.07(1), Florida Statutes, and
38 s. 24(a), Article I of the State Constitution. Protecting
39 information contained in records relating to initial screenings
40 for participation in a treatment-based drug court program,
41 records relating to substance abuse screenings, behavioral
42 health evaluations, and subsequent treatment status reports is
43 necessary to protect the privacy rights of participants or
44 individuals considered for participation in treatment-based drug
45 court programs. Protecting against the release of information
46 that is sensitive and personal in nature prevents unwarranted
47 damage to the reputation of treatment-based drug court program
48 participants. Public disclosure of such information could result
49 in a substantial chilling effect on participation in treatment-
50 based drug court programs. Preventing such chilling effect by
51 making this information confidential substantially outweighs any
52 public benefit derived from public disclosure of such
53 information. Accordingly, it is a public necessity that this
54 information be made confidential to protect the privacy rights
55 of program participants, encourage individuals to participate in
56 such programs, and promote the effective and efficient
57 administration of treatment-based drug court programs.

58 Section 3. This act shall take effect upon becoming a law.

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 142

INTRODUCER: Senator Hays

SUBJECT: Sovereign Immunity for Dentists and Dental Hygienists

DATE: January 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 142 expands the circumstances in which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and retain the protections from personal liability.

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.¹ This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of

¹ Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed \$22,980 is at 200 percent of the federal poverty level using Medicaid data. See *2013 Poverty Guidelines, Annual Guidelines* at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2013-Federal-Poverty-level-charts.pdf> (last visited December 13, 2013).

the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:²

- A birth center licensed under ch. 383, F.S.³
- An ambulatory surgical center licensed under ch. 395, F.S.⁴
- A hospital licensed under ch. 395, F.S.⁵
- A physician or physician assistant licensed under ch. 458, F.S.⁶
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.⁷
- A chiropractic physician licensed under ch. 460, F.S.⁸
- A podiatric physician licensed under ch. 461, F.S.⁹
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility which employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the Act.¹⁰
- A dentist or dental hygienist licensed under ch. 466, F.S.¹¹
- A midwife licensed under ch. 467, F.S.¹²
- A health maintenance organization certificated under part I of ch. 641, F.S.¹³
- A health care professional association and its employees or a corporate medical group and its employees.¹⁴
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.¹⁵
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.¹⁶
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse or midwife.¹⁷
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any

² Section 766.1115(3)(d), F.S.

³ Section 766.1115(3)(d)1., F.S.

⁴ Section 766.1115(3)(d)2., F.S.

⁵ Section 766.1115(3)(d)3., F.S.

⁶ Section 766.1115(3)(d)4., F.S.

⁷ Section 766.1115(3)(d)5., F.S.

⁸ Section 766.1115(3)(d)6., F.S.

⁹ Section 766.1115(3)(d)7., F.S.

¹⁰ Section 766.1115(3)(d)8., F.S.

¹¹ Section 766.1115(3)(d)9., F.S.

¹² Section 766.1115(3)(d)10., F.S.

¹³ Section 766.1115(3)(d)11., F.S.

¹⁴ Section 766.1115(3)(d)12., F.S.

¹⁵ Section 766.1115(3)(d)13., F.S.

¹⁶ Section 766.1115(3)(d)14., F.S.

¹⁷ Section 766.1115(3)(d)15., F.S.

federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

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

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

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

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- Patient care, including any follow-up or hospital care is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.²⁰
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.²¹

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.²²

The individual accepting services through this contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.²³ The services not covered under the Act include experimental procedures and clinically unproven procedures. The governmental contractor must determine whether a procedure is covered.

¹⁸ Section 766.1115(3)(c), F.S.

¹⁹ Section 766.1115(3)(a), F.S.

²⁰ Section 766.1115(4), F.S.

²¹ Rule 64I-2.003(2), F.A.C.

²² Section 766.1115(5), F.S.

²³ Rule 64I-2.002(2), F.A.C.

The health care provider may not subcontract for the provision of services under this chapter.²⁴

The Department of Health reported that from July 1, 2011 – June 30, 2012, 12,867 licensed healthcare volunteers (plus an additional 9,949 clinic staff volunteers) provided 433,191 health care patient visits with a total value of \$231,530,324 under the Act.²⁵ The Florida Department of Financial Services, Division of Risk Management reported on March 26, 2012, that 9 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.²⁶

Currently, s. 766.1115, F.S., is interpreted differently across the state. In certain parts of the state one medical director interprets this law to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, a medical director suggests that if any monetary amount is accepted, then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that the provider incurs to pay outside providers for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.²⁷

Sovereign Immunity

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

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to \$200,000 for one incident and limits all recovery related to one incident to a total of \$300,000. The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.²⁸

²⁴ Rule 64I-2.004(2), F.A.C.

²⁵ Department of Health, *Volunteer Health Services 2011-2012 Annual Report*, available at: <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhsreportfinal12.pdf>, (last visited December 13, 2013).

²⁶ *Id.* at Appendix B.

²⁷ Conversation with representatives of the Florida Dental Association on December 11, 2013.

²⁸ Section 768.28(5), F.S.

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.²⁹ In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.³⁰

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.³¹ The court explained:

Whether the [Children's Medical Services] CMS physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS³² Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.³³

III. Effect of Proposed Changes:

This bill expands the circumstances in which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and retain the protections from personal liability. Such contributions may not exceed the actual cost of the laboratory work.

²⁹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

³⁰ *Id.*

³¹ *Id.* at 703.

³² Florida Department of Health and Rehabilitative Services, *Senate Bill 1016 (2013) Fiscal Analysis* (on file with the Senate Committee on Judiciary).

³³ *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Health anticipates that a small number of dental laboratories will receive compensation for laboratory work for indigent patients.³⁴

A dentist or dental hygienist may need to prepare additional documentation showing that any voluntary contribution for laboratory is reimbursement for costs, not compensation.³⁵

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

³⁴ See Department of Health, *Bill Analysis for SB 1016 (2013)*, March 13, 2013, (on file with the Senate Committee on Judiciary Committee).

³⁵ *Id.*

VII. Related Issues:

The bill does not clearly indicate whether a dentist's compensation to his or her staff to coordinate laboratory work is a "cost" of the laboratory work.³⁶ The Legislature may wish to consider whether reimbursable costs for laboratory work should be defined.

VIII. Statutes Affected:

This bill substantially amends section 766.1115, Florida Statutes.

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

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

None.

B. Amendments:

None.

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

³⁶ *Id.*

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/14/13
Meeting Date

Topic Sovereign Immunity

Name Joe Anne Hart

Job Title Dir. of Governmental Affairs

Address 118 E. Jefferson Street
Street

Tally FL 32311
City State Zip

Speaking: For Against Information

Representing Florida Dental Association

Bill Number 142
(if applicable)

Amendment Barcode _____
(if applicable)

Phone (822) 224-1089

E-mail jahart@floridadental.org

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.

By Senator Hays

11-00173A-14

2014142__

1 A bill to be entitled
2 An act relating to sovereign immunity for dentists and
3 dental hygienists; amending s. 766.1115, F.S.;
4 revising a definition; requiring a contract with a
5 governmental contractor for health care services to
6 include a provision for a health care provider
7 licensed under ch. 466, F.S., as an agent of the
8 governmental contractor, to allow a patient or a
9 parent or guardian of the patient to voluntarily
10 contribute a fee to cover costs of dental laboratory
11 work related to the services provided to the patient
12 without forfeiting sovereign immunity; prohibiting the
13 contribution from exceeding the actual amount of the
14 dental laboratory charges; providing that the
15 contribution complies with the requirements of s.
16 766.1115, F.S.; providing an effective date.
17

18 Be It Enacted by the Legislature of the State of Florida:
19

20 Section 1. Paragraph (a) of subsection (3) of section
21 766.1115, Florida Statutes, is amended, and paragraph (g) is
22 added to subsection (4) of that section, to read:

23 766.1115 Health care providers; creation of agency
24 relationship with governmental contractors.—

25 (3) DEFINITIONS.—As used in this section, the term:

26 (a) "Contract" means an agreement executed in compliance
27 with this section between a health care provider and a
28 governmental contractor which allows. ~~This contract shall allow~~
29 the health care provider to deliver health care services to low-

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30 income recipients as an agent of the governmental contractor.
31 The contract must be for volunteer, uncompensated services. For
32 services to qualify as volunteer, uncompensated services under
33 this section, the health care provider must receive no
34 compensation from the governmental contractor for any services
35 provided under the contract and must not bill or accept
36 compensation from the recipient, or a ~~any~~ public or private
37 third-party payor, for the specific services provided to the
38 low-income recipients covered by the contract.

39 (4) CONTRACT REQUIREMENTS.—A health care provider that
40 executes a contract with a governmental contractor to deliver
41 health care services on or after April 17, 1992, as an agent of
42 the governmental contractor is an agent for purposes of s.
43 768.28(9), while acting within the scope of duties under the
44 contract, if the contract complies with the requirements of this
45 section and regardless of whether the individual treated is
46 later found to be ineligible. A health care provider under
47 contract with the state may not be named as a defendant in any
48 action arising out of medical care or treatment provided on or
49 after April 17, 1992, under contracts entered into under this
50 section. The contract must provide that:

51 (g) Notwithstanding subsection (3), as an agent of the
52 governmental contractor for purposes of s. 768.28(9), while
53 acting within the scope of duties under the contract, a health
54 care provider licensed under chapter 466 may allow a patient or
55 a parent or guardian of the patient to voluntarily contribute a
56 fee to cover costs of dental laboratory work related to the
57 services provided to the patient. This contribution may not
58 exceed the actual cost of the dental laboratory charges and is

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59 deemed in compliance with this section.

60

61 A governmental contractor that is also a health care provider is
62 not required to enter into a contract under this section with
63 respect to the health care services delivered by its employees.

64 Section 2. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SPB 7018

INTRODUCER: For consideration by the Judiciary Committee

SUBJECT: Public Records/Estate Inventories and Accountings

DATE: January 13, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Munroe	Cibula		Submitted as Committee Bill

I. Summary:

SPB 7018 removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws.

II. Present Situation:

The Florida Probate Code makes the following records filed in probate proceedings confidential and exempt from disclosure requirements under the public records laws:

- Estate inventories;
- Any inventory of an elective estate; and
- Any accounting of an estate.¹

These exemptions will be repealed on October 2, 2014, unless they are reenacted by the Legislature.² In 2009, when the exemptions were enacted, the Legislature found that the exemptions were necessary because the “public disclosure of estate inventories and accountings . . . would produce undue harm to the heirs of the decedent or beneficiaries of the decedent’s estate.”³

Estate Inventories

Within 60 days after issuance of letters of administration of an estate, a personal representative must file an inventory of the property of the estate.⁴ The inventory of property must be verified,

¹ Section 733.604(1)(b), F.S.

² Chapter 2009-230, Laws of Fla.

³ *Id.*

⁴ Fla. Prob. R. 5.340; *see s.* 733.604, F.S. In general, a personal representative of an estate is appointed upon the filing of letters of administration with the court. *See* 31 AM. JUR. 2D *Executors and Administrators* s. 237. As a prerequisite to the issuance of letters of administration in a probate proceeding, the following pleadings and papers must be filed with the court:

and an estimated fair market value of the items at the date of death of the decedent must be included.⁵ The inventory may be disclosed only to the personal representative, the personal representative's attorney, other interested persons, or by court order upon a showing of good cause.⁶ The personal representative must file a verified amended or supplementary inventory if he or she learns that property was left out of the original inventory or learns that the estimated value or description was erroneous or misleading.⁷

Elective Share of a Surviving Spouse

Unless waived, a surviving spouse may elect to take the elective share of a decedent's estate instead of assets provided to a surviving spouse through the decedent's will. The elective share generally includes 30 percent of the fair market value of all assets subject to the administration of the estate except for real property not located in Florida.⁸

Estate Accountings

The Florida Probate Rules specify requirements for the contents and accounting standards for a fiduciary accounting that must be verified and filed in a probate proceeding.⁹ The content includes:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and
- A schedule of assets at the end of the accounting period.

Public Records Requirements

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹⁰ The records of the legislative, executive, and judicial branches are specifically included.¹¹

Only the Legislature may create an exemption to public records requirements.¹² Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹³ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

petition for administration, will (if any), proof of will (if applicable), order appointing personal representative, oath of the representative, any required bond, and designation of and acceptance by a resident agent, are filed. *See* Henry P. Trawick, Jr., REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, 2010, s. 5:6 *Issuance of letters of administration* (2009-10 ed.).

⁵ Section 733.604(2), F.S.

⁶ *Id.*

⁷ Section 733.604(2), F.S.

⁸ Section 732.2065, F.S.; *see* Henry P. Trawick, Jr., Trawick, REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, s. 5:6 *Elective Share* (2009-10 ed.).

⁹ Fla. Prob. R. 5.346.

¹⁰ FLA. CONST. art. I, s. 24(a).

¹¹ *Id.*

¹² FLA. CONST. art. I, s. 24(c).

¹³ FLA. CONST. art. I, s. 24(c).

substantive provisions¹⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ provides for the systematic review of an exemption from the Public Records Act in the 5th year after its enactment. The act states that an exemption may be maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁷

An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.¹⁸ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁹

The act also requires the Legislature in reviewing an exemption to consider several questions that go to the scope, public purpose, and necessity of the exemption.²⁰

Exemptions Under Review

During the interim before the 2014 Session, the staff of the Judiciary Committee reviewed the exemptions for estate inventories, inventories of elective estates, and estate accountings. The review was conducted by a series of questions to and responses from the Real Property, Probate, and Trust Law Section of The Florida Bar.

The questions that committee staff submitted to the section included:

- What specific records are affected by the exemptions?
- Who do the exemptions uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemptions?

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

¹⁵ FLA. CONST. art. I, s. 24(c).

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 119.15(6)(a), F.S.

- Can the information contained in the confidential records be readily obtained by alternative means?
- What is the continued necessity for the exemptions?
- Were any particular incidents the impetus for the creation of the exemptions? If yes, what type of information was disclosed, and how did the disclosure cause harm to another person? If no particular incidents were the impetus, please explain how the disclosure of the information could be used to harm another.
- Has anything changed since the exemptions were adopted which diminishes the need for their continued existence?
- Can an exemption be narrowed to disclose more information without affecting the identifiable purpose or goal of the exemption?
- Is there any reason to believe that the general public has a need to access the information protected by an exemption?

As a result of the review, committee staff found that a public purpose will be served by saving the exemptions from repeal.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore, it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continued existence of the public records exemptions reenacted by the bill may protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 733.604, Florida Statutes.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Judiciary

590-00707-14

20147018__

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 733.604, F.S., which
4 provides exemptions from public records requirements
5 for the inventories of an estate or elective estate
6 filed with the clerk of court or the accountings filed
7 in an estate proceeding; abrogating the scheduled
8 repeal of the exemptions under the Open Government
9 Sunset Review Act; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (1) of section 733.604, Florida
14 Statutes, is amended to read:

15 733.604 Inventories and accountings; public records
16 exemptions.—

17 (1) (a) Unless an inventory has been previously filed, a
18 personal representative shall file a verified inventory of
19 property of the estate, listing it with reasonable detail and
20 including for each listed item its estimated fair market value
21 at the date of the decedent's death.

22 (b) 1. Any inventory of an estate, whether initial, amended,
23 or supplementary, filed with the clerk of the court in
24 conjunction with the administration of an estate is confidential
25 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
26 Constitution.

27 2. Any inventory of an elective estate, whether initial,
28 amended, or supplementary, filed with the clerk of the court in
29 conjunction with an election made in accordance with part II of

590-00707-14

20147018__

30 chapter 732 is confidential and exempt from s. 119.07(1) and s.
31 24(a), Art. I of the State Constitution.

32 3. Any accounting, whether interim, final, amended, or
33 supplementary, filed in an estate proceeding is confidential and
34 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
35 Constitution.

36 4. Any inventory or accounting made confidential and exempt
37 by subparagraph 1., subparagraph 2., or subparagraph 3. shall be
38 disclosed by the custodian for inspection or copying:

- 39 a. To the personal representative;
40 b. To the personal representative's attorney;
41 c. To an interested person as defined in s. 731.201; or
42 d. By court order upon a showing of good cause.

43 5. These exemptions apply to any inventory or accounting
44 filed before, on, or after July 1, 2009.

45 ~~6. This paragraph is subject to the Open Government Sunset~~
46 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
47 ~~on October 2, 2014, unless reviewed and saved from repeal~~
48 ~~through reenactment by the Legislature.~~

49 Section 2. This act shall take effect July 1, 2014.