

Tab 1	SB 164 by Polsky (CO-INTRODUCERS) Berman, Book ; (Identical to H 00165) Controlled Substance Testing						
384396	A	S	RCS	RC, Polsky	Delete L.29 - 30:	03/22 10:59 AM	
Tab 2	CS/CS/SB 226 by CF, JU, Berman ; (Similar to CS/H 00813) Support for Dependent Adult Children						
Tab 3	CS/SB 264 by JU, Collins (CO-INTRODUCERS) Avila ; (Similar to H 01355) Interests of Foreign Countries						
833514	A	S	RCS	RC, Collins	Delete L.293 - 663:	03/22 11:03 AM	
Tab 4	SB 404 by Perry ; (Identical to CS/H 00273) Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence						
145616	A	S	RCS	RC, Hutson	btw L.24 - 25:	03/22 11:06 AM	
Tab 5	CS/SB 450 by CJ, Ingoglia (CO-INTRODUCERS) Martin ; (Compare to CS/H 00555) Death Penalty						
654152	A	S	RCS	RC, Ingoglia	Delete L.65 - 149:	03/22 11:08 AM	
Tab 6	SM 848 by Powell (CO-INTRODUCERS) Brodeur, Book, Perry ; (Identical to H 00531) People of Iran						
Tab 7	SM 1036 by Wright ; (Identical to H 00971) Florida National Guard						
Tab 8	SB 1210 by Burgess ; (Similar to CS/H 00841) Public Records/Human Trafficking Victims						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Mayfield, Chair
Senator Perry, Vice Chair

MEETING DATE: Wednesday, March 22, 2023

TIME: 8:30—10:30 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Mayfield, Chair; Senator Perry, Vice Chair; Senators Baxley, Book, Boyd, Brodeur, Broxson, Burgess, Burton, DiCeglie, Garcia, Hooper, Hutson, Jones, Osgood, Rodriguez, Rouson, Simon, Torres, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 164 Polsky (Identical H 165)	Controlled Substance Testing; Revising the definition of the term "drug paraphernalia" to exclude certain narcotic-drug-testing products, etc. CJ 02/14/2023 Favorable JU 03/07/2023 Favorable RC 03/22/2023 Fav/CS	Fav/CS Yeas 18 Nays 0
2	CS/CS/SB 226 Children, Families, and Elder Affairs / Judiciary / Berman (Similar CS/H 813)	Support for Dependent Adult Children; Requiring that certain rights of the parents of a dependent adult child be established in a guardianship proceeding; specifying that a court may modify a child support order for adult children in certain circumstances; providing factors a court must consider when determining the amount of child support for a dependent adult child; prohibiting the court from ordering support that will cause ineligibility for certain programs; authorizing a court to assign support to certain trusts established for a dependent adult child for a specified purpose, etc. JU 02/07/2023 Fav/CS CF 03/06/2023 Fav/CS RC 03/22/2023 Favorable	Favorable Yeas 18 Nays 0
3	CS/SB 264 Judiciary / Collins (Similar H 1355, Compare H 835, S 924)	Interests of Foreign Countries; Prohibiting governmental entities from knowingly entering into certain contracts; authorizing the Attorney General to bring a civil action; providing penalties; requiring government entities to require an affidavit from applicants before providing any economic incentive; prohibiting foreign principals from purchasing agricultural land, or interest in such land, and certain real property in the state, respectively; authorizing foreign principals to continue to own or hold such land or property under certain circumstances, etc. JU 03/14/2023 Fav/CS RC 03/22/2023 Fav/CS	Fav/CS Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 22, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 404 Perry (Identical CS/H 273)	Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence; Citing this act as the “Rex and Brody Act”; creating an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence; requiring that certain surviving parents of a minor whose death was related to an act of domestic violence be given notice of petitions to view or copy the minor’s autopsy report and the opportunity to be present and heard at related hearings under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/06/2023 Favorable GO 03/15/2023 Favorable RC 03/22/2023 Fav/CS	Fav/CS Yeas 19 Nays 0
5	CS/SB 450 Criminal Justice / Ingoglia (Compare CS/H 555, H 609, S 520)	Death Penalty; Requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of death to the court; requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of life imprisonment without the possibility of parole to the court; requiring the court to impose the recommended sentence of death if a certain number of jurors recommend a sentence of death; requiring the court to include in its written order the reasons for not accepting the jury’s recommended sentence, if applicable, etc. CJ 03/06/2023 Fav/CS RC 03/22/2023 Fav/CS	Fav/CS Yeas 15 Nays 4
6	SM 848 Powell (Identical HM 531)	People of Iran; Urging Congress to stand in support of the fight for freedom of the people of Iran, etc. MS 03/14/2023 Favorable RC 03/22/2023 Favorable	Favorable Yeas 18 Nays 0
7	SM 1036 Wright (Identical HM 971)	Florida National Guard; Urging Congress to impel the United States National Guard Bureau to examine the resource allocations of the Florida National Guard and allow an increase in its force structure, etc. MS 03/14/2023 Favorable RC 03/22/2023 Favorable	Favorable Yeas 19 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 22, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1210 Burgess (Similar CS/H 841, S 1428)	Public Records/Human Trafficking Victims; Expanding an existing public records exemption relating to human trafficking victims seeking expunction of certain records related to an offense listed in s. 775.084(1)(b)1., F.S.; providing for the reversion of specified provisions if the exemption is not saved from repeal; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/14/2023 Favorable RC 03/22/2023 Favorable	Favorable Yeas 18 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 164

INTRODUCER: Rules Committee and Senators Polsky and Berman

SUBJECT: Controlled Substance Testing

DATE: March 22, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Stokes	CJ	Favorable
2. Collazo	Cibula	JU	Favorable
3. Erickson	Twogood	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 164 amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl, fentanyl-related compounds, fentanyl derivatives, analogs of these substances, and mixtures containing any of these substances or any analog of these substances. If so amended, a person who possesses or uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Scheduling of Fentanyl as a Controlled Substance

State law¹ classifies controlled substances into five categories or classifications, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule

¹ Section 893.03, F.S.

may apply to a substance are the “potential for abuse”² of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.³
- Schedule II substances have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.⁴
- Schedule III substances have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.⁵
- Schedule IV substances have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.⁶
- Schedule V substances have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.⁷

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”⁸ Fentanyl is a Schedule II controlled substance.⁹

“Synthetic opioids, including fentanyl, are now the most common drugs involved in drug overdose deaths in the United States.”¹⁰ According to Florida’s Statewide Drug Policy Advisory Council, the majority of overdose death in Florida in 2021 were related to opioids, and “[t]he most significant increases [in overdose deaths relative to the previous year] were deaths

² Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

³ Section 893.03(1), F.S.

⁴ Section 893.03(2), F.S.

⁵ Section 893.03(3), F.S.

⁶ Section 893.03(4), F.S.

⁷ Section 893.03(5), F.S.

⁸ National Institute on Drug Abuse, *Fentanyl DrugFacts*, <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on Mar. 3, 2023) (internal citations omitted). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[,]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

⁹ Section 893.03(2)(b)9., F.S.

¹⁰ National Institute on Drug Abuse, *supra* note 2.

involving fentanyl which increased by 11 percent, and deaths caused by fentanyl increased by 9 percent.”¹¹

Controlled Substance Analog

A “controlled substance analog” is as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II.¹²

Fentanyl Test Strip Kit

According to the Centers for Disease Control and Prevention (CDC), fentanyl test strips (FTS) are “small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables).”¹³

The CDC outlines the steps to conduct the test:

- “Put a small amount (at least 10mg) of your drugs aside in a clean, dry container.”
- “Add water to the container and mix together.”
- “Place the wavy end of the test strip down in the water and let it absorb for about 15 seconds.”
- “Take the strip out of the water and place it on a flat surface for 2 to 5 minutes.”
- “Read results.”
 - “Positive results: A single pink line on the left-hand side indicates that fentanyl or a fentanyl analog has been detected in your drugs. If you receive a positive result, it is much safer to discard the batch. Using it could kill you. Illicitly manufactured fentanyl is extremely potent and can be deadly.”
 - “Negative results: Two pink lines indicate that fentanyl or a fentanyl analog has not been detected in your drugs. Remember that no test is 100% accurate and your drugs may still contain fentanyl or fentanyl analogs even if you receive a negative result. You should still take caution as FTS might not detect more potent fentanyl-like drugs, like carfentanil, and fentanyl might not be everywhere in your drugs and your test might miss it.”
 - “Invalid results: A single pink line on the right-hand side or no lines at all, indicates an invalid test. If you get an invalid result, test your drugs again using a new strip.”¹⁴

¹¹ Statewide Drug Policy Advisory Council, 2022 Annual Report (Dec. 1, 2022), 8, available at https://www.floridahealth.gov/provider-and-partner-resources/dpac/documents/2022_DPAC_Annual_Report.pdf.

¹² Section 893.0356(2)(a), F.S. (referencing Schedules I and II in s. 893.03, F.S.).

¹³ Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, [https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20\(FTS\)%20are,%2C%20powder%2C%20and%20injectables](https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables) (last visited on Mar. 3, 2023) (internal citations omitted).

¹⁴ *Id.*

Drug Paraphernalia Statutes

“Drug paraphernalia” includes:

*all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of [the chapter governing drug abuse, prevention, and control] or [the statute prohibiting the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances]. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture.*¹⁵

Drug paraphernalia includes testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.¹⁶

When determining in a criminal case whether an object constitutes drug paraphernalia, a jury or judge must consider, in addition to all other logically relevant factors, all of the following:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.¹⁷

¹⁵ Section 893.145, F.S. (referencing ch. 893, F.S., and s. 877.111, F.S.) (emphases added).

¹⁶ Section 893.145(4), F.S.

¹⁷ Section 893.146, F.S.

It is a first degree misdemeanor¹⁸ to:

- Use, or possess with intent to use, drug paraphernalia to test a controlled substance.¹⁹
- Advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of objects designed or intended for use as drug paraphernalia.²⁰

It is a third degree felony²¹ to:

- Deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to test a controlled substance.²²
- Use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance or contraband.²³

Immunity from Arrest, Charge, Prosecution, or Penalization

Under the immunity statute,²⁴ a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, a drug-related overdose may not be arrested, charged, prosecuted, or penalized for possession of a controlled substance, or the use or possession of drug paraphernalia.²⁵ Similar immunity is provided for the person who experiences, or has a good faith belief that he or she is experiencing, drug-related overdose and is in need of medical assistance.²⁶

The immunity statute appears to provide immunity from arrest, etc., for a violation of the use or possession statute,²⁷ provided an FTS kit was used or possessed and the criteria in the use or possession statute have otherwise been met. However, there are other offenses in the use or possession statute that might be applicable to an FTS kit and that might not qualify as immune from arrest, etc. under the immunity statute.

III. Effect of Proposed Changes:

The bill amends s. 893.145, F.S., the drug paraphernalia statute, to exclude from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl, fentanyl-related compounds, derivatives, and analogs, and mixtures containing any of these substances.²⁸ If so amended, a person who possesses or

¹⁸ A first degree misdemeanor is punishable by a term of imprisonment of not more than 1 year and a fine not exceeding \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

¹⁹ Section 893.147(1)(a), F.S.

²⁰ Section 893.147(5), F.S.

²¹ A third degree felony is generally punishable by a term of imprisonment of not more than five years and a fine not exceeding \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (providing for prison diversion).

²² Section 893.147(2), F.S.

²³ Section 893.147(4), F.S. (referencing the definition of contraband found in s. 932.701(2)(a)1., F.S.).

²⁴ *See generally* s. 893.21, F.S.

²⁵ Section 893.21(1), F.S.

²⁶ Section 893.21(2), F.S.

²⁷ Section 893.147(1), F.S.

²⁸ The bill references s. 893.03(2)(b)9., F.S., which is the scheduling reference for fentanyl in the controlled substance schedules. The bill also references s. 893.131(1)(c)4.a., F.S., the fentanyl trafficking provision, which references fentanyl,

uses a fentanyl test strip kit would not be subject to arrest and prosecution for any offense under s. 893.145, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the

alfentanil, carfentanil, sufentanil, fentanyl derivatives, analogs of these substances, and mixtures containing any of these substances or any analog of these substances.

bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).²⁹

According to the EDR, “per [Department of Corrections] in FY 18-19, there were 4 new commitments for drug paraphernalia violations under s. 893.147, F.S., and there was 1 new commitment in FY 19-20. In FY 20-21, there was 1 new commitment, and in FY 21-22, there were 2 new commitments. While it is not known how prison admissions will be impacted by this new language, the low number of commitments for the last four fiscal years indicate that there will not be a significant impact on the prison population.”³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.145 of the 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 Rules on March 22, 2023:

The committee substitute excludes from the definition of “drug paraphernalia” narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl, fentanyl-related compounds, fentanyl derivatives, analogs of these substances, and mixtures containing any of these substances or any analog of these substances.

- B. Amendments:

None.

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

²⁹ Office of Economic and Demographic Research, *HB 165 – Controlled Substance Testing (Identical SB 164)*, (undated) (on file with the Senate Committee on Criminal Justice).

³⁰ *Id.*



384396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
	.	
	.	
	.	

The Committee on Rules (Polsky) recommended the following:

Senate Amendment

Delete lines 29 - 30
and insert:
s. 893.03(2)(b)9. or any other controlled substance specified in
s. 893.135(1)(c)4.a.

By Senator Polsky

30-00067B-23

2023164__

1 A bill to be entitled
 2 An act relating to controlled substance testing;
 3 amending s. 893.145, F.S.; revising the definition of
 4 the term "drug paraphernalia" to exclude certain
 5 narcotic-drug-testing products; providing an effective
 6 date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (4) of section 893.145, Florida
 11 Statutes, is amended to read:
 12 893.145 "Drug paraphernalia" defined.—The term "drug
 13 paraphernalia" means all equipment, products, and materials of
 14 any kind which are used, intended for use, or designed for use
 15 in planting, propagating, cultivating, growing, harvesting,
 16 manufacturing, compounding, converting, producing, processing,
 17 preparing, testing, analyzing, packaging, repackaging, storing,
 18 containing, concealing, transporting, injecting, ingesting,
 19 inhaling, or otherwise introducing into the human body a
 20 controlled substance in violation of this chapter or s. 877.111.
 21 Drug paraphernalia is deemed to be contraband which shall be
 22 subject to civil forfeiture. The term includes, but is not
 23 limited to:
 24 (4) Testing equipment used, intended for use, or designed
 25 for use in identifying, or in analyzing the strength,
 26 effectiveness, or purity of, controlled substances, excluding
 27 narcotic-drug-testing products that are used to determine
 28 whether a controlled substance contains fentanyl as described in
 29 s. 893.03(2)(b)9. or a controlled substance analog, as defined

Page 1 of 2

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

30-00067B-23

2023164__

30 in s. 893.0356, of fentanyl.
 31 Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment,
and General Government
Appropriations Committee on Transportation, Tourism,
and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY

30th District

March 8, 2023

Chair Debbie Mayfield
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Mayfield,

I respectfully request that you place SB 164, relating to Controlled Substance Testing, on the agenda of the Committee on Rules, at your earliest convenience.

SB 164 would decriminalize the use of Fentanyl test strips in Florida. Currently, Florida law classifies these testing strips as drug paraphernalia.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky", with a stylized flourish at the end.

Senator Tina S. Polsky
Florida Senate, District 30

cc: Phillip Twogood, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3-22-23

Meeting Date

Rules

Committee

SB 164

Bill Number or Topic

77

Amendment Barcode (if applicable)

Name

Sara Elliott

Phone

703 297 0354

Address

13214 Agave St

Street

PCB FL 32407

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/22

Meeting Date

SB164

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Cherie Crim

Phone

214-679-8502

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

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☐

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☐

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(travel, meals, lodging, etc.),
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This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3-22-23

Meeting Date

(S) Rules

Committee

SB 164

Bill Number or Topic

Amendment Barcode (if applicable)

Name Nazbi Chowdhury

Phone 561-506-7929

Address 1300 S Andrew

Street

Email nchowdhury@unitedwaybroward.org

Ft. Lauderdale FL 33316

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

United Way of Broward County

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/22/23

Meeting Date

Senate Rules

Committee

SB 164

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ashlei Richardson for Florida Public Defender Assoc.

Phone

850-488-6850

Address

103 N. Gadsden

Street

Email

ARichardson@flpda.org

Tallahassee

City

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Public Defender
Association

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3-22-23

The Florida Senate

APPEARANCE RECORD

164

Meeting Date

Rules

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Jarrod Fowler

Phone

850-224-6496

Address

2350 Phillips Rd. Apt 10207

Email

jfowler@flmedical.org

Street

Tallahassee FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Medical Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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03/22/2023

Meeting Date

Senate Rules

Committee

SB 164: Controlled Substance Testing

Bill Number or Topic

Amendment Barcode (if applicable)

Name Megan Fay

Phone 850-222-9075

Address 124 W Jefferson St.

Email megan@cccfia.com

Tallahassee FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Florida Association of Nurse Anesthesiology

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Rules

BILL: CS/CS/SB 226

INTRODUCER: Children, Families, and Elder Affairs Committee, Judiciary Committee and Senator Berman

SUBJECT: Support for Dependent Adult Children

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 226 specifies procedures for effectuating the common law duty of parents to support a dependent adult child. In this context, a dependent adult child is an adult who is dependent on others for care or support because of a mental or physical incapacity that began before the age of 18. This duty of support is detailed in court opinions and is recognized in the Florida Statutes, but the procedures for a dependent adult child to obtain support are not clear.

This bill specifies that a suit to establish support may be initiated at any time by the dependent adult child, the child's parent, or another person, including an agent under the adult child's durable power of attorney, or the adult child's guardian or guardian advocate. In determining the amount of support, the court must consider the adult child's income and assets, existing and future needs, support provided by a parent, the financial resources of each parent, and the availability of other resources and programs to support the adult child. The court may order that support payments be made to the adult child, the adult child's guardian advocate, guardian, or agent under a durable power of attorney or a special needs or pooled trust.

The bill takes effect July 1, 2023.

II. Present Situation:

Support for Dependent Adult Children

Generally, the obligation of a parent to support a child ceases when the child reaches majority, but an exception arises when the child is, from physical or mental deficiencies, unable to support himself or herself.¹ State common law imposes a duty of support upon parents for a dependent adult child who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority.² This duty of support rests upon both parents throughout the dependency and throughout their lives.³

In 1973, the Legislature adopted s. 743.07, F.S., removing the disability of nonage, while preserving an exception for continued support of a certain class of dependent adults.⁴ In its present form, the statute provides as follows (emphases added):

743.07 Rights, privileges, and obligations of persons 18 years of age or older.—

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

(2) *This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.*

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

The statute preserves a common law right to seek adult dependent support from a parent in a court of competent jurisdiction, if the dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.⁵ The circuit court is the proper court for such adjudications.⁶ The right to support, and the corresponding right to bring the cause of action, belongs to the mentally or physically disabled adult whose disability began prior to

¹ *Perla v. Perla*, 58 So. 2d 689, 690 (Fla. 1952).

² *Brown v. Brown*, 714 So. 2d 475, 477 (Fla. 5th DCA 1998); *Monitzer v. Monitzer*, 600 So. 2d 575, 575 (Fla. 2d DCA 1992); *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. 1st DCA 1963).

³ *Fernandez v. Fernandez*, 306 So. 3d 1013, 1015 (Fla. 3d DCA 2020) (quoting *Hastings v. Hastings*, 841 So. 2d 484, 486 (Fla. 3d DCA 2003) (internal citations omitted)).

⁴ *Fernandez*, 306 So. 3d at 1015.

⁵ *Fernandez*, 306 So. 3d at 1016-17.

⁶ *Fernandez*, 306 So. 3d at 1015.

majority,⁷ although the child does not need to be adjudicated dependent before he or she reaches majority for the court to order extended support.⁸

In cases where the parents of a dependent adult child have dissolved their marriage, and one party has fulfilled his or her child support obligations through the age of majority as provided in the final judgment of dissolution, an independent action may nevertheless be brought to adjudicate that party's continuing support obligation for the dependent adult child.⁹

Aside from the above-described statute that recognizes the existence of a common law right to seek support for dependent persons, state statutes do not otherwise recognize or regulate any right to support for dependent adult children.

Kinds of Financial Support Available to Adult Dependent Children

Government Benefits

There are many government benefits available to individuals with special needs, and they vary significantly from state to state. Some of the major programs are:¹⁰

- *Medicaid*. Medicaid provides basic medical care to low-income individuals. Most states also have “waiver” Medicaid programs covering residential, day care, career, and other services.
- *Supplemental Security Income (SSI)*. SSI provides funds for food and shelter to individuals with disabilities. To qualify, a person must have less than \$2,000 in “countable assets.”
- *Social Security Disability Insurance (SSDI)*. SSDI requires that participants have been unable to work for at least a year due to their disability. Benefits are based on the individual's income history and the number of quarters they have worked and contributed to the program.
- *Disabled Adult Child (DAC)*. DAC requires a determination that the onset of the participant's disability occurred before age 22, that the person is unmarried, and that the participant has a parent who has a disability, is retired or deceased and who qualifies for Social Security himself or herself.
- *Supplemental Nutrition Assistance Program (SNAP/Food Stamps)*. SNAP has eligibility guidelines similar to SSI.
- *Section 8 Housing*. Section 8 Housing subsidizes residential rents for families for low-income families, which may include those with special needs. Eligibility is based on a sliding scale that considers income and family size.¹¹

Special Needs Trusts

A special needs trust, sometimes called a supplemental needs trust, is a legal vehicle enabling assets to be held on behalf of someone with disabilities without affecting their eligibility for

⁷ *Id.*

⁸ *Skelly v. Skelly*, 300 So. 3d 342, 345 (Fla. 5th DCA 2020) (confirming that s. 743.07(2), F.S., does not require that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support).

⁹ *Fernandez*, 306 So. 3d at 1015.

¹⁰ Special Needs Alliance, *Government Benefits*, available at <https://www.specialneedsalliance.org/special-needs-101/government-benefits/> (last visited Feb. 27, 2023).

¹¹ *Id.*

means-tested public benefits such as Medicaid or Supplemental Security Income.¹² Put another way, the essential purpose of a special needs trust is usually to improve the quality of an individual's life without disqualifying him or her from eligibility for public benefits.¹³

Special needs trusts are meant to supplement the funds and services available through government programs.¹⁴ While assets held by the trust are not “countable” for the purpose of qualifying for such programs, there are strict regulations regarding disbursements.¹⁵ To create a valid special needs trust, the trust must be established in a way that complies with the Federal law authorizing them.¹⁶ Specifically, a special needs trust must:

- Contain the assets of an individual under age 65;
- Be established for an individual who has a disability that makes him or her substantially unable to work;¹⁷
- Be established for the benefit of the individual;
- Be established by the individual's parent, grandparent, legal guardian, or a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death.¹⁸

Special needs trusts can be either “first party” or “third party” trusts.¹⁹ A first-party special needs trust is created with assets belonging to an individual with disabilities, who becomes the “beneficiary.” The funds typically consist of a personal injury settlement or an inheritance. The person must be under 65 at the time that the trust is established. Funds remaining in the trust at the beneficiary's death must be used to reimburse Medicaid for services to that individual before they can be distributed to anyone else.²⁰

A third-party special needs trust is created with assets provided by anyone other than the beneficiary, such as parents, other relatives, or friends of the beneficiary.²¹ The trust can be created and funded during the life of the originator (“inter vivos”) or as part of a last will and testament (“testamentary”). Upon the beneficiary's death, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual, and “remainder” beneficiaries may be named to receive those assets.²²

¹² Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/> (last visited Feb. 27, 2023).

[special-needs-101/special-needs-trusts-and-personal-injury-settlements/](https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/) (last visited Feb. 27, 2023).

¹³ Special Needs Alliance, *Administering a Special Needs Trust: A Handbook for Trustees* (2022 Ed.), at p. 4, available at <https://www.specialneedsalliance.org/wp-content/uploads/2022/01/2022-SNA-Handbook.pdf>. (last visited Feb. 27, 2023)

¹⁴ Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

¹⁵ *Id.*

¹⁶ 42 U.S.C. s. 1396p(d)(4).

¹⁷ See 42 U.S.C. s. 1382c(a)(3) (providing full details of what constitutes a disability).

¹⁸ *Id.*

¹⁹ Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Pooled Trusts

A pooled trust is often a practical alternative for small estates or where it is difficult to identify a person who will agree to serve as trustee. Sub-accounts belonging to many beneficiaries are managed as a single entity, usually by nonprofit corporations, which call upon the experience of social workers, money managers, and attorneys specializing in special needs cases. Because many financial institutions do not handle small special needs trusts, or charge fees that are not cost-effective for modest trusts, pooled trusts can give families access to highly skilled trustees. Funds remaining at the beneficiary's death are typically divided between Medicaid and the nonprofit entity.²³

Similar to special needs trusts, pooled trusts must be established in a way that complies with the Federal law authorizing them.²⁴ Specifically, a pooled trust must:

- Contain the assets of an individual of any age who has a disability that makes him or her substantially unable to work;²⁵
- Be established for the benefit of the individual;
- Be established and managed by a nonprofit association;
- Maintain a separate account for each beneficiary but pool the funds for investment and management purposes;
- Be established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death to the extent the funds are not retained by the trust.²⁶

Child Support

In dissolution of marriage proceedings, the court may at any time order a parent to pay support to the other parent or to a third party who has custody.²⁷ The amount of child support is based on statutory child support guidelines.²⁸ These guidelines are intended to ensure support amounts are fair.²⁹

Child support guidelines are used the first time child support is ordered and every time the child support amount changes. They are also used to review the order to see if the support amount should be changed. Child support guidelines consider:

- The income of both parents;
- The child's health care and child care costs; and

²³ *Id.*

²⁴ 42 U.S.C. s. 1396p(d)(4)(C).

²⁵ 42 U.S.C. s. 1382c(a)(3).

²⁶ *Id.*

²⁷ Section 61.13(1)(a)1.a., F.S.

²⁸ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

²⁹ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023).

- The standard needs for the child.³⁰

A table of support amounts based on the child's age and net income of the parents is provided in statute.³¹

The court or agency establishing support must use the guidelines to decide the amount of child support that will go in the support order.³² In special circumstances, support amounts can be higher or lower than the guideline amounts. For example, a judge may consider a child's high medical expenses as a reason to change the support amount. In most cases, judges have to give written reasons why support amounts are different from the guideline amounts.³³

All child support orders and income deduction orders entered on or after October 1, 2010, must provide, among other things, for child support to terminate on a child's 18th birthday, unless the court finds or has previously found that child support should continue:

for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.³⁴

Additionally, a court that initially enters an order requiring a parent to make child support payments has continuing jurisdiction after entry of the initial order to modify the amount and terms and conditions of the child support payments if:

- The modification is found by the court to be in the best interests of the child;
- There is a substantial change in the circumstances of the parties;
- The child support payments are for an adult child who is dependent due to a mental or physical incapacity that began before age 18;
- The child support payments are for a child who is between the ages of 18 and 19 and is reasonably expected to graduate before age 19; or
- The child is emancipated, marries, joins the armed services, or dies.³⁵

Guardianship

If a court finds that a person does not have the ability to safely manage the things that belong to him or her, or the ability to meet his or her basic health, safety, and self-care needs, the court will

³⁰ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023); see also s. 61.30, F.S. (providing the child support guidelines).

³¹ *Id.*

³² Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023).

³³ *Id.*

³⁴ Section 743.07(2), F.S.

³⁵ Section 61.13(1)(a)2., F.S.

rule that this person is incapacitated.³⁶ In many cases, after a court decides that a person is incapacitated, it will choose someone else to make some or all the decisions for the incapacitated person. This is called a guardianship.³⁷

Being placed in a guardianship results in the loss of an individual's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend lawsuits, choose living arrangements, make decisions about their social life, have a driver's license, personally apply for benefits, and manage money or property.³⁸

Guardianships must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.³⁹ Consequently, there are different types of guardianships under state law. They include:⁴⁰

- Preneed guardian;⁴¹
- Voluntary guardianship;⁴²
- Emergency temporary guardianship;⁴³
- Limited guardianship;⁴⁴
- Guardian advocate for individuals who have a developmental disability;⁴⁵
- Guardian advocate for individuals receiving mental health treatment;⁴⁶ and
- Full (*i.e.* plenary) guardianship.⁴⁷

The powers and duties of a court-appointed guardian include, but are not limited to:

- Filing an initial plan and annual reports;⁴⁸
- Making provision for the medical, mental, rehabilitative, and personal care of the person;⁴⁹
- Making residential decisions on behalf of the person;⁵⁰
- Advocating on behalf of the person in institutional and other residential settings;⁵¹ and
- Making financial decisions on behalf of the person.⁵²

³⁶ See generally Part V, Ch. 744, F.S.; see also Disability Rights Florida, *What is Guardianship?*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_is_guardianship (last visited Feb. 27, 2023).

³⁷ See *id.*

³⁸ See 744.1012(1), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

³⁹ Section 744.1012(2), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

⁴⁰ See generally Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

⁴¹ Sections 744.3045 and 744.3046, F.S.

⁴² Section 744.341, F.S.

⁴³ Section 744.3031, F.S.

⁴⁴ Section 744.441(1), F.S.; see also s. 744.102(9)(a), F.S. (defining “limited guardian”).

⁴⁵ Sections 744.3085 and 393.12, F.S.

⁴⁶ Sections 744.3085 and 394.4598, F.S.

⁴⁷ Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining “plenary guardian”).

⁴⁸ Section 744.361(6)-(7), F.S.

⁴⁹ Section 744.361(13)(f), F.S.

⁵⁰ Section 744.361(13)(h), F.S.

⁵¹ Section 744.361(13)(i), F.S.

⁵² Section 744.361(12), F.S.

Any resident of the state who is 18 years old and of sound mind is qualified to act as a guardian.⁵³ Additionally, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption, or law.⁵⁴ Certain individuals, however, cannot be appointed to act as a guardian.⁵⁵

Guardians must file an initial guardianship report with the court within 60 days after appointment.⁵⁶ The initial guardianship report must consist of an initial guardianship plan,⁵⁷ which must include certain specified information for the person for whom the guardianship is being established. For example, the initial guardianship plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the person, as well as the place and kind of residential setting best suited for the needs of the person.⁵⁸

Guardians must also file an annual guardianship report with the court.⁵⁹ The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan⁶⁰ containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.⁶¹

Guardian Advocates

A “guardian advocate” is a person appointed by a written order of the court to represent a person with developmental disabilities.⁶² A “developmental disability” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁶³

Guardian advocacy is a circuit court process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.⁶⁴

⁵³ Section 744.309(1), F.S.

⁵⁴ Section 744.309(2), F.S.

⁵⁵ See generally ss. 744.309(3), (6), F.S.

⁵⁶ Sections 744.361(6) and 744.362(1), F.S.

⁵⁷ Section 744.362(1), F.S.

⁵⁸ See s. 744.363(1)(a)-(f), F.S.

⁵⁹ Section 744.367(1), F.S.

⁶⁰ Section 744.367(3)(a), F.S.

⁶¹ Section 744.3675, F.S.

⁶² Sections 393.063(21) and 393.12, F.S.

⁶³ Section 393.063(12), F.S.

⁶⁴ See s. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship.⁶⁵ A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated.⁶⁶ The process of becoming a guardian advocate of a person with a developmental disability does not require the hiring of an attorney, although during the proceedings the court will appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.⁶⁷

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a plenary guardian must have an attorney.⁶⁸

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.⁶⁹

The qualifications to serve as a guardian advocate are the same as those required of any guardian under the guardianship statute.⁷⁰ The court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as his or her guardian advocate.⁷¹ A guardian advocate need not be the caregiver of the person with a disability.⁷²

III. Effect of Proposed Changes:

The common law and statutes of this state recognize that a parent has a duty to support a dependent adult child who has a mental or physical incapacity that began before the age of 18. Under current law, a dependent adult child may pursue support from a parent in court, but the procedures for doing so, proof required to obtain support, and standards governing awards are not clear. This bill clarifies those matters by creating or amending statutes relating to the

⁶⁵ Section 744.3085, F.S.

⁶⁶ Section 393.12(2)(a), F.S.

⁶⁷ Section 393.12(2)(b), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

⁶⁸ Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

⁶⁹ Section 393.12(10), F.S.

⁷⁰ Fifth Judicial Circuit, Lake County, Florida, *Florida Law and Guardian Advocacy: A Guide for Families and Friends of Developmentally Disabled Individuals* (Oct. 2014), at 2, available at <https://www.lakecountyclerk.org/forms/Guardianship/DavisGuardianAdvocacyManual.pdf> (last visited Feb. 27, 2023)

⁷¹ *Id.*

⁷² Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

dissolution of marriage, support and time-sharing;⁷³ developmental disabilities;⁷⁴ determination of parentage;⁷⁵ and guardianship.⁷⁶

Amendments to Dissolution of Marriage, Support, and Time-Sharing Statutes

Within the statutes governing dissolution of marriage, support, and time-sharing, the bill creates s. 61.1255, F.S., entitled “Support for dependent adult children; powers of court,” to provide for the support of dependent adult children. The bill:

- Provides legislative intent, specifically to state that the Legislature intends to:
 - Codify and clarify existing common law and Florida case law recognizing that the parents of a dependent adult child have an obligation to support that child;
 - Provide procedures for establishing support for a dependent adult child; and
 - Provide safeguards, when establishing court-ordered support for a dependent adult child, to protect and preserve any means-based government benefits the dependent adult child is receiving or may be entitled to receive.
- Defines the term “dependent adult child” to mean an unmarried adult who is incapable of self-support as a result of physical or mental incapacity that began before the person reached the age of 18.
- Requires that any right of a parent or other person to decide where the dependent adult child will live be established in a guardianship proceeding brought under the statutes governing developmental disabilities or guardianship.
- Clarifies that language in the bill may not be construed to require the appointment of a guardian advocate under ch. 393, F.S., or a guardianship under ch. 744, F.S., in order for a court to order support for a dependent adult child.
- Provides that a suit to establish support for a dependent adult child may only be filed by one of the following:
 - The dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child’s right to sue or defend lawsuits has not been removed by the court. Any such action must be brought in the circuit court in the county in which the child resides.
 - A parent or other person on behalf of the dependent adult child. Any such action must be brought under the statutes governing developmental disabilities or guardianship.
 - The dependent adult child’s appointed guardian advocate or appointed guardian, if the dependent adult child’s right to sue or defend lawsuits has been removed by the court.
- Provides that a suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place, having been established during the child’s minority.
- Provides that if a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to provide for dependent adult support in the existing case if the agreement is submitted to the court for approval before the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one or both parents to the other must be established in a guardianship proceeding or in a separate support proceeding in

⁷³ Chapter 61, F.S.

⁷⁴ Chapter 393, F.S.

⁷⁵ Chapter 742, F.S.

⁷⁶ Chapter 744, F.S.

circuit court pursuant to the bill. The bill does not preclude a court from establishing support, ordering continued support, or enforcing or modifying support orders established under the statutes governing dissolution of marriage, support, and time-sharing.

- Provides that support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law⁷⁷ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.
- Prohibits the Department of Revenue from filing a petition to establish, modify, or enforce a support order under the bill.

The bill also creates s. 61.31, F.S., entitled "Amount of support for a dependent adult child," to provide for the amount of support for dependent adult children. In determining the amount of support to be paid after a dependent adult child reaches the age of 18, the specific terms and conditions of such support, and the rights and duties of both parents with respect to support, the court must determine and give consideration to all of the following:

- The dependent adult child's income and assets;
- Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity;
- Whether a parent or other person pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself;
- The financial resources available to each parent for the support, care, and supervision of the dependent adult child; and
- Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

The bill provides that the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law⁷⁸ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. In making its decisions, the court must take into consideration:

- Any state or federal programs and benefits that the dependent adult child is receiving or may receive due to reaching the age of majority; and
- The effect that the court-ordered support would have on the dependent adult child's eligibility for such programs and benefits.

⁷⁷ See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); *see also* 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

⁷⁸ See *id.*

The bill specifies that the court may not order support that will cause ineligibility for programs in which the dependent adult child currently participates, or programs and services they are reasonably expected to become eligible for due to reaching the age of majority.

The bill amends the statute governing child support and parenting⁷⁹ by replacing certain statutory cross-references⁸⁰ to s. 743.07(2), F.S., with specific language from the cross-referenced statute. The replacement of the cross-references with specific language from the cross-referenced statute is a technical change that does not create new rights or obligations relating to child support. The language inserted from the cross-referenced statute relates to the authority of a court to order child support for a child who is between 18 and 19 and is reasonably expected to graduate high school before age 19.

The bill amends the statute governing child support and guidelines,⁸¹ to provide that the guidelines in that section do not apply to support for a dependent adult child, and that the amount of support for a dependent adult child must be determined with reference to the new statute created by the bill governing the amount of support for a dependent adult child.

The bill amends the statute governing child support guidelines and retroactive child support.⁸² The amendment clarifies that the existing child support guidelines apply to a child support order for a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19.

Amendments to Developmental Disabilities Statute

Within the statutes governing developmental disabilities, the bill amends the section governing the capacity and appointment of guardian advocates,⁸³ to provide that a person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney if he or she is delegated the right of a parent to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability.

The bill also provides that a petition to appoint a guardian advocate may include a request for periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person. The bill also clarifies that no obligation or duty is conferred on a guardian advocate to pursue support for the person with a developmental disability.

⁷⁹ Section 61.13, F.S.

⁸⁰ Section 743.07(2), F.S.

⁸¹ Section 61.29, F.S.

⁸² Section 61.30, F.S.

⁸³ Section 393.12, F.S.

Amendments to Determination of Parentage Statute

Within the statutes governing the determination of parentage, the bill amends the section governing hearings and court orders for support, hospital expenses, and attorney fees,⁸⁴ to make conforming changes. The bill also amends the section governing the retention of jurisdiction for future orders,⁸⁵ to clarify that modifications of child support and time-sharing must be determined under the statutes governing dissolution of marriage, support, and time-sharing.

Amendments to Guardianship Statute

Within the statutes governing guardianship, the bill creates s. 744.1013, F.S., entitled “Jurisdiction for support claims,” to provide jurisdiction for dependent adult child-related support claims. The bill provides that the court has jurisdiction over claims for support of a dependent adult child and must adjudicate the financial obligation, including health insurance, of the dependent adult child’s parents and enforce the financial obligation as provided in the statute governing dissolution of marriage, support, and time-sharing. All support required to be paid in relation to a dependent adult child over the age of 18 must be paid to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law⁸⁶ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child’s means-based government benefits. Any order for support entered in a proceeding under the statutes governing guardianship or developmental disabilities supersedes any support order entered under the statute governing the dissolution of marriage, support, and time-sharing.

The bill also creates s. 744.422, F.S., entitled “Petition for child support for a dependent adult child,” to authorize the filing of petitions in court for child support for a dependent adult child. The bill provides that pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for the support of dependent adult children, a guardian may petition the court for an order requiring either or both parents to pay periodic amounts for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support must be determined pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for same. The bill also clarifies that no obligation or duty is conferred on a guardian to pursue support for the person with a developmental disability.

The bill amends the statute governing guardians of minors,⁸⁷ to include a reference to the dissolution of marriage, support, and time-sharing statute.

The bill takes effect July 1, 2023.

⁸⁴ Section 742.031, F.S.

⁸⁵ Section 742.06, F.S.

⁸⁶ See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); see also 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

⁸⁷ Section 744.3021, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

By providing clear procedures to obtain support for adult dependent children, more suits seeking support will likely be pursued and more support obtained. However, the clear procedures may reduce the time and expense of obtaining awards.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), any additional workload on the courts as a result of the bill will apply only to a small number of cases. Moreover, OSCA reports that it does not have sufficient “data to quantifiably establish the increase in judicial time and workload as a result of additional court filings” that result from the bill.⁸⁸

VI. Technical Deficiencies:

None.

⁸⁸ Office of the State Courts Administrator, 2023 Judicial Impact Statement for SB 226 (Feb. 2, 2023).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 61.1255, 61.31, 744.1013, and 744.422.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.29, 61.30, 393.12, 742.031, 742.06, and 744.3021.

IX. Additional Information:

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

CS/CS by Children, Families, and Elder Affairs on March 7, 2023:

The committee substitute:

- Provides legislative intent;
- Removes language stating that the parents of a dependent adult child are responsible for supporting that child.
- Clarifies that the bill does specifically require the appointment of a guardian advocate under ch. 393, F.S., or the filing of a guardianship under ch. 744, F.S., in order for a court to order support for a dependent adult child.
- Removes language stating that a suit to establish support for a dependent adult child may only be filed by the dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child's right to sue or defend lawsuits has not been removed by the court.
- Requires courts to take certain factors relating to benefit eligibility into consideration when determining the amount of support for a dependent adult child.
- Clarifies that no obligation or duty is conferred on either a guardian or guardian advocate to pursue support for a person with a developmental disability.

CS by Judiciary on February 7, 2023:

- Makes technical changes to s. 61.13(1)(a)2., F.S., to clarify that the provided list was intended to establish separate independent bases for which a court is authorized to modify the amount and terms and conditions of child support payments.
- Replaces references to "attorney in fact" with references to "agent under a durable power of attorney," to ensure consistency within the bill and to use the more common and modern term to refer to a person having authority to act under a power of attorney.

B. Amendments:

None.

By the Committees on Children, Families, and Elder Affairs; and
Judiciary; and Senator Berman

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1 A bill to be entitled
2 An act relating to support for dependent adult
3 children; creating s. 61.1255, F.S.; providing
4 legislative intent; defining the term "dependent adult
5 child"; requiring that certain rights of the parents
6 of a dependent adult child be established in a
7 guardianship proceeding; providing construction;
8 specifying individuals who may file a suit to
9 establish support for a dependent adult child;
10 specifying a timeframe during which such suits may be
11 filed; providing an exception; specifying procedures
12 for establishing support; specifying who may receive
13 such support before and after the dependent adult
14 child reaches the age of 18; providing construction;
15 authorizing the court to assign support to certain
16 trusts established for a dependent adult child;
17 prohibiting the Department of Revenue from filing
18 petitions to establish, modify, or enforce certain
19 support orders; amending s. 61.13, F.S.; conforming a
20 provision to changes made by the act; specifying that
21 a child support order does not terminate on the
22 child's 18th birthday in certain circumstances;
23 specifying that a court may modify a child support
24 order for adult children in certain circumstances;
25 authorizing either parent to consent to mental health
26 treatment for a child in certain circumstances unless
27 stated otherwise in the parenting plan; amending s.
28 61.29, F.S.; providing that child support guidelines
29 do not apply to certain cases; amending s. 61.30,

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30 F.S.; conforming a provision to changes made by the
31 act; creating s. 61.31, F.S.; providing factors a
32 court must consider when determining the amount of
33 child support for a dependent adult child; authorizing
34 a court to assign support to certain trusts
35 established for a dependent adult child for a
36 specified purpose; requiring the court to consider
37 certain state and federal programs and benefits when
38 making its decisions; prohibiting the court from
39 ordering support that will cause ineligibility for
40 certain programs; amending s. 393.12, F.S.; providing
41 an additional circumstance under which a guardian
42 advocate must be represented by an attorney in
43 guardianship proceedings; specifying that petitions to
44 appoint a guardian advocate for a person with
45 disabilities may include certain requests for support
46 from the person's parents; providing construction;
47 amending ss. 742.031 and 742.06, F.S.; conforming
48 provisions to changes made by the act; creating s.
49 744.1013, F.S.; assigning jurisdiction over petitions
50 for support of dependent adult children to the
51 guardianship court; specifying who may receive such
52 support for dependent adult children over the age of
53 18; authorizing a court to assign support to certain
54 trusts established for a dependent adult child for a
55 specified purpose; specifying that such support orders
56 supersede any orders entered under certain other
57 provisions; amending s. 744.3021, F.S.; conforming
58 provisions to changes made by the act; creating s.

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744.422, F.S.; authorizing a guardian of a dependent adult child to petition the court for certain support payments from the dependent adult child's parents in certain circumstances; specifying that the amount of such support is determined pursuant to certain provisions; providing construction; providing an effective date.

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

Section 1. Section 61.1255, Florida Statutes, is created to read:

61.1255 Support for dependent adult children; legislative intent; powers of court.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(a) Codify and clarify existing common law and Florida case law recognizing that the parents of a dependent adult child have an obligation to support that child;

(b) Provide procedures for establishing support for a dependent adult child; and

(c) Provide safeguards, when establishing court-ordered support for a dependent adult child, to protect and preserve any means-based government benefits the dependent adult child is receiving or may be entitled to receive.

(2) POWERS OF COURT.—

(a) For purposes of this section, the term "dependent adult child" means an unmarried adult who is incapable of self-support as a result of a physical or mental incapacity that began before

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the person reached the age of 18.

(b) The right of a parent or other person to decide where the dependent adult child will live must be established in a guardianship proceeding brought under chapter 393 or chapter 744. This paragraph may not be construed to require guardian advocacy under chapter 393 or a guardianship under chapter 744 or in order for a court to order support for a dependent adult child.

(c) A suit to establish support for a dependent adult child may only be filed by one of the following:

1. The dependent adult child or his or her agent under a durable power of attorney. Any such action must be brought in the circuit court in the county in which the dependent adult child resides.

2. A parent or other person on behalf of the dependent adult child. Any such action must be brought under chapter 393 or chapter 744.

3. The dependent adult child's guardian advocate appointed under chapter 393 or guardian appointed under chapter 744, if the dependent adult child's right to sue or defend lawsuits has been removed by the court.

(d) A suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place, having been established during the child's minority.

(e) If a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to provide for dependent adult child support in the existing case if the agreement is submitted to the court for approval before

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the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one or both parents must be established in a guardianship proceeding or in a separate support proceeding in circuit court pursuant to subparagraph (c)1. This section does not preclude a court from establishing support, ordering continued support, or enforcing or modifying support orders established under this chapter.

(f) Support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d)(4) or to a pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.

(g) The Department of Revenue may not file a petition to establish, modify, or enforce a support order under this section.

Section 2. Paragraph (a) of subsection (1) and paragraph (b) of subsection (2) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(1)(a) In a proceeding under this chapter, the court may at any time order either or both parents who owe a duty of support

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to a child to pay support to the other parent or, ~~in the case of both parents,~~ to a third party who has custody in accordance with the child support guidelines schedule in s. 61.30.

1. All child support orders and income deduction orders entered on or after October 1, 2010, must provide:

a. For child support to terminate on a child's 18th birthday unless the court finds or previously found that the minor child, or the child who is dependent in fact and between the ages of 18 and 19, is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19 ~~s. 743.07(2) applies,~~ or the continued support is otherwise agreed to by the parties;

b. A schedule, based on the record existing at the time of the order, stating the amount of the monthly child support obligation for all the minor children at the time of the order and the amount of child support that will be owed for any remaining children after one or more of the children are no longer entitled to receive child support; and

c. The month, day, and year that the reduction or termination of child support becomes effective.

2. The court initially entering an order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments if: the modification is found by the court to be in the best interests of the child; ~~when~~ the child reaches majority; ~~if~~ there is a substantial change in the circumstances of the parties; the minor child, or the child who is dependent in fact and between the ages of 18 and 19, is still in high school and

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is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19 ~~if s-~~ 743.07(2) applies; or the ~~when~~ a child is emancipated, marries, joins the armed services, or dies. The court initially entering a child support order has continuing jurisdiction to require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

(2)

(b) A parenting plan approved by the court must, at a minimum:

1. Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child;

2. Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;

3. Designate who will be responsible for:

a. Any and all forms of health care. If the court orders shared parental responsibility over health care decisions, ~~the parenting plan must provide that~~ either parent may consent to mental health treatment for the child unless stated otherwise in the parenting plan.

b. School-related matters, including the address to be used for school-boundary determination and registration.

c. Other activities; and

4. Describe in adequate detail the methods and technologies that the parents will use to communicate with the child.

Section 3. Section 61.29, Florida Statutes, is amended to read:

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61.29 Child support guidelines; principles; application.-

(1) The following principles establish the public policy of the State of Florida in the creation of the child support guidelines:

~~(a)(1)~~ Each parent has a fundamental obligation to support his or her minor or legally dependent child.

~~(b)(2)~~ The guidelines schedule is based on the parent's combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household.

~~(c)(3)~~ The guidelines encourage fair and efficient settlement of support issues between parents and minimizes the need for litigation.

(2) The guidelines in this section do not apply to support for a dependent adult child as defined in s. 61.1255. The amount of support for a dependent adult child is determined by s. 61.31.

Section 4. Paragraph (a) of subsection (1) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.-

(1) (a) The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact ~~must shall~~ order as child support for a minor child, or a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19, in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or

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another chapter. The trier of fact may order payment of child support which varies, plus or minus 5 percent, from the guideline amount, after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent. The trier of fact may order payment of child support in an amount which varies more than 5 percent from such guideline amount only upon a written finding explaining why ordering payment of such guideline amount would be unjust or inappropriate. Notwithstanding the variance limitations of this section, the trier of fact must ~~shall~~ order payment of child support which varies from the guideline amount as provided in paragraph (11)(b) whenever any of the children are required by court order or mediation agreement to spend a substantial amount of time with either parent. This requirement applies to any living arrangement, whether temporary or permanent.

Section 5. Section 61.31, Florida Statutes, is created to read:

61.31 Amount of support for a dependent adult child.—

(1) In determining the amount of support to be paid after a dependent adult child as defined in s. 61.1255 reaches the age of 18, the specific terms and conditions of such support, and the rights and duties of both parents with respect to the support, the court shall determine and give consideration to all of the following:

(a) The dependent adult child's income and assets.

(b) Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal

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supervision directly required by or related to that incapacity.

(c) Whether a parent or other person pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself.

(d) The financial resources available to each parent for the support, care, and supervision of the dependent adult child.

(e) Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

(2) The court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d)(4) or to a pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.

(3) In making its decisions, the court shall take into consideration:

(a) Any state or federal programs and benefits that the dependent adult child is receiving or may receive due to reaching the age of majority; and

(b) The effect that the court-ordered support would have on the dependent adult child's eligibility for such programs and benefits.

(4) The court may not order support that will cause ineligibility for programs in which the dependent adult child currently participates, or programs and services for which the

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291 dependent adult child is reasonably expected to become eligible
 292 upon reaching the age of majority.

293 Section 6. Paragraph (b) of subsection (2) and subsection
 294 (3) of section 393.12, Florida Statutes, are amended to read:

295 393.12 Capacity; appointment of guardian advocate.—

296 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

297 (b) A person who is being considered for appointment or is
 298 appointed as a guardian advocate is not required to need not be
 299 represented by an attorney unless required by the court or if
 300 the guardian advocate is delegated any rights regarding property
 301 other than the right to be the representative payee for
 302 government benefits or the right of a parent to receive periodic
 303 payments for the support, care, maintenance, education, or other
 304 needs of the person with a developmental disability. This
 305 paragraph applies only to proceedings relating to the
 306 appointment of a guardian advocate and the court's supervision
 307 of a guardian advocate and is not an exercise of the
 308 Legislature's authority under pursuant to s. 2(a), Art. V of the
 309 State Constitution.

310 (3) PETITION.—

311 (a) A petition to appoint a guardian advocate for a person
 312 with a developmental disability may be executed by an adult
 313 person who is a resident of this state. The petition must be
 314 verified and must:

315 1.(a) State the name, age, and present address of the
 316 petitioner and his or her relationship to the person with a
 317 developmental disability;

318 2.(b) State the name, age, county of residence, and present
 319 address of the person with a developmental disability;

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320 3.(e) Allege that the petitioner believes that the person
 321 needs a guardian advocate and specify the factual information on
 322 which such belief is based;

323 4.(d) Specify the exact areas in which the person lacks the
 324 decisionmaking ability to make informed decisions about his or
 325 her care and treatment services or to meet the essential
 326 requirements for his or her physical health or safety;

327 5.(e) Specify the legal disabilities to which the person is
 328 subject; and

329 6.(f) State the name of the proposed guardian advocate, the
 330 relationship of that person to the person with a developmental
 331 disability; the relationship that the proposed guardian advocate
 332 had or has with a provider of health care services, residential
 333 services, or other services to the person with a developmental
 334 disability; and the reason why this person should be appointed.
 335 The petition must also state if a willing and qualified guardian
 336 advocate cannot be located, ~~the petition shall so state.~~

337 (b) A petition to appoint a guardian advocate may include a
 338 request for periodic payments from either or both parents of the
 339 person with a developmental disability for the support, care,
 340 maintenance, education, or other needs of that person pursuant
 341 to s. 61.1255. This section may not be construed to confer any
 342 obligation or duty for a guardian advocate to pursue support for
 343 the person with a developmental disability.

344 Section 7. Subsection (1) of section 742.031, Florida
 345 Statutes, is amended to read:

346 742.031 Hearings; court orders for support, hospital
 347 expenses, and attorney ~~attorney's~~ fee.—

348 (1) Hearings for the purpose of establishing or refuting

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the allegations of the complaint and answer ~~must shall~~ be held in the chambers and may be restricted to persons, in addition to the parties involved and their counsel, as the judge in his or her discretion may direct. The court shall determine the issues of paternity of the child and the ability of the parents to support the child. Each party's social security number ~~must shall~~ be recorded in the file containing the adjudication of paternity. If the court finds that the alleged father is the father of the child, it ~~must shall~~ so order. If appropriate, the court ~~may shall~~ order the father to pay the complainant, her guardian, or any other person assuming responsibility for the child moneys sufficient to pay reasonable attorney attorney's fees, hospital or medical expenses, cost of confinement, and any other expenses incident to the birth of the child and to pay all costs of the proceeding. Bills for pregnancy, childbirth, and scientific testing are admissible as evidence without requiring third-party foundation testimony, and ~~shall~~ constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child. The court shall order either or both parents owing a duty of support to the child to pay support under chapter 61 pursuant to s. 61.30. The court ~~must shall~~ issue, upon motion by a party, a temporary order requiring child support for a minor child under pursuant to s. 61.30 pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity on the basis of genetic tests or other evidence. The court may also make a determination of an appropriate parenting plan, including a time-sharing schedule, in accordance with chapter 61.

Section 8. Section 742.06, Florida Statutes, is amended to

Page 13 of 15

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

586-02298-23

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read:

742.06 Jurisdiction retained for future orders.—The court shall retain jurisdiction of the cause for the purpose of entering such other and further orders as changing circumstances of the parties may in justice and equity require. Modifications of child support and time-sharing are determined under chapter 61.

Section 9. Section 744.1013, Florida Statutes, is created to read:

744.1013 Jurisdiction for support claims.—The court has jurisdiction over claims for support of a dependent adult child as defined in s. 61.1255 and shall adjudicate the financial obligation, including health insurance, of the dependent adult child's parents and enforce the financial obligation as provided in chapter 61. All support required to be paid in relation to a dependent adult child over the age of 18 must be paid to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d)(4) or to a pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. Any order for support entered in a proceeding under this chapter or chapter 393 supersedes any support order entered under chapter 61.

Section 10. Subsection (4) of section 744.3021, Florida

Page 14 of 15

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

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Statutes, is amended to read:

744.3021 Guardians of minors.—

(4) If a petition is filed ~~under pursuant to~~ this section requesting appointment of a guardian for a minor who is the subject of any proceeding under chapter 39 or chapter 61 and who is aged 17 years and 6 months or older, the court division with jurisdiction over guardianship matters has jurisdiction over the proceedings under s. 744.331. The alleged incapacitated minor under this subsection must ~~shall~~ be provided all the due process rights conferred upon an alleged incapacitated adult under ~~pursuant to~~ this chapter and applicable court rules. The order of adjudication under s. 744.331 and the letters of limited or plenary guardianship may issue upon the minor's 18th birthday or as soon thereafter as possible. Any proceeding under ~~pursuant to~~ this subsection must ~~shall~~ be conducted separately from any other proceeding.

Section 11. Section 744.422, Florida Statutes, is created to read:

744.422 Petition for child support for a dependent adult child.—Pursuant to s. 61.1255, a guardian may petition the court for an order requiring either or both parents to pay periodic amounts for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support is determined pursuant to s. 61.31. This section may not be construed to confer any obligation or duty for a guardian to pursue support on behalf of a ward.

Section 12. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 6, 2023

I respectfully request that **Senate Bill #226**, relating to Support for Dependent Adult Children, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script, appearing to read "Lori Berman", is written over a horizontal line.

Senator Lori Berman
Florida Senate, District 26

cc: Senator Keith Perry, Vice Chair
Philip Twogood, Staff Director

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 226
Bill Number or Topic

3/22/23
Meeting Date
Rules
Committee

Name Cherie Kim Phone 214-679-8502

Address _____ Email _____
Street

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3-22-23

Meeting Date

Rules

Committee

SB 226

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Sara Elliott

Phone

703 2970354

Address

13214 Agave St

Street

Email

PCB

City

FL

State

32407

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 226

3/22/23

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Lisa Hurley** Phone **850.224.5081**

Address **311 E. Park Ave.** Email **lhurley@smithbryanandmyers.com**
Street

Tallahassee **Florida** **32301**
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Family Law Section FL Bar

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Rules

BILL: CS/CS/SB 264

INTRODUCER: Rules Committee; Judiciary Committee; and Senators Collins and Avila

SUBJECT: Interests of Foreign Countries

DATE: March 22, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 264 generally restricts both governmental entity contracting with certain foreign countries and entities of concern, as well as conveyances of agricultural lands and other interests in real property to foreign principals, the People's Republic of China, and other entities and persons that are affiliated with them. It also amends certain electronic health record statutes to ensure that such records are physically stored in the continental U.S., U.S. territories, or Canada.

Specifically, with respect to governmental entity contracting, the bill creates statutes that prohibit governmental entities from:

- Contracting with entities of foreign countries of concern.
- Entering into contracts for an economic incentive with a foreign entity.

And with respect to conveyances of agricultural lands, the bill creates statutes that:

- Prohibit a foreign principal from owning or acquiring agricultural land in the state.
- Prohibit a foreign principal from owning or acquiring any interest in real property within 20 miles of any military installation or critical infrastructure in the state.
- Prohibit China, Chinese Communist Party or other Chinese political party officials or members, Chinese business organizations, and persons domiciled in China, but who are not citizens or lawful permanent residents of the U.S., from purchasing or acquiring any interest in real property in the state.

The bill also amends:

- The Florida Electronic Health Records Act, to require that the offsite storage of certain personal medical information be physically maintained in the continental U.S., U.S. territories, or Canada.
- The Health Care Licensing Procedures Act, to require licensees to sign affidavits attesting that all patient information stored by them is being physically maintained in the continental U.S., U.S. territories, or Canada.
- The statute criminalizing threats and extortion, to provide that a person who commits a violation of the statute, and at the time is acting as a foreign agent with the intent of benefitting a foreign country of concern, commits a first degree felony.

The bill takes effect July 1, 2023.

II. Present Situation:

Foreign Ownership of U.S. Agricultural Land

Foreign ownership and investment in U.S. agricultural land has generated significant interest in recent years.¹ Several high-profile incidents have prompted lawmakers to focus their attention on evaluating and responding to the potential impacts of foreign ownership and investment on national security, trade, and food security.²

A significant example occurred last year. Fufeng Group Limited, a Chinese food manufacturer, acquired 300 acres of land near the Grand Forks Air Force Base in North Dakota in order to build a wet corn milling and biofermentation plant.³ The Air Force base, which is only about 12 miles away from the site, is believed to be the home of some of the country's most sophisticated, "top secret" military drone technology.⁴ The location of the land close to the base made it particularly convenient for monitoring air traffic flows in and out of the base, among other security-related concerns.⁵

In January, Andrew P. Hunter, Assistant Secretary of the Air Force for Acquisition, Technology and Logistics,⁶ sent U.S. Senator John Hoeven a letter providing the Air Force's official position

¹ Aleks Phillips, *What the U.S. Is Doing to Curtail Chinese Land Ownership*, NEWSWEEK, Feb. 13, 2023, <https://www.newsweek.com/chinese-land-ownership-investment-us-military-bases-1780886>.

² See Letter from Congressmen Glenn "GT" Thompson & James Comer to Gene L. Dodaro, Comptroller General of the U.S. Government Accountability Office (Oct. 1, 2022), available at https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf (requesting that the office conduct a review of foreign investment in U.S. farmland and its impact on national security, trade, and food security).

³ Congressional Research Service (CRS), *Foreign Ownership and Holdings of U.S. Agricultural Land* (version 4, updated Jan. 24, 2023), available at <https://crsreports.congress.gov/product/pdf/IF/IF11977>.

⁴ Ariel Zilber, *Chinese firm bought North Dakota farm near U.S. Air Force drone base: report*, NEW YORK POST, Jul. 1, 2022, <https://nypost.com/2022/07/01/chinese-firm-bought-farm-near-us-air-force-drone-base-report/>; see also Letter from Thompson & Comer, *supra* note 2 (describing the technology as "top secret"); see also Lauren Greenwood, U.S.-China Economic and Security Review Commission, *China's Interests in U.S. Agriculture: Augmenting Food Security through Investment Abroad* (May 26, 2022), 11, available at https://www.uscc.gov/sites/default/files/2022-05/Chinas_Interests_in_U.S._Agriculture.pdf (noting that the Grand Forks Air Force Base "houses some of the United States' top intelligence, surveillance, and reconnaissance capabilities").

⁵ Greenwood, *supra* note 4.

⁶ U.S. Air Force, Andrew P. Hunter (Sept. 2022), <https://www.af.mil/About-Us/Biographies/Display/Article/3154079/andrew-p-hunter/>.

on the project. It confirmed that “Grand Forks Air Force Base is the center of military activities related to both air and space operations” and that the department’s position is “unambiguous: the proposed project presents a significant threat to national security with both near- and long-term risks of significant impacts to our operations in the area.”⁷ About a week after the department issued its letter, the Grand Forks City Council abandoned the project.⁸

In addition to national security concerns, federal officials are also concerned about potential food security impacts. A recent letter from 130 lawmakers to the U.S. Government Accountability Office expressed concern that “foreign investment in U.S. farmland could result in foreign control of available U.S. farmland, especially prime agricultural lands, and possibly lead to foreign control over food production and food prices.”⁹ In a separate interview, one of the lawmakers noted that “food security is national security,” explaining that Russia was able to exercise undue influence over Europe because it supplied Europe with a significant amount of natural gas, and that China might similarly try to control food supplies in South America, Southeast Asia, and even North America, in order to exert greater coercive power around the globe.¹⁰

Other recent incidents, while not involving the acquisition of U.S. farmland, suggest that China is working aggressively to undermine U.S. interests in other ways, both at home and abroad:

- Confucius Institutes, which offer Chinese language and cultural programs, first began appearing on U.S. university campuses in 2005. Some Members of Congress and others have alleged that they may play a role in China’s efforts to influence public opinion abroad, recruit “influence agents” on U.S. campuses, and engage in cyber espionage and intellectual property theft.¹¹
- In November of last year, FBI Director Christopher Wray testified at a U.S. Senate Homeland Security and Governmental Affairs Committee hearing about the existence of certain unauthorized ‘police stations’ established by China in major U.S. cities, noting that the U.S. has made a number of indictments involving the Chinese government harassing, stalking, surveilling, and blackmailing people in the U.S. who disagreed with Chinese leader Xi Jinping.¹²
- Last month, the U.S. shot down a Chinese spy balloon after it had traversed over a large swath of North America. The Biden Administration alleged it was part of a larger Chinese surveillance-balloon program that had violated the sovereignty of nations all over the world.¹³

⁷ Letter from Andrew P. Hunter, Office of the Assistant Secretary, to U.S. Senator John Hoeven (Jan. 27, 2023), *available at* <https://www.hoeven.senate.gov/imo/media/doc/USAIRFORCE-FUFENG-LETTER-HOEVEN.pdf>.

⁸ Meghan Arbogast, *Year-long Fufeng debate comes to an end after Grand Forks council members vote to stop project*, GRAND FORKS HERALD, Feb. 6, 2023, <https://www.grandforksherald.com/news/local/year-long-fufeng-debate-comes-to-an-end-after-grand-forks-council-members-vote-to-stop-project>.

⁹ Letter from Thompson & Comer, *supra* note 2.

¹⁰ NPR, *China is buying up more U.S. farmland. Some lawmakers consider that a security threat* (Mar. 1, 2023), <https://www.npr.org/2023/03/01/1160297853/china-farmland-purchases-house-hearing-competition>.

¹¹ CRS, *Confucius Institutes in the United States: Selected Issues* (version 12, updated May 20, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF11180>.

¹² Michael Martina & Ted Hesson, *FBI director ‘very concerned’ by Chinese ‘police stations’ in U.S.*, REUTERS, Nov. 17, 2022, <https://www.reuters.com/world/us/fbi-director-very-concerned-by-chinese-police-stations-us-2022-11-17/>.

¹³ Isaac Chotiner, *What’s Behind the Chinese Spy Balloon*, THE NEW YORKER, Feb. 18, 2023, <https://www.newyorker.com/news/q-and-a/whats-behind-the-chinese-spy-balloon>.

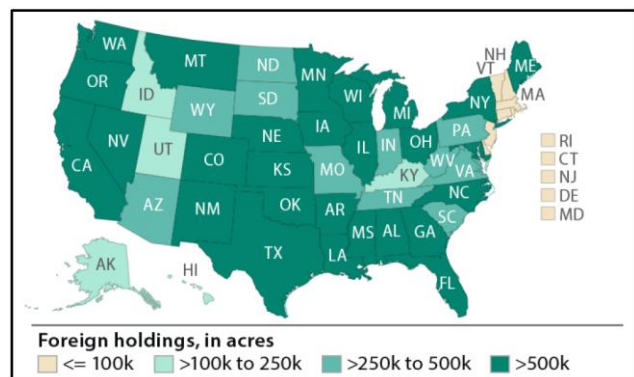
- This month, the U.S. (and Canada) issued orders banning the use of TikTok, a Chinese-owned video sharing app, on government-issued mobile devices amid growing privacy and cybersecurity concerns.¹⁴
- Also this month, U.S. defense and national security officials have raised the possibility that certain Chinese-made giant cargo cranes are being used for espionage.¹⁵

Ownership Statistics

Foreign persons and entities held an interest in 40.8 million acres of U.S. agricultural land in 2021, accounting for 3.1% of total privately owned land.¹⁶ These data cover agricultural land and nonagricultural land (e.g. associated homesteads, roads, etc.). In 2021, forestland accounted for 47% of all foreign-owned land, cropland accounted for 29%, and pasture and other agricultural land for 22%. Nonagricultural land (such as homesteads and roads) accounted for 2%. Foreign land holdings have increased by an average of 2.2 million acres per year since 2015.¹⁷

With respect to China specifically, not including the Fufeng Group Limited's purchase in 2022, the U.S. Department of Agriculture reports that China accounted for 383,935 acres, or 0.9% of total foreign-owned U.S. agricultural land as of year-end 2021.¹⁸ The department also reports that 85 Chinese investors own 275 parcels of agricultural land totaling 194,772 acres worth \$1,868,577.¹⁹

		U.S. Entities % of U.S.		
		Foreign	w/ Foreign	Private
Country	Total	Entities	Shares	Land
	(million acres)			(percent)
Canada	12.8	9.7	3.2	1.0%
Netherlands	4.9	4.4	0.5	0.4%
Italy	2.7	2.6	0.1	0.2%
United Kingdom	2.5	1.5	1.0	0.2%
Germany	2.3	1.4	0.9	0.2%
Subtotal	25.2	19.6	5.7	2.0%
Other Countries	12.4	7.1	5.3	1.0%
Not Listed	3.2	2.4	0.8	0.3%
Total	40.8	29.1	11.7	3.1%



Foreign Holdings of Agricultural Land, 2021²⁰

As of year-end 2021, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million

¹⁴ CBS News, *TikTok banned on U.S. government devices, and the U.S. is not alone. Here's where the app is restricted* (Mar. 1, 2023), <https://www.cbsnews.com/news/tiktok-banned-us-government-where-else-around-the-world/>.

¹⁵ Kent Masing, *U.S. Concerned China-Made Cranes In American Ports Used To Spy On Military: Report*, INTERNATIONAL BUSINESS TIMES, Mar. 6, 2023, <https://www.ibtimes.com/us-concerned-china-made-cranes-american-ports-used-spy-military-report-3673964>.

¹⁶ CRS, *supra* note 3, at 2.

¹⁷ *Id.*

¹⁸ *Id.*; Farm Service Agency, U.S. Department of Agriculture, *Foreign Holdings of U.S. Agricultural Land* (through Dec. 31, 2021), 4, available at <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/annual-reports/index>.

¹⁹ Farm Service Agency, *supra* note 18, at 229.

²⁰ *Id.* at Table 1 and Figure 2 (internal citations omitted).

acres), and Oklahoma (1.7 million acres). Other states with more than 1 million foreign-owned acres were Arkansas, California, Florida, Georgia, Kansas, Louisiana, Michigan, New Mexico, Oregon, and Washington.²¹

According to the U.S. Department of Agriculture, of the 21,849,568 acres of privately held agricultural land in Florida, 1,382,284 acres (6.3%) are held by foreigners, which is among the highest proportions in the U.S.²² It is unclear how much of that land is owned by China, although the department does report that it owns 96,975 acres in the “South Region,” which includes Florida.²³

Existing Federal and State Laws

Federal law currently imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned.²⁴ However, the Agricultural Foreign Investment Disclosure Act of 1978 established a nationwide system for collecting information pertaining to the foreign ownership of U.S. agricultural land,²⁵ including land used for agricultural, forestry, or timber production purposes.²⁶ For purposes of the act, foreign persons include any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity (including any foreign government) under the laws of a foreign government or having a principal place of business outside of the U.S.²⁷

The act’s regulations require foreign persons who buy, sell, or gain interest in U.S. agricultural land to disclose their holdings and transactions to the U.S. Department of Agriculture directly or to the Farm Service Agency county office where the land is located.²⁸ Failure to disclose this information may result in penalties and fines.²⁹ After the original disclosure, each subsequent change of ownership or use must be reported.³⁰ It should be noted that some have expressed concern that U.S. Department of Agriculture figures developed under the act may actually underestimate foreign ownership due to unreliable data collection and the definitions used by the department.³¹

The Committee on Foreign Investment in the U.S. is an interagency committee authorized to review certain transactions involving foreign investment in the U.S. and real estate transactions by foreign persons, in order to determine the effect of such transactions on national security.³² Notwithstanding recent expansions to the committee’s jurisdictional authority and review

²¹ *Id.*

²² See Farm Service Agency, *supra* note 18, at 4, 17.

²³ *Id.* at 238.

²⁴ CRS, *supra* note 3, at 1.

²⁵ Pub. L. No. 95-460, 92 Stat. 1263 (1978); 7 U.S.C. ss. 3501-3508.

²⁶ 7 U.S.C. s. 3508(1); 7 C.F.R. s. 781.2(b).

²⁷ 7 U.S.C. s. 3508(3); 7 C.F.R. s. 781.2(g).

²⁸ 7 U.S.C. s. 3501(a); 7 C.F.R. s. 781.3(a).

²⁹ 7 U.S.C. s. 3502; 7 C.F.R. ss. 781.4., 781.5.

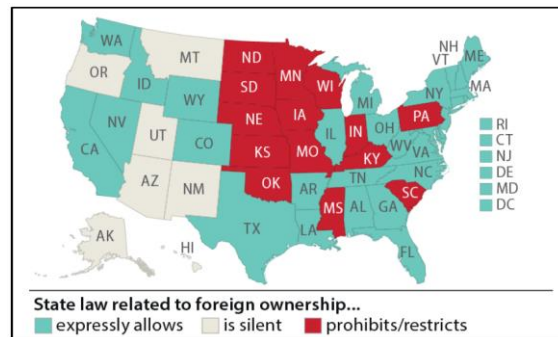
³⁰ 7 U.S.C. s. 3501(a); 7 C.F.R. s. 781.3(b).

³¹ Texas Farm Bureau, *Lawmakers ask for review of foreign ownership of U.S. farmland*, <https://texasfarmbureau.org/lawmakers-ask-for-review-of-foreign-ownership-of-u-s-farmland/> (last visited Mar. 7, 2023).

³² U.S. Department of the Treasury, *The Committee on Foreign Investment in the United States*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> (last visited Mar. 6, 2023).

considerations,³³ there appear to be significant gaps. For example, the committee recently determined that Fufeng Group Limited's purchase near Grand Forks Air Force Base was outside of its jurisdiction and that it would therefore take no further action.³⁴

Some U.S. states and localities have instituted restrictions on the foreign ownership of farmland.³⁵ Although no state has instituted an absolute prohibition on all foreign ownership, some states have limited or proposed to prohibit certain foreign persons and entities from acquiring or owning an interest in agricultural land within their states, and several states have separate disclosure requirements within their states.³⁶



*Overview of Selected State Laws Related to Foreign Ownership of U.S. Agricultural Land*³⁷

There is no single uniform approach under state laws to addressing foreign ownership.³⁸ Some general categories include:

- Restrictions on the amount of land that can be owned or the duration of ownership.
- Distinctions involving private versus public land or how agricultural land is defined.
- Distinctions involving resident and nonresident aliens.
- Inheritance considerations involving land ownership.
- Restrictions on ownership by foreign corporations (e.g. corporate farming laws or requirements corporations are subject to in order to obtain license or register).
- Differences related to enforcement and penalties.³⁹

Currently, in Florida, foreign persons and entities have the same rights in real property as do citizens of the U.S. Foreign corporations, upon qualifying to do business in the state, have the same rights in real property as do domestic corporations. Foreign ownership of a domestic corporation has no effect on that corporation's rights in real property. No disclosure is required by any person or corporation when acquiring, holding or transferring rights in real property.⁴⁰

³³ See *id.* (discussing Executive Order 14083, the Foreign Investment Risk Review Modernization Act of 2018, and associated regulations).

³⁴ T.J. Nelson, KVVR Local News, *Fufeng USA Looking to Move Ahead with Grand Forks Project After Federal Agency Review Suddenly Ends* (Dec. 13, 2022), <https://www.kvvr.com/2022/12/13/fufeng-usa-looking-to-move-ahead-with-grand-forks-project-after-federal-agency-review-suddenly-ends/>.

³⁵ CRS *supra* note 3, at 1.

³⁶ *Id.*

³⁷ *Id.* at Figure 1 (internal citation omitted).

³⁸ *Id.* at 1.

³⁹ *Id.*

⁴⁰ See 2 INTERNATIONAL BUSINESS TRANSACTIONS s. 29:26 (3d ed., updated Nov. 2022).

Florida Electronic Health Records Act

The Florida Electronic Health Records Act⁴¹ authorizes health care providers to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of that patient for an emergency medical condition, when consent cannot be obtained from the patient or the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.⁴² It provides immunity from civil liability whenever a health care provider accesses or releases the identifiable health record in good faith under the statute. It also directs the Agency for Health Care Administration to develop a form to document patient authorization for the use or release of an identifiable health record.⁴³ The act includes definitions for the following terms: "electronic health record," "qualified electronic health record," "certified electronic health record technology," "health record," "identifiable health record," "patient," and "patient representative."⁴⁴

Health Care Licensing Procedures Act

The Health Care Licensing Procedures Act⁴⁵ provides a streamlined and consistent set of basic licensing requirements for health care providers.⁴⁶ The act is intended to minimize confusion, standardize terminology, and include issues that are not otherwise addressed in state law pertaining to specific providers.⁴⁷ Among other things, it provides certain minimum licensure requirements, with which applicants and licensees must comply in order to obtain and maintain a license.⁴⁸

Statute Criminalizing Threats and Extortion

State law criminalizes threats and extortion. One commits the crime if he or she, either verbally or by a written or printed communication:

maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will[.]⁴⁹

⁴¹ Section 408.051, F.S.

⁴² Section 408.051(3), F.S.

⁴³ Section 408.051(4), F.S.

⁴⁴ Section 408.051(2), F.S.

⁴⁵ Chapter 408, Part II, F.S.; *see also* s. 408.801(1), F.S. (providing a short title).

⁴⁶ Section 408.801(2), F.S.

⁴⁷ *Id.*

⁴⁸ *See generally* s. 408.810, F.S.

⁴⁹ Section 836.05, F.S.

The crime is a second degree felony, punishable by a term of imprisonment not exceeding 15 years⁵⁰ and a \$10,000 fine,⁵¹ or possibly more under the habitual offender statute.⁵²

III. Effect of Proposed Changes:

CS/CS/SB 264 generally restricts both governmental entity contracting with certain foreign countries and entities of concern, as well as conveyances of agricultural lands and other interests in real property to foreign principals, the People's Republic of China, and other entities and persons that are affiliated with them. It also amends certain electronic health record statutes to ensure that such records are physically stored in the continental U.S., U.S. territories, or Canada.

Prohibition on Governmental Entity Contracting with Entities of Foreign Countries of Concern

Section 1 of the bill creates s. 287.138, F.S., within chapter 287, part I, F.S., which governs commodities, insurance, and contractual services, to prohibit contracting between governmental entities and entities of foreign countries of concern.

The bill defines the following terms for purposes of the new statute:

- “Controlling interest” means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest in that company.
- “Department” means the Department of Management Services.
- “Foreign country of concern” means:
 - The People's Republic of China.
 - The Russian Federation.
 - The Islamic Republic of Iran.
 - The Democratic People's Republic of Korea.
 - The Republic of Cuba.
 - The Venezuelan regime of Nicolás Maduro.
 - The Syrian Arab Republic.
 - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- “Governmental entity” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that governmental entities may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if:

⁵⁰ Section 775.082(3)(d), F.S.

⁵¹ Section 775.083(1)(b), F.S.

⁵² See generally s. 775.084, F.S. (providing heightened punishments for habitual offenders).

- The entity is owned by the government of a foreign country of concern;
- The government of a foreign country of concern has a controlling interest in the entity; or
- The entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Additionally, the bill provides that:

- Beginning January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in the new statute.
- Beginning July 1, 2025:
 - A governmental entity may not extend or renew a contract with one of the entities listed above if the contract would give such entity access to an individual's personal identifying information.
 - When an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in the new statute.

The bill authorizes the Attorney General to bring a civil action in any court of competent jurisdiction against an entity that violates the statute. Violations of the statute may result in:

- A civil penalty equal to twice the amount of the contract for which the entity submitted a bid or proposal for, replied to, or entered into.
- Ineligibility to enter into, renew, or extend any contract, including any grant agreements, with any governmental entity for up to 5 years.
- Ineligibility to receive or renew any license, certification, or credential issued by a governmental entity for up to 5 years.
- Placement on the suspended vendor list.⁵³

Any penalties collected from entities that violate the statute must be deposited into the General Revenue Fund.

The bill also authorizes the department to adopt rules to implement the statute, including rules establishing the form for the affidavit required under the statute.

Prohibition on Contracting for an Economic Incentive with a Foreign Entity

Section 2 of the bill creates s. 288.007, F.S., to prohibit governmental entities from entering into contracts for an economic incentive with a foreign entity.

The bill defines the following terms for purposes of the new statute:

- “Controlled by” means having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract,

⁵³ See s. 287.1351, F.S. (providing for the suspension of certain vendors).

or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company, or that is entitled to 25 percent or more of its profits, is presumed to control the foreign entity.

- “Economic incentive” means all programs administered by, or for which an applicant for the program must seek certification, approval, or other action by, the department under chapter 288, F.S. (governing commercial development and capital improvements), chapter 212, F.S. (governing tax on sales, use, and other transactions), or chapter 220, F.S. (the income tax code), and all local economic development programs, grants, or financial benefits administered by a political subdivision or an agent thereof.
- “Foreign country of concern” has the same meaning as defined later in the bill.⁵⁴
- “Foreign entity” means an entity that is:
 - Owned or controlled by the government of a foreign country of concern; or
 - A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity.
- “Government entity” means a state agency, a political subdivision, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that a government entity may not knowingly enter into an agreement or contract for an economic incentive with a foreign entity. Before providing any economic incentive, a government entity must require the recipient or applicant to provide the government entity with an affidavit signed under penalty of perjury attesting that the recipient or applicant is not a foreign entity.

The bill also requires the department to adopt rules to administer the new statute, including rules establishing the form for the required affidavit.

Prohibition of Conveyances to Foreign Entities

Section 3 of the bill directs the Division of Law Revision to create part III of chapter 692, F.S., consisting of ss. 692.201, 692.202, 692.203, and 692.204, F.S., to be entitled “Conveyances to Foreign Entities.”

Definitions

Section 4 of the bill creates s. 692.201, F.S., which defines the following terms for purposes of part III of chapter 692, F.S.:

- “Agricultural land” means land classified as agricultural under state law.⁵⁵
- “Critical infrastructure facility” means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:
 - A chemical manufacturing facility.
 - A refinery.

⁵⁴ See s. 4 of the bill (creating s. 692.201(3), F.S., which defines “foreign country of concern”).

⁵⁵ See s. 193.461, F.S. (providing the agricultural land classification process).

- An electrical power plant, including a substation, switching station, electrical control center, or electric transmission or distribution facility.⁵⁶
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport.⁵⁷
- A spaceport territory.⁵⁸
- “Foreign country of concern” means:
 - The People’s Republic of China.
 - The Russian Federation.
 - The Islamic Republic of Iran.
 - The Democratic People’s Republic of Korea.
 - The Republic of Cuba.
 - The Venezuelan regime of Nicolás Maduro.
 - The Syrian Arab Republic.
 - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- “Foreign principal” means:
 - The government or any official of the government of a foreign country of concern;
 - A political party or member of a political party or any subdivision of a political party in a foreign country of concern;
 - A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country of concern, or a subsidiary of such entity; or
 - Any person who is domiciled in a foreign country of concern and is not a citizen or lawful permanent resident of the U.S.
- “Military installation” means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the secretary of a military department or the

⁵⁶ See s. 403.031(20), F.S. (defining “electrical power plant” as meaning any electrical generating facility that uses any process or fuel and that is owned or operated by an electric utility, as defined in s. 403.503(14), and includes any associated facility that directly supports the operation of the electrical power plant).

⁵⁷ See s. 311.09(1), F.S. (listing the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina).

⁵⁸ See s. 331.303(18), F.S. (defining “spaceport territory” as the geographical area designated in s. 331.304, F.S., and as amended or changed in accordance with s. 331.329, F.S.; it includes, but is not limited to, the real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; and the John F. Kennedy Space Center).

Secretary of Defense, without regard to the duration of operational control.⁵⁹ For purposes of the bill, military installations include armories.⁶⁰

- “Real property” means land, buildings, fixtures, and all other improvements to land.

Purchase of Agricultural Land by Foreign Principals

Section 5 of the bill creates s. 692.202, F.S., to prohibit the purchase of agricultural land by foreign principals.

The bill provides that a foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent agricultural land or any interest in such land in the state. This prohibition does not apply to a foreign principal that acquires agricultural land for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

A foreign principal that directly or indirectly owns or acquires agricultural land or any interest in such land in the state before July 1, 2023:

- May continue to own or hold such land or interest, but may not purchase or otherwise acquire by grant, devise, or descent any additional agricultural land or interest in such land in the state.
- Must register with the Department of Agriculture and Consumer Services by January 1, 2024. The department must establish a form for such registration, which, at minimum, must include all of the following:
 - The name of the owner of the agricultural land or the owner of the interest in such land.
 - The address of the agricultural land, the property appraiser’s parcel identification number, and the property’s legal description.
 - The number of acres of the agricultural land.

A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered agricultural land for the unpaid balance of any penalties assessed under the new statute.

The bill clarifies that notwithstanding the general prohibition in the bill, a foreign principal can still acquire agricultural land on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, but must sell, transfer, or otherwise divest itself of the agricultural land within 2 years after acquiring the agricultural land.

At the time of purchase, a buyer of agricultural land, or an interest in such land, must provide an affidavit signed under penalty of perjury attesting that the buyer is not a foreign principal and is in compliance with the new statute. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the agricultural land or subject the closing agent to civil or criminal liability, except for liability under the law criminalizing perjury, unless the closing agent has actual knowledge that the transaction will result in a violation of the new statute. The

⁵⁹ 10 U.S.C. s. 2801(c)(4).

⁶⁰ See s. 250.01(5), F.S. (defining an “armory” as a building or group of buildings used primarily for housing and training troops or for storing military property, supplies, or records).

Florida Real Estate Commission must adopt rules to implement this provision, including rules establishing the form for the affidavit required under this provision.

The bill provides that an agricultural land, or any interest in such land, that is owned or acquired in violation of the new statute may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Agriculture and Consumer Services may initiate a civil action in the circuit court of the county in which the property lies.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law.⁶¹ The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the agricultural land, or any portion thereof, is owned or held in violation of the new statute.
- If the court finds that the agricultural land, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the agricultural land in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the agricultural land subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the agricultural land upon a showing that the defendant's control of the agricultural land constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A foreign principal that purchases or acquires agricultural land or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days⁶² and a \$500 fine.⁶³
- A person who knowingly sells agricultural land or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days⁶⁴ and a \$500 fine.⁶⁵

The bill also requires the Department of Agriculture and Consumer Services to adopt rules to implement the new statute.

Purchase of Real Property around Military Installation and Critical Infrastructure Facilities by Foreign Principals

Section 6 of the bill creates s. 692.203, F.S., to prohibit the purchase of real property around military installations and critical infrastructure facilities by foreign principals.

⁶¹ See s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).

⁶² Section 775.082(4)(b), F.S.

⁶³ Section 775.083(1)(e), F.S.

⁶⁴ Section 775.082(4)(b), F.S.

⁶⁵ Section 775.083(1)(e), F.S.

The bill provides that a foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state. This prohibition does not apply to a foreign principal that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

A foreign principal that directly or indirectly owns or acquires any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property within 20 miles of any military installation or critical infrastructure facility in the state.

The bill provides that a foreign principal that owns or acquires real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

- The name of the owner of the real property.
- The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this provision.

The bill clarifies that notwithstanding the general prohibition in the bill, a foreign principal can still acquire real property, or any interest therein, which is within 20 miles of any military installation or critical infrastructure facility in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, but must sell, transfer, or otherwise divest itself of such real property within 2 years after acquiring the real property.

At the time of purchase, a buyer of real property that is located within 20 miles of any military installation or critical infrastructure facility in the state must provide an affidavit signed under penalty of perjury attesting that the buyer is not a foreign principal and is in compliance with the new statute. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property or subject the closing agent to civil or criminal liability, except for liability under the law criminalizing perjury, unless the closing agent has actual knowledge that the transaction will result in a violation of the new statute. The Florida Real Estate Commission must adopt rules to implement this provision, including rules establishing the form for the affidavit required under this provision.

The bill provides that if any real property is owned or acquired in violation of the new statute, it may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.

- Upon filing such action, the clerk must record a lis pendens in accordance with state law.⁶⁶ The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of the new statute.
- If the court finds that the real property, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A foreign principal that purchases or acquires real property or any interest therein in violation of the new statute commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days⁶⁷ and a \$500 fine.⁶⁸
- A person who knowingly sells real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days⁶⁹ and a \$500 fine.⁷⁰

The bill also requires the Department of Economic Opportunity to adopt rules to implement the new statute.

Purchase or Acquisition of Real Property by the People's Republic of China

Section 7 of the bill creates s. 692.204, F.S., to prohibit the purchase or acquisition of real property by the People's Republic of China.

The bill prohibits the following persons or entities from directly or indirectly owning or acquiring by purchase, grant, devise, or descent any interest in real property in the state:

- The People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party.
- Any other political party or member of a political party or a subdivision of a political party in the People's Republic of China.

⁶⁶ See s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).

⁶⁷ Section 775.082(4)(b), F.S.

⁶⁸ Section 775.083(1)(e), F.S.

⁶⁹ Section 775.082(4)(b), F.S.

⁷⁰ Section 775.083(1)(e), F.S.

- A partnership, an association, a corporation, an organization, or any other combination of persons organized under the laws of or having its principal place of business in the People's Republic of China, or a subsidiary of such entity.
- Any person who is domiciled in the People's Republic of China and who is not a citizen or lawful permanent resident of the U.S.

This prohibition does not apply to a person or entity of the People's Republic of China that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

Any person or entity described above that directly or indirectly owns or acquires any interest in real property in the state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property in the state.

The bill provides that any person or entity described above that owns or acquires real property in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

- The name of the owner of the real property.
- The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

A person or entity that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

The bill clarifies that notwithstanding the general prohibition in the bill, a Chinese person or entity can still acquire real property in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, but must sell, transfer, or otherwise divest itself of such real property within 2 years after acquiring the real property unless the person or entity acquired the real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

At the time of purchase, a buyer of real property in the state must provide an affidavit signed under penalty of perjury attesting that the buyer is not one of the Chinese entities or persons prohibited from owning or acquiring any interest in real property in the state and is in compliance with the new statute. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property or subject the closing agent to civil or criminal liability, except for liability under the law criminalizing perjury, unless the closing agent has actual knowledge that the transaction will result in a violation of the new statute. The Florida Real Estate Commission must adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

The bill provides that if any real property is owned or acquired in violation of the new statute, it may be forfeited to the state. In connection with such forfeitures, the bill provides:

- The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law.⁷¹ The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of the new statute.
- If the court finds that the real property, or any portion thereof, is owned or held in violation of the new statute, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the new statute, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

The bill provides the following criminal penalties:

- A violation of this section constitutes a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years⁷² and a \$5,000 fine,⁷³ or possibly more under the habitual offender statute.⁷⁴
- A person who sells real property or any interest therein in violation of the new statute commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year⁷⁵ and a \$1,000 fine.⁷⁶

The bill also requires the Department of Economic Opportunity to adopt rules to implement the new statute.

Amendments to the Florida Electronic Health Records Act

Section 8 of the bill amends s. 408.051, F.S., the Florida Electronic Health Records Exchange Act (Act), by adding two definitions and by requiring that the offsite storage of certain personal medical information be physically maintained in the continental U.S., U.S. territories, or Canada.

First, for purposes of the Act, the bill incorporates the definition for “cloud computing” found in chapter 282, part I, F.S., which governs information technology management. That definition⁷⁷

⁷¹ See s. 48.23, F.S. (addressing the recordation of notices of lis pendens in particular circumstances).

⁷² Section 775.082(3)(e), F.S.

⁷³ Section 775.083(1)(c), F.S.

⁷⁴ See generally s. 775.084, F.S. (providing heightened punishments for habitual offenders).

⁷⁵ Section 775.082(4)(a), F.S.

⁷⁶ Section 775.083(1)(d), F.S.

⁷⁷ Section 282.0041(5), F.S.

provides that cloud computing has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology, which reads as follows:

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.⁷⁸

Second, for purposes of the Act, the bill defines the term “health care provider” as including all of the following:

- Any provider as defined in the Health Care Licensing Procedures Act;⁷⁹
- Any health care practitioner as defined in chapter 456, F.S., which governs health professions and occupations;⁸⁰
- Any health care professional certified under the Radiological Personnel Certification Act;⁸¹
- Any home health aide as defined in the Home Health Services Act;⁸²
- Any service provider as defined in the Florida Mental Health Act,⁸³ and the service provider’s clinical and nonclinical staff who provide inpatient or outpatient services;
- Any licensed continuing care facility;⁸⁴ and
- Any pharmacy permitted under the Florida Pharmacy Act.⁸⁵

Third, the bill amends the Act to provide that in addition to complying with certain federal standards regulating the privacy of individually identifiable health information,⁸⁶ a health care provider that utilizes certified electronic health record technology must ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted computing facility or an entity providing cloud computing services, is

⁷⁸ U.S. Department of Commerce, National Institute of Standards and Technology, *Special Publication 800-145 (The NIST Definition of Cloud Computing)* (Sept. 2011), available at <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf> (also identifying the referenced five essential characteristics, three service models, and four deployment models) (footnotes omitted).

⁷⁹ See s. 408.803(12), F.S. (defining “provider” as any activity, service, agency, or facility regulated by Agency for Health Care Administration and listed in s. 408.802, F.S.).

⁸⁰ See s. 456.001(4), F.S. (defining “health care practitioner” as any person licensed under one of the listed statutes).

⁸¹ Chapter 468, part IV, F.S.

⁸² See s. 400.462, F.S. (defining “home health aide” as a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency under part III (regulating home health services), or performs tasks delegated to him or her under ch. 464, F.S. (regulating nursing)).

⁸³ See s. 394.455(45), F.S. (defining “service provider” as a receiving facility, a facility licensed under ch. 397, F.S. (governing substance abuse services), a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse, a psychiatric nurse, or a qualified professional as defined in s. 39.01, F.S. (referencing licensed physicians, physician assistants, psychiatrists, psychologists, and psychiatric nurses)).

⁸⁴ See ch. 651, F.S. (governing continuing care contracts).

⁸⁵ Chapter 465, F.S.

⁸⁶ 45 C.F.R. pts. 160 and 164 (subparts A and C).

physically maintained in the continental U.S., U.S. territories, or Canada. The bill applies this provision to all qualified electronic health records that are stored using any technology that can allow information to be electronically retrieved, accessed, or transmitted.

Amendments to the Health Care Licensing Procedures Act

Section 9 of the bill amends s. 408.810, F.S., which provides certain minimum licensure requirements for health care providers.⁸⁷

The bill provides that a licensee must sign an affidavit at the time of his or her initial application for a license, and on any renewal applications thereafter, that attests under penalty of perjury that he or she is in compliance with the bill, specifically the requirement in the bill that health care providers using certified electronic health record technology ensure that all patient information stored in an offsite physical or virtual environment is physically maintained in the continental U.S., U.S. territories, or Canada. The licensee must remain in compliance with this requirement or be subject to disciplinary action by the agency.

The licensee must also ensure that a person or entity who possesses a controlling interest in the licensee does not also hold, either directly or indirectly, regardless of ownership structure, an interest in an entity that has a business relationship with a foreign country of concern or that is subject to the statute prohibiting contracting with scrutinized companies.⁸⁸

For purposes of this provision, the bill defines the following terms:

- “Business relationship” means engaging in commerce in any form, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.
- “Foreign country of concern” has the same meaning as provided earlier in the bill.⁸⁹
- Having an “interest” in an entity means having any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity’s net worth, or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.⁹⁰

Amendments to the Statute Criminalizing Threats and Extortion

Section 10 of the bill amends s. 836.05, F.S., which criminalizes threats and extortion, to provide that a person who commits a violation of the statute and at the time of the violation is acting as a foreign agent as defined in state law,⁹¹ with the intent of benefitting a foreign country of concern as defined earlier in the bill,⁹² commits a felony of the first degree, punishable by a term of

⁸⁷ See *supra* note 79 (defining providers); see also s. 408.802, F.S. (listing regulated providers).

⁸⁸ Section 287.135, F.S.

⁸⁹ See s. 4 of the bill (creating s. 692.201(3), F.S., which defines “foreign country of concern”).

⁹⁰ See s. 286.101(1), F.S. (defining “interest”).

⁹¹ See s. 812.081(1)(b), F.S. (defining “foreign agent” as any officer, employee, proxy, servant, delegate, or representative of a foreign government).

⁹² See s. 4 of the bill (creating s. 692.201(3), F.S., which defines “foreign country of concern”).

imprisonment of not exceeding 30 years⁹³ and a \$10,000 fine,⁹⁴ or possibly more under the habitual offender statute.⁹⁵

Effective Date

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

A state's power to apply its law exclusively to its alien inhabitants as a class is confined to narrow limits. However, each state, in the absence of any treaty provision to the contrary, may deny to aliens the right to own land within its border.⁹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, governmental entities are prohibited from knowingly entering into contracts for an economic incentive with a foreign entity. Accordingly, foreign entities

⁹³ Section 775.082(3)(b)1., F.S.

⁹⁴ Section 775.083(1)(b), F.S.

⁹⁵ See generally s. 775.084, F.S. (providing heightened punishments for habitual offenders).

⁹⁶ See *Graham v. Ramani*, 383 So. 2d 634, 635 (Fla. 1980) (recognizing that the U.S. Supreme Court has upheld statutes denying aliens the right to acquire land and citing in support *Terrace v. Thompson*, 263 U.S. 197 (1923); *Terrace* upheld a state of Washington statute prohibiting the ownership of land within the state by nondeclarant aliens, finding that the “privilege of owning or controlling agricultural land within the state” and the “allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself” (*id.* at 221)).

(as defined in the bill) will no longer be able to avail themselves of such economic incentives in connection with their projects.

The bill provides that foreign principals who acquired agricultural land or land within 20 miles of a military installation or critical infrastructure facility before July 1, 2023 may continue to own those lands, but may not expand upon their ownership after that date. Similarly, Chinese businesses, and persons who are domiciled in China and not citizens or lawful permanent residents of the U.S., who acquired real property before July 1, 2023 may continue to own those lands, but may not expand upon their ownership after that date. To the extent any of these foreign principals, businesses, or persons' business plans assumed future expansions of land ownership, those plans will be negatively impacted by the bill.

The bill requires health care providers that use certified electronic health care technology to ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted facility or an entity providing cloud computing services, is maintained in the continental U.S., U.S. territories, or Canada. To the extent such patient information is not already maintained in one of those locations, health care providers will incur costs moving that information into one of them.

C. Government Sector Impact:

Under the bill, governmental entities may not contract with entities of foreign countries of concern. To the extent contracting with entities of foreign countries of concern might have resulted in more favorable contractual terms than contracting with other entities, governmental entities will be negatively impacted by the bill.

The bill authorizes the Attorney General, Department of Agriculture and Consumer Services, and the Department of Economic Opportunity to enforce certain affidavit preparation and property forfeiture provisions in the bill. Additionally, the bill requires the Department of Management Services, the Florida Real Estate Commission, and the Department of Economic Opportunity to adopt rules to implement various provisions of the bill. Although these state agencies will incur costs associated with these efforts, it is anticipated that they will be minimal and absorbed by their existing budget allocations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 287.138, 288.007, 692.201, 692.202, 692.203, and 692.204.

This bill substantially amends the following sections of the Florida Statutes: 408.051, 408.810, and 836.05.

IX. Additional Information:

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

CS/CS by Rules on March 22, 2023:

- Revises the definition of “foreign principal,” and the category of Chinese persons and entities that are prohibited from owning or acquiring protected lands in the state, to exclude any persons who are lawful permanent residents of the U.S.
- Revises the requirement that health care providers store offsite patient information only within the continental U.S., by expanding it to also allow for such storage within U.S. territories and Canada.
- Clarifies that it is the buyer who must attest in the affidavit to not being a foreign principal and to otherwise comply with the new statute.
- Provides that the failure to obtain or maintain the affidavit does not subject the closing agent to civil or criminal liability, except for liability under the law criminalizing perjury, unless the closing agent has actual knowledge that the transaction will result in a violation of the new statute.

CS by Judiciary on March 14, 2023:

- Revises the definitions of “foreign entity” and “foreign principal,” and the category of Chinese persons and entities that are prohibited from owning or acquiring protected lands in the state, to include the subsidiaries of those entities.
- Clarifies that notwithstanding the general prohibitions in the bill, foreign principals and Chinese persons and entities may still acquire protected lands on or after the effective date, but must divest themselves of those lands within 2 years unless a diplomatic exemption applies.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
	.	
	.	
	.	

The Committee on Rules (Collins) recommended the following:

Senate Amendment (with title amendment)

Delete lines 293 - 663
and insert:
concern and is not a citizen or lawful permanent resident of the
United States.

(5) "Military installation" has the same meaning as in 10
U.S.C. s. 2801(c)(4) and includes an armory as defined in s.
250.01.

(6) "Real property" means land, buildings, fixtures, and
all other improvements to land.



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Section 5. Section 692.202, Florida Statutes, is created to read:

692.202 Purchase of agricultural land by foreign principals prohibited.—

(1) A foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent agricultural land or any interest in such land in the state. This prohibition does not apply to a foreign principal that acquires agricultural land for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

(2) A foreign principal that directly or indirectly owns or acquires agricultural land or any interest in such land in the state before July 1, 2023, may continue to own or hold such land or interest, but may not purchase or otherwise acquire by grant, devise, or descent any additional agricultural land or interest in such land in the state.

(3) (a) A foreign principal that directly or indirectly owns or acquires agricultural land or any interest in such land in the state before July 1, 2023, must register with the Department of Agriculture and Consumer Services by January 1, 2024. The department must establish a form for such registration, which, at minimum, must include all of the following:

1. The name of the owner of the agricultural land or the owner of the interest in such land.

2. The address of the agricultural land, the property appraiser's parcel identification number, and the property's legal description.

3. The number of acres of the agricultural land.

(b) A foreign principal that fails to timely file a



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registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered agricultural land for the unpaid balance of any penalties assessed under this paragraph.

(4) Notwithstanding subsection (1), a foreign principal may acquire agricultural land on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the foreign principal sells, transfers, or otherwise divests itself of the agricultural land within 2 years after acquiring the agricultural land.

(5) (a) At the time of purchase, a buyer of agricultural land or an interest in such land must provide an affidavit signed under penalty of perjury attesting that the buyer is:

1. Not a foreign principal; and
2. In compliance with the requirements of this section.

(b) The failure to obtain or maintain the affidavit does not:

1. Affect the title or insurability of the title for the agricultural land; or
2. Subject the closing agent to civil or criminal liability except for liability under chapter 837, unless the closing agent has actual knowledge that the transaction will result in a violation of this section.

(c) The Florida Real Estate Commission shall adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

(6) (a) The agricultural land or an interest in such land



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that is owned or acquired in violation of this section may be forfeited to the state.

(b) The Department of Agriculture and Consumer Services may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the agricultural land or any interest therein.

(c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the agricultural land, or any portion thereof, is owned or held in violation of this section.

(d) If the court finds that the agricultural land, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the agricultural land in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the agricultural land subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the



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agricultural land upon a showing that the defendant's control of the agricultural land constitutes a clear and present danger to the state.

(7) A foreign principal that purchases or acquires agricultural land or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A person who knowingly sells agricultural land or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Department of Agriculture and Consumer Services shall adopt rules to implement this section.

Section 6. Section 692.203, Florida Statutes, is created to read:

692.203 Purchase of real property around military installations and critical infrastructure facilities by foreign principals prohibited.-

(1) A foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state. This prohibition does not apply to a foreign principal that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

(2) A foreign principal that directly or indirectly owns or acquires any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, may continue to own or hold such real



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property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property within 20 miles of any military installation or critical infrastructure facility in the state.

(3) (a) A foreign principal that owns or acquires real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

1. The name of the owner of the real property.
2. The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

(b) A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

(4) Notwithstanding subsection (1), a foreign principal may acquire real property or any interest therein which is within 20 miles of any military installation or critical infrastructure facility in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the foreign principal sells, transfers, or otherwise divests itself of such real property within 2 years after acquiring the real property.



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(5) (a) At the time of purchase, a buyer of the real property that is within 20 miles of any military installation or critical infrastructure facility in this state must provide an affidavit signed under penalty of perjury attesting that the buyer is:

1. Not a foreign principal; and

2. In compliance with the requirements of this section.

(b) The failure to obtain or maintain the affidavit does not:

1. Affect the title or insurability of the title for the real property; or

2. Subject the closing agent to civil or criminal liability except for liability under chapter 837, unless the closing agent has actual knowledge that the transaction will result in a violation of this section.

(c) The Florida Real Estate Commission shall adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

(6) (a) If any real property is owned or acquired in violation of this section, the real property may be forfeited to the state.

(b) The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.

(c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that



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there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of this section.

(d) If the court finds that the real property, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

(7) A foreign principal that purchases or acquires real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A person who knowingly sells real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.



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(9) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 7. Section 692.204, Florida Statutes, is created to read:

692.204 Purchase or acquisition of real property by the People's Republic of China prohibited.—

(1) (a) The following persons or entities may not directly or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property in the state:

1. The People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party.

2. Any other political party or member of a political party or a subdivision of a political party in the People's Republic of China.

3. A partnership, an association, a corporation, an organization, or any other combination of persons organized under the laws of or having its principal place of business in the People's Republic of China, or a subsidiary of such entity.

4. Any person who is domiciled in the People's Republic of China and who is not a citizen or lawful permanent resident of the United States.

(b) Paragraph (a) does not apply to a person or entity of the People's Republic of China that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

(2) A person or entity described in paragraph (1) (a) that directly or indirectly owns or acquires any interest in real property in the state before July 1, 2023, may continue to own



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or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property in the state.

(3)(a) A person or entity described in paragraph (1)(a) that owns or acquires real property in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

1. The name of the owner of the real property.
2. The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

(b) A person or entity that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

(4) Notwithstanding subsection (1), a person or an entity described in paragraph (1)(a) may acquire real property in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the person or entity sells, transfers, or otherwise divests itself of such real property within 2 years after acquiring the real property unless the person or entity is exempt under paragraph (1)(b).

(5)(a) At the time of purchase, a buyer of real property in the state must provide an affidavit signed under penalty of



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perjury attesting that the buyer is:

1. Not a person or entity described in paragraph (1)(a);
and

2. In compliance with the requirements of this section.

(b) The failure to obtain or maintain the affidavit does
not:

1. Affect the title or insurability of the title for the
real property; or

2. Subject the closing agent to civil or criminal liability
except for liability under chapter 837, unless the closing agent
has actual knowledge that the transaction will result in a
violation of this section.

(c) The Florida Real Estate Commission shall adopt rules to
implement this subsection, including rules establishing the form
for the affidavit required under this subsection.

(6)(a) If any real property is owned or acquired in
violation of this section, the real property may be forfeited to
the state.

(b) The Department of Economic Opportunity may initiate a
civil action in the circuit court of the county in which the
property lies for the forfeiture of the real property or any
interest therein.

(c) Upon filing such action, the clerk must record a lis
pendens in accordance with s. 48.23. The court must advance the
cause on the calendar. The defendant may at any time petition to
modify or discharge the lis pendens based upon a finding that
there is no probable cause to believe that the real property, or
any portion thereof, is owned or held in violation of this
section.



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(d) If the court finds that the real property, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

(7) A violation of this section constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) A person who sells real property or any interest therein in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 8. Present subsections (3), (4), and (5) of section 408.051, Florida Statutes, are redesignated as subsections (4),



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(5), and (6), respectively, a new subsection (3) is added to that section, and subsection (2) of that section is reordered and amended, to read:

408.051 Florida Electronic Health Records Exchange Act.—

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

(c)~~(a)~~ “Electronic health record” means a record of a person’s medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format.

(i)~~(b)~~ “Qualified electronic health record” means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such information from, other sources.

(a)~~(e)~~ “Certified electronic health record technology” means a qualified electronic health record that is certified pursuant to s. 3001(c)(5) of the Public Health Service Act as meeting standards adopted under s. 3004 of such act which are applicable to the type of record involved, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals.

(b) “Cloud computing” has the same meaning as in s. 282.0041.

(d) “Health care provider” means any of the following:

1. A provider as defined in s. 408.803.



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2. A health care practitioner as defined in s. 456.001.

3. A health care professional certified under part IV of chapter 468.

4. A home health aide as defined in s. 400.462.

5. A service provider as defined in s. 394.455 and the service provider's clinical and nonclinical staff who provide inpatient or outpatient services.

6. A continuing care facility licensed under chapter 651.

7. A pharmacy permitted under chapter 465.

(e)~~(d)~~ "Health record" means any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.

(f)~~(e)~~ "Identifiable health record" means any health record that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.

(g)~~(f)~~ "Patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(h)~~(g)~~ "Patient representative" means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or



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surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient's surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child.

(3) SECURITY AND STORAGE OF PERSONAL MEDICAL INFORMATION.—

In addition to the requirements in 45 C.F.R. part 160 and subparts A and C of part 164, a health care provider that utilizes certified electronic health record technology must ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted computing facility or an entity providing cloud computing services, is physically maintained in the continental United States or its territories or Canada. This subsection applies to all qualified

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 46 - 114
and insert:
real property, respectively, or subject the closing agent to certain liability; authorizing the Florida Real Estate Commission to adopt rules; authorizing that certain agricultural land or real property be forfeited to the state; authorizing the Department of Agriculture and Consumer Services and the Department of Economic Opportunity to initiate civil actions for forfeiture of the interest in agricultural land or real property, respectively; requiring that such actions be filed in a certain circuit court; requiring



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clerks to record a lis pendens; requiring courts to advance the cause on the calendar; authorizing defendants to petition to modify or discharge the lis pendens; requiring the court to enter a specified final judgment under certain circumstances; authorizing the Department of Agriculture and Consumer Services and the Department of Economic Opportunity, respectively, to sell the agricultural land or real property; providing requirements for the proceeds from such sale; authorizing the Department of Agriculture and Consumer Services and the Department of Economic Opportunity, respectively, to seek a specified ex parte order; providing criminal penalties; requiring the Department of Agriculture and Consumer Services and the Department of Economic Opportunity, respectively, to adopt rules; creating s. 692.204, F.S.; prohibiting the People's Republic of China, the Chinese Communist Party, any other political party or member of a political party in the People's Republic of China, and certain persons and entities from purchasing or acquiring real property in the state; providing an exception; authorizing such persons and entities to continue to own or hold such real property under certain circumstances; requiring certain persons or entities that own or acquire real property in the state to register with the Department of Economic Opportunity by a specified date; requiring the Department of Economic Opportunity to establish a form for such registration; providing civil penalties;



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authorizing the Department of Economic Opportunity to place a lien against unregistered real property; requiring certain persons and entities to sell, transfer, or otherwise divest themselves of certain real property within a specified timeframe; requiring buyers of real property to provide a signed affidavit; specifying that the failure to maintain or obtain the affidavit does not affect the title or insurability of the title for the real property or subject the closing agent to certain liability; authorizing the commission to adopt rules; authorizing certain real property to be forfeited to the state; authorizing the Department of Economic Opportunity to initiate civil actions for forfeiture of the interest in real property; requiring such actions to be filed in a certain circuit court; requiring clerks to record a lis pendens; requiring courts to advance the cause on the calendar; authorizing defendants to petition to modify or discharge the lis pendens; requiring the court to enter a specified final judgment under certain circumstances; authorizing the Department of Economic Opportunity to sell the real property; providing requirements for the proceeds from such sale; authorizing the Department of Economic Opportunity to seek a specified ex parte order; providing criminal penalties; requiring the Department of Economic Opportunity to adopt rules; amending s. 408.051, F.S.; defining the terms "cloud computing" and "health care provider"; requiring that certain information held by



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476 health care providers that utilize certified
477 electronic health record technology be maintained in
478 specified locations; providing

By the Committee on Judiciary; and Senators Collins and Avila

590-02576-23

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1 A bill to be entitled
 2 An act relating to interests of foreign countries;
 3 creating s. 287.138, F.S.; defining terms; prohibiting
 4 governmental entities from knowingly entering into
 5 certain contracts; prohibiting governmental entities
 6 from taking specified actions after a specified date
 7 relating to contracts that give certain access to
 8 personal identifying information; providing an
 9 exception; authorizing the Attorney General to bring a
 10 civil action; providing penalties; requiring penalties
 11 to be deposited into the General Revenue Fund;
 12 requiring the Department of Management Services to
 13 adopt rules; creating s. 288.007, F.S.; defining
 14 terms; prohibiting governmental entities from
 15 knowingly entering into certain contracts; requiring
 16 government entities to require an affidavit from
 17 applicants before providing any economic incentive;
 18 requiring the Department of Economic Opportunity to
 19 adopt rules; providing a directive to the Division of
 20 Law Revision to create part III of ch. 692, F.S., to
 21 be entitled "Conveyances to Foreign Entities";
 22 creating s. 692.201, F.S.; defining terms; creating
 23 ss. 692.202 and 692.203, F.S.; prohibiting foreign
 24 principals from purchasing agricultural land, or
 25 interest in such land, and certain real property in
 26 the state, respectively; authorizing foreign
 27 principals to continue to own or hold such land or
 28 property under certain circumstances; requiring
 29 certain foreign principals that own or acquire such

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

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30 land or real property to register with a specified
 31 department; requiring the Department of Agriculture
 32 and Consumer Services and the Department of Economic
 33 Opportunity, respectively, to establish a form for
 34 such registration; providing civil penalties;
 35 authorizing the Department of Agriculture and Consumer
 36 Services and the Department of Economic Opportunity to
 37 place a lien against unregistered agricultural land or
 38 real property, respectively; requiring certain foreign
 39 principals to sell, transfer, or otherwise divest
 40 themselves of certain agricultural land or real
 41 property within a specified timeframe; requiring
 42 buyers of such land or property to provide a signed
 43 affidavit; specifying that the failure to maintain or
 44 obtain the affidavit does not affect the title or
 45 insurability of the title for the agricultural land or
 46 real property, respectively; authorizing the Florida
 47 Real Estate Commission to adopt rules; authorizing
 48 certain agricultural land or real property to be
 49 forfeited to the state; authorizing the Department of
 50 Agriculture and Consumer Services and the Department
 51 of Economic Opportunity to initiate civil actions for
 52 forfeiture of the interest in agricultural land or
 53 real property, respectively; requiring such actions to
 54 be filed in a certain circuit court; requiring clerks
 55 to record a lis pendens; requiring courts to advance
 56 the cause on the calendar; authorizing defendants to
 57 petition to modify or discharge the lis pendens;
 58 requiring the court to enter a specified final

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

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59 judgment under certain circumstances; authorizing the
 60 Department of Agriculture and Consumer Services and
 61 the Department of Economic Opportunity, respectively,
 62 to sell the agricultural land or real property;
 63 providing requirements for the proceeds from such
 64 sale; authorizing the Department of Agriculture and
 65 Consumer Services and the Department of Economic
 66 Opportunity, respectively, to seek a specified ex
 67 parte order; providing criminal penalties; requiring
 68 the Department of Agriculture and Consumer Services
 69 and the Department of Economic Opportunity,
 70 respectively, to adopt rules; creating s. 692.204,
 71 F.S.; prohibiting the People's Republic of China, the
 72 Chinese Communist Party, any other political party or
 73 member of a political party in the People's Republic
 74 of China, and certain persons and entities from
 75 purchasing or acquiring real property in the state;
 76 providing an exception; authorizing such persons and
 77 entities to continue to own or hold such real property
 78 under certain circumstances; requiring certain persons
 79 or entities that own or acquire real property in the
 80 state to register with the Department of Economic
 81 Opportunity by a specified date; requiring the
 82 Department of Economic Opportunity to establish a form
 83 for such registration; providing civil penalties;
 84 authorizing the Department of Economic Opportunity to
 85 place a lien against unregistered real property;
 86 requiring certain persons and entities to sell,
 87 transfer, or otherwise divest themselves of certain

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88 real property within a specified timeframe; requiring
 89 buyers of real property to provide a signed affidavit;
 90 specifying that the failure to maintain or obtain the
 91 affidavit does not affect the title or insurability of
 92 the title for the real property; authorizing the
 93 commission to adopt rules; authorizing certain real
 94 property to be forfeited to the state; authorizing the
 95 Department of Economic Opportunity to initiate civil
 96 actions for forfeiture of the interest in real
 97 property; requiring such actions to be filed in a
 98 certain circuit court; requiring clerks to record a
 99 lis pendens; requiring courts to advance the cause on
 100 the calendar; authorizing defendants to petition to
 101 modify or discharge the lis pendens; requiring the
 102 court to enter a specified final judgment under
 103 certain circumstances; authorizing the Department of
 104 Economic Opportunity to sell the real property;
 105 providing requirements for the proceeds from such
 106 sale; authorizing the Department of Economic
 107 Opportunity to seek a specified ex parte order;
 108 providing criminal penalties; requiring the Department
 109 of Economic Opportunity to adopt rules; amending s.
 110 408.051, F.S.; defining the terms "cloud computing"
 111 and "health care provider"; requiring that certain
 112 information held by health care providers that utilize
 113 certified electronic health record technology be
 114 maintained in the continental United States; providing
 115 applicability; amending s. 408.810, F.S.; requiring a
 116 licensee to sign a specified affidavit upon initial

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117 application for a license and any renewal
 118 applications; authorizing disciplinary action by the
 119 Agency for Health Care Administration; prohibiting a
 120 person or entity that possesses a controlling interest
 121 from holding an interest in certain entities;
 122 providing definitions; amending s. 836.05, F.S.;
 123 providing enhanced criminal penalties for threatening
 124 a person while acting as a foreign agent with the
 125 intent of benefiting a foreign country of concern;
 126 providing an effective date.

127

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

129

130 Section 1. Section 287.138, Florida Statutes, is created to
 131 read:

132 287.138 Contracting with entities of foreign countries of
 133 concern prohibited.—

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

135 (a) "Controlling interest" means possession of the power to
 136 direct or cause the direction of the management or policies of a
 137 company, whether through ownership of securities, by contract,
 138 or otherwise. A person or entity that directly or indirectly has
 139 the right to vote 25 percent or more of the voting interests of
 140 the company or is entitled to 25 percent or more of its profits
 141 is presumed to possess a controlling interest.

142 (b) "Department" means the Department of Management
 143 Services.

144 (c) "Foreign country of concern" means the People's
 145 Republic of China, the Russian Federation, the Islamic Republic

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146 of Iran, the Democratic People's Republic of Korea, the Republic
 147 of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian
 148 Arab Republic, including any agency of or any other entity of
 149 significant control of such foreign country of concern.

150 (d) "Governmental entity" means any state, county,
 151 district, authority, or municipal officer, department, division,
 152 board, bureau, commission, or other separate unit of government
 153 created or established by law including, but not limited to, the
 154 Commission on Ethics, the Public Service Commission, the Office
 155 of Public Counsel, and any other public or private agency,
 156 person, partnership, corporation, or business entity acting on
 157 behalf of any public agency.

158 (2) A governmental entity may not knowingly enter into a
 159 contract with an entity which would give access to an
 160 individual's personal identifying information if:

161 (a) The entity is owned by the government of a foreign
 162 country of concern;

163 (b) The government of a foreign country of concern has a
 164 controlling interest in the entity; or

165 (c) The entity is organized under the laws of or has its
 166 principal place of business in a foreign country of concern.

167 (3) Beginning July 1, 2025, a governmental entity may not
 168 extend or renew a contract with an entity listed in paragraphs
 169 (2) (a)-(c) if the contract would give such entity access to an
 170 individual's personal identifying information.

171 (4) (a) Beginning January 1, 2024, a governmental entity may
 172 not accept a bid on, a proposal for, or a reply to, or enter
 173 into, a contract with an entity which would grant the entity
 174 access to an individual's personal identifying information

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unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c).

(b) Beginning July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c).

(5) The Attorney General may bring a civil action in any court of competent jurisdiction against an entity that violates this section. Violations of this section may result in:

(a) A civil penalty equal to twice the amount of the contract for which the entity submitted a bid or proposal for, replied to, or entered into;

(b) Ineligibility to enter into, renew, or extend any contract, including any grant agreements, with any governmental entity for up to 5 years;

(c) Ineligibility to receive or renew any license, certification, or credential issued by a governmental entity for up to 5 years; and

(d) Placement on the suspended vendor list pursuant to s. 287.1351.

(6) Any penalties collected under subsection (5) must be deposited into the General Revenue Fund.

(7) The department shall adopt rules to implement this section, including rules establishing the form for the affidavit

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required under subsection (4).

Section 2. Section 288.007, Florida Statutes, is created to read:

288.007 Economic incentives to foreign countries of concern prohibited.—

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

(a) "Controlled by" means having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or that is entitled to 25 percent or more of its profits is presumed to control the foreign entity.

(b) "Economic incentive" means all programs administered by, or for which an applicant for the program must seek certification, approval, or other action by, the department under this chapter, chapter 212, or chapter 220; and all local economic development programs, grants, or financial benefits administered by a political subdivision or an agent thereof.

(c) "Foreign country of concern" has the same meaning as in s. 692.201.

(d) "Foreign entity" means an entity that is:

1. Owned or controlled by the government of a foreign country of concern; or

2. A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity.

(e) "Government entity" means a state agency, a political

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subdivision, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) A government entity may not knowingly enter into an agreement or contract for an economic incentive with a foreign entity.

(3) Before providing any economic incentive, a government entity must require the recipient or applicant to provide the government entity with an affidavit signed under penalty of perjury attesting that the recipient or applicant is not a foreign entity.

(4) The department shall adopt rules to administer this section, including rules establishing the form for the affidavit required under subsection (3).

Section 3. The Division of Law Revision is directed to create part III of chapter 692, Florida Statutes, consisting of ss. 692.201, 692.202, 692.203, and 692.204, Florida Statutes, to be entitled "Conveyances to Foreign Entities."

Section 4. Section 692.201, Florida Statutes, is created to read:

692.201 Definitions.—As used in this part, the term:

(1) "Agricultural land" means land classified as agricultural under s. 193.461.

(2) "Critical infrastructure facility" means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

(a) A chemical manufacturing facility.

(b) A refinery.

(c) An electrical power plant as defined in s. 403.031(20),

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including a substation, switching station, electrical control center, or electric transmission or distribution facility.

(d) A water intake structure, water treatment facility, wastewater treatment plant, or pump station.

(e) A natural gas transmission compressor station.

(f) A liquid natural gas terminal or storage facility.

(g) A telecommunications central switching office.

(h) An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.

(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(j) A seaport as listed in s. 311.09.

(k) A spaceport territory as defined in s. 331.303(18).

(3) "Foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.

(4) "Foreign principal" means:

(a) The government or any official of the government of a foreign country of concern;

(b) A political party or member of a political party or any subdivision of a political party in a foreign country of concern;

(c) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of

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291 concern, or a subsidiary of such entity;

292 (d) Any person who is domiciled in a foreign country of
 293 concern and is not a citizen of the United States.

294 (5) "Military installation" has the same meaning as in 10
 295 U.S.C. s. 2801(c)(4) and includes an armory as defined in s.
 296 250.01.

297 (6) "Real property" means land, buildings, fixtures, and
 298 all other improvements to land.

299 Section 5. Section 692.202, Florida Statutes, is created to
 300 read:

301 692.202 Purchase of agricultural land by foreign principals
 302 prohibited.—

303 (1) A foreign principal may not directly or indirectly own
 304 or acquire by purchase, grant, devise, or descent agricultural
 305 land or any interest in such land in the state. This prohibition
 306 does not apply to a foreign principal that acquires agricultural
 307 land for a diplomatic purpose that is recognized, acknowledged,
 308 or allowed by the Federal Government.

309 (2) A foreign principal that directly or indirectly owns or
 310 acquires agricultural land or any interest in such land in the
 311 state before July 1, 2023, may continue to own or hold such land
 312 or interest, but may not purchase or otherwise acquire by grant,
 313 devise, or descent any additional agricultural land or interest
 314 in such land in the state.

315 (3)(a) A foreign principal that directly or indirectly owns
 316 or acquires agricultural land or any interest in such land in
 317 the state before July 1, 2023, must register with the Department
 318 of Agriculture and Consumer Services by January 1, 2024. The
 319 department must establish a form for such registration, which,

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320 at minimum, must include all of the following:

321 1. The name of the owner of the agricultural land or the
 322 owner of the interest in such land.

323 2. The address of the agricultural land, the property
 324 appraiser's parcel identification number, and the property's
 325 legal description.

326 3. The number of acres of the agricultural land.

327 (b) A foreign principal that fails to timely file a
 328 registration with the department is subject to a civil penalty
 329 of \$1,000 for each day that the registration is late. The
 330 department may place a lien against the unregistered
 331 agricultural land for the unpaid balance of any penalties
 332 assessed under this paragraph.

333 (4) Notwithstanding subsection (1), a foreign principal may
 334 acquire agricultural land on or after July 1, 2023, by devise or
 335 descent, through the enforcement of security interests, or
 336 through the collection of debts, provided that the foreign
 337 principal sells, transfers, or otherwise divests itself of the
 338 agricultural land within 2 years after acquiring the
 339 agricultural land.

340 (5) At the time of purchase, a buyer of agricultural land
 341 or an interest in such land must provide an affidavit signed
 342 under penalty of perjury attesting to compliance with this
 343 section. The failure to obtain or maintain the affidavit does
 344 not affect the title or insurability of the title for the
 345 agricultural land. The Florida Real Estate Commission shall
 346 adopt rules to implement this subsection, including rules
 347 establishing the form for the affidavit required under this
 348 subsection.

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(6) (a) The agricultural land or an interest in such land that is owned or acquired in violation of this section may be forfeited to the state.

(b) The Department of Agriculture and Consumer Services may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the agricultural land or any interest therein.

(c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the agricultural land, or any portion thereof, is owned or held in violation of this section.

(d) If the court finds that the agricultural land, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the agricultural land in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the agricultural land subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the

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department may seek an ex parte order of seizure of the agricultural land upon a showing that the defendant's control of the agricultural land constitutes a clear and present danger to the state.

(7) A foreign principal that purchases or acquires agricultural land or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A person who knowingly sells agricultural land or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Department of Agriculture and Consumer Services shall adopt rules to implement this section.

Section 6. Section 692.203, Florida Statutes, is created to read:

692.203 Purchase of real property around military installations and critical infrastructure facilities by foreign principals prohibited.—

(1) A foreign principal may not directly or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property within 20 miles of any military installation or critical infrastructure facility in the state. This prohibition does not apply to a foreign principal that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

(2) A foreign principal that directly or indirectly owns or acquires any interest in real property within 20 miles of any military installation or critical infrastructure facility in the

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state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property within 20 miles of any military installation or critical infrastructure facility in the state.

(3)(a) A foreign principal that owns or acquires real property within 20 miles of any military installation or critical infrastructure facility in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the following:

1. The name of the owner of the real property.

2. The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

(b) A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

(4) Notwithstanding subsection (1), a foreign principal may acquire real property or any interest therein which is within 20 miles of any military installation or critical infrastructure facility in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the foreign principal sells, transfers, or otherwise divests itself of such

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real property within 2 years after acquiring the real property.

(5) At the time of purchase, a buyer of real property that is located within 20 miles of any military installation or critical infrastructure facility in the state must provide an affidavit signed under penalty of perjury attesting to compliance with this section. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property. The Florida Real Estate Commission shall adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

(6)(a) If any real property is owned or acquired in violation of this section, the real property may be forfeited to the state.

(b) The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.

(c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of this section.

(d) If the court finds that the real property, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the

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rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.

(7) A foreign principal that purchases or acquires real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A person who knowingly sells real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 7. Section 692.204, Florida Statutes, is created to read:

692.204 Purchase or acquisition of real property by the People's Republic of China prohibited.—

(1) (a) The following persons or entities may not directly

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or indirectly own or acquire by purchase, grant, devise, or descent any interest in real property in the state:

1. The People's Republic of China, the Chinese Communist Party, or any official or member of the People's Republic of China or the Chinese Communist Party.

2. Any other political party or member of a political party or a subdivision of a political party in the People's Republic of China.

3. A partnership, an association, a corporation, an organization, or any other combination of persons organized under the laws of or having its principal place of business in the People's Republic of China, or a subsidiary of such entity.

4. Any person who is domiciled in the People's Republic of China and who is not a citizen of the United States.

(b) Paragraph (a) does not apply to a person or entity of the People's Republic of China that acquires real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

(2) A person or entity described in paragraph (1)(a) that directly or indirectly owns or acquires any interest in real property in the state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property in the state.

(3) (a) A person or entity described in paragraph (1)(a) that owns or acquires real property in the state before July 1, 2023, must register with the Department of Economic Opportunity by January 1, 2024. The department must establish a form for such registration which, at a minimum, must include all of the

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following:

1. The name of the owner of the real property.

2. The address of the real property, the property appraiser's parcel identification number, and the property's legal description.

(b) A person or entity that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.

(4) Notwithstanding subsection (1), a person or an entity described in paragraph (1) (a) may acquire real property in the state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the person or entity sells, transfers, or otherwise divests itself of such real property within 2 years after acquiring the real property unless the person or entity is exempt under paragraph (1) (b).

(5) At the time of purchase, a buyer of real property in the state must provide an affidavit signed under penalty of perjury attesting to compliance with this section. The failure to obtain or maintain the affidavit does not affect the title or insurability of the title for the real property. The Florida Real Estate Commission shall adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.

(6) (a) If any real property is owned or acquired in violation of this section, the real property may be forfeited to

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the state.

(b) The Department of Economic Opportunity may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.

(c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of this section.

(d) If the court finds that the real property, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the real property in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.

(e) The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.

(f) At any time during the forfeiture proceeding the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real

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property constitutes a clear and present danger to the state.

(7) A violation of this section constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) A person who sells real property or any interest therein in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(9) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 8. Present subsections (3), (4), and (5) of section 408.051, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, a new subsection (3) is added to that section, and subsection (2) of that section is reordered and amended, to read:

408.051 Florida Electronic Health Records Exchange Act.—

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

(a) "Electronic health record" means a record of a person's medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format.

(i) ~~(b)~~ "Qualified electronic health record" means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such

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information from, other sources.

(b) ~~(e)~~ "Certified electronic health record technology" means a qualified electronic health record that is certified pursuant to s. 3001(c)(5) of the Public Health Service Act as meeting standards adopted under s. 3004 of such act which are applicable to the type of record involved, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals.

(c) "Cloud computing" has the same meaning as in s. 282.0041.

(d) "Health care provider" means any of the following:

1. A provider as defined in s. 408.803.

2. A health care practitioner as defined in s. 456.001.

3. A health care professional certified under part IV of chapter 468.

4. A home health aide as defined in s. 400.462.

5. A service provider as defined in s. 394.455 and the service provider's clinical and nonclinical staff who provide inpatient or outpatient services.

6. A continuing care facility licensed under chapter 651.

7. A pharmacy permitted under chapter 465.

(e) ~~(d)~~ "Health record" means any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.

(f) ~~(e)~~ "Identifiable health record" means any health record that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.

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~~(g)(f)~~ "Patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

~~(h)(g)~~ "Patient representative" means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient's surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child.

(3) SECURITY AND STORAGE OF PERSONAL MEDICAL INFORMATION.—
In addition to the requirements in 45 C.F.R. part 160 and subparts A and C of part 164, a health care provider that utilizes certified electronic health record technology must ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted computing facility or an entity providing cloud computing services, is physically maintained in the continental United States. This subsection applies to all qualified electronic health records that are stored using any technology that can allow information to be electronically retrieved, accessed, or transmitted.

Section 9. Subsections (14) and (15) are added to section

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408.810, Florida Statutes, to read:

408.810 Minimum licensure requirements.—In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

(14) The licensee must sign an affidavit at the time of his or her initial application for a license and on any renewal applications thereafter that attests under penalty of perjury that he or she is in compliance with s. 408.051(3). The licensee must remain in compliance with s. 408.051(3) or the licensee shall be subject to disciplinary action by the agency.

(15)(a) The licensee must ensure that a person or entity who possesses a controlling interest does not hold, either directly or indirectly, regardless of ownership structure, an interest in an entity that has a business relationship with a foreign country of concern or that is subject to s. 287.135.

(b) For purposes of this subsection, the term:

1. "Business relationship" means engaging in commerce in any form, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

2. "Foreign country of concern" has the same meaning as in s. 692.201.

3. "Interest" has the same meaning as in s. 286.101(1).

Section 10. Section 836.05, Florida Statutes, is amended to read:

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697 836.05 Threats; extortion.-

698 (1) Whoever, either verbally or by a written or printed
699 communication, maliciously threatens to accuse another of any
700 crime or offense, or by such communication maliciously threatens
701 an injury to the person, property or reputation of another, or
702 maliciously threatens to expose another to disgrace, or to
703 expose any secret affecting another, or to impute any deformity
704 or lack of chastity to another, with intent thereby to extort
705 money or any pecuniary advantage whatsoever, or with intent to
706 compel the person so threatened, or any other person, to do any
707 act or refrain from doing any act against his or her will,
708 commits shall be guilty of a felony of the second degree,
709 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

710 (2) A person who commits a violation of subsection (1) and
711 at the time of the violation is acting as a foreign agent, as
712 defined in s. 812.081(1), with the intent of benefiting a
713 foreign country of concern, as defined in s. 692.201, commits a
714 felony of the first degree, punishable as provided in s.
715 775.082, s. 775.083, or s. 775.084.

716 Section 11. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

3/22/2023

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Meeting Date

Bill Number or Topic

Rules

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Committee

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Name Isabelle Garbarino Phone 407-412-4405

Address 400 S Monroe Street, PL 10 Email isabelle.garbarino@fdacs.gov
Street

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S-001 (08/10/2021)

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 Rules

BILL: CS/SB 404

INTRODUCER: Committee on Rules and Senator Perry

SUBJECT: Public Records/Deaths of Minors

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tuszynski	Cox	CF	Favorable
2. Limones-Borja	McVaney	GO	Favorable
3. Tuszynski	Twogood	RC	Fav/CS

I. Summary:

CS/SB 404 makes confidential and exempt from public disclosure the photographs or video or audio recordings that depict the killing of a minor when held by an agency. The bill defines the “killing of a minor” and specifies who may obtain such photographs and recordings and specifies the process for obtaining these materials. The bill provides for retroactive application of the exemption.

The bill amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the killing of a minor. Specifically:

- Certain government entities’ may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such;
- Any surviving parent must be given reasonable notice of petition to view or copy the photographs or video or audio recordings, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of photographs or video or audio recordings that depict the killing of a minor who willfully and knowingly violates the provisions in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The exemption created for photographs or video or audio recordings that depict the killing of a minor must be given retroactive application.

The bill also creates the “Rex and Brody Act” and makes confidential and exempt from public inspection and copying requirements an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner. The bill allows for disclosure of the report

to the surviving parent who did not commit the act of domestic violence. The bill provides for retroactive application of the exemption.

The bill conforms several provisions in s. 406.135, F.S., to incorporate the expanded exemption for autopsy reports of certain minors. Specifically:

- Certain government entities' may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- A court may use its discretion to authorize the disclosure of such reports;
- Reasonable notice of a petition to view such reports must be given to certain surviving parents; they must also receive a copy of the petition to view or copy such reports; and
- Any person who willfully and knowingly violates a court order regarding the disclosure of these reports, and any custodian who willfully and knowingly discloses these reports in violation of the law, are subject to a third degree felony.

The term "minor" is defined to mean a person younger than 18 years of age who has not had the disability of nonage removed.

The bill makes findings that the new exemptions from public records disclosure for photographs or video or audio recordings that depict the killing of a minor and for an autopsy report of a minor whose death was related to an act of domestic violence are a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

There is no anticipated fiscal impact on state or local governments.

The bill is effective upon becoming law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S.,

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting 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. An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁴

Exemptions related to Sensitive Photos, or Videos of Deaths

Autopsy Photographs, Videos, or Audio Depictions

Section 406.135, F.S., makes confidential and exempt a photograph, video, or audio recording of an autopsy held by a medical examiner. It does not limit the disclosure of any written autopsy report. There is an exception which allows for a surviving spouse to view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy.²⁵ If there is no surviving spouse, current law provides that the surviving parent must have access to such records.²⁶ If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.²⁷ Current law also allows for the disclosure to a local, state, or federal agency if it is in furtherance of its official duties.²⁸

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S. The specified questions are:

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

²³ See generally s. 119.15, F.S.

²⁴ Section 119.15(7), F.S.

²⁵ Section 406.135(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 406.135(3)(b), F.S.

The custodian of the record, or his or her designee, may not allow any other person to view or copy such records unless the deceased's surviving relative who has authority to request such records designated, or his or her designated agent, grants permission to view or copy such records.²⁹

Upon a showing of good cause, a court may issue an order authorizing any person to view or copy a photograph or video recording, or listen to, or copy any audio recording of an autopsy.³⁰ The court may impose any restrictions or stipulations that it deems appropriate.³¹ The court must consider three factors when determining whether good cause exists, including:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records.³²

Any handling of photographs, videos, or audio recordings of an autopsy must be under the direct supervision of the custodian of record or his or her designee.³³

The surviving spouse, surviving parent, or adult children of the deceased, as appropriate, must be given:

- Reasonable notice of a petition filed with the court to view or copy a photograph or video recording, or listen to or copy an audio recording of an autopsy;
- A copy of such petition; and
- Reasonable notice of the opportunity to be present and heard at any hearing.³⁴

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates these provisions commits a felony of the third degree.³⁵ Any person who willfully and knowingly violates a court order issued after showing good cause to view or copy a photograph or video, or listen to or copy an audio recording of an autopsy commits a felony of the third degree.³⁶

A criminal or administrative proceeding is exempt from s. 406.135, F.S., and is subject to all the provisions of ch. 119, F.S., unless otherwise exempted.³⁷ A court in a criminal or administrative proceeding, however, may, upon a showing of good cause, restrict or otherwise control the disclosure of an autopsy, crime scene, or similar photograph, video, or audio recording.³⁸

²⁹ Section 406.135(3)(c), F.S.

³⁰ Section 406.135(4)(a), F.S.

³¹ *Id.*

³² Section 406.135(4)(b), F.S.

³³ Section 406.135(5)(c), F.S.

³⁴ Section 406.135(5), F.S.

³⁵ Section 406.135(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

³⁶ Section 406.135(6)(b), F.S.

³⁷ Section 406.135(7), F.S.

³⁸ *Id.*

The exemption under s. 406.135, F.S. is given retroactive application.³⁹ There is no provision under current law which makes confidential and exempt autopsy reports of any person that are held by a medical examiner, including autopsy reports of a minor whose death was related to an act of domestic violence.⁴⁰

Killing of a Law Enforcement Officer and Mass Killings

Section 119.071(2)(p), F.S., makes a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her

³⁹ Section 406.135(8), F.S.

⁴⁰ Section 741.28(2), F.S. defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member. A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony. Section 784.03(1)(a), F.S., states that the offense of battery occurs when a person: 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person. Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon. Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Section 784.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function. Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

official duties⁴¹ or the killing of a victim of mass violence⁴² confidential and exempt from public records requirements.⁴³ Similar to the above described public records exemption related to autopsies, a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent then the adult children must have access to such records.⁴⁴

Additionally, access may be provided to the photograph or video or audio recordings by a court in the same circumstances as described above for autopsies.⁴⁵

As with the exemption related to autopsies, this exemption applies retroactively and to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after May 23, 2019.⁴⁶

There is currently no exemption for photographs or video or audio recordings related to the killing of a minor, to mean the killing of a victim who has not yet reached the age of eighteen years at the time of death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict the victim being killed, or events that depict the body of the victim who has been killed.

Reinhart Case

On May 4, 2021, law enforcement began searching for Paul Reinhart and his two sons, Rex and Brody, as part of a wellness check that was requested by a family member after Mr. Reinhart posted a series of “cryptic” Facebook updates and sent family members “concerning” text messages. Authorities later found them dead inside Mr. Reinhart’s second home in Dixie County that was in flames when they arrived on scene.⁴⁷ News stations obtained a copy of the children’s

⁴¹ Section 119.071(2)(p)1.a., F.S., defines “killing of a law enforcement officer who was acting in accordance with his or her official duties” to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

⁴² Section 119.071(2)(p)1.b., F.S., defines “killing of a victim of mass violence” to mean events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

⁴³ Section 119.071(2)(p)1.b., F.S., defines “killing of a victim of mass violence” as events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

⁴⁴ Section 119.071(2)(p)2., F.S.

⁴⁵ See s. 119.071(2)(p)4.-6., F.S.

⁴⁶ Section 119.071(2)(p)7., F.S. However, the provision further states that it is not intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any Florida court, as of the effective date of the act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

⁴⁷ Syed, Camille, Autopsy Report Shows Rex and Brody Reinhart Were Shot by Father, 20WCJB, Aug. 31, 2021, available at <https://www.wcjb.com/2021/08/31/autopsy-report-shows-rex-brody-reinhart-were-shot-by-father/>; Swirko, Cindy, Paul Reinhart shot his two sons and then himself, autopsies conclude, Gainesville Sun, August 31, 2021, available at

autopsy reports. Several outlets published some of its findings in August 2021 after the surviving mother had expressed to such outlets that she did not want to know the nature of her children's deaths and requested the news stations not to publish the information contained in them.⁴⁸

Tristyn Bailey Case

In the early morning hours of May 9, 2021, 13-year-old Tristyn Bailey was murdered by a 14-year-old classmate.⁴⁹ The murder was particularly brutal as Tristyn was stabbed more than 100 times.⁵⁰ The teenage boy last seen with Tristyn was arrested and charged with her murder the morning of May 10, 2021.⁵¹ He subsequently admitted to killing Tristyn and pleaded guilty to first-degree murder, sentencing proceedings began on March 21, 2023.⁵²

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(2), F.S., to make a photograph or video or audio recording that depicts the killing of a minor confidential and exempt from public disclosure when held by an agency.

The section defines “killing of a minor” to mean the killing of a victim who has not yet reached the age of eighteen years at the time of death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict the victim being killed, or events that depict the body of the victim who has been killed.

The section amends s. 119.071(2)(p), F.S., to conform to the expanded exemption for photographs or video or audio recordings that depict the killing of a minor. Specifically:

- Certain government entities' may access such photographs or video or audio recordings in furtherance of their official duties;
- The court, upon showing of good cause, may issue an order authorizing any person to view or copy such photographs or video or audio recordings;
- The record custodian in control of photographs or video or audio recordings, or his or her designee, must directly supervise anyone who views, copies, or handles such;

<https://www.gainesville.com/story/news/2021/08/31/paul-reinhart-shot-sons-and-then-himself-autopsiesconclude/5668557001/>; Weber, Thomas, Dad Suspected of Killing 2 Sons, Including UF Bat Boy, Burning Home, and Killing Himself, WJCT News (May 4, 2021), available at <https://news.wjct.org/state-news/2021-05-04/dad-suspected-of-killing-2-sons-including-uf-bat-boy-burning-home-and-killing-himself> (all sites last visited March 9, 2023).

⁴⁸ *Id.*

⁴⁹ See News 4 JAX, *Tristyn Bailey: The murder that sent shockwaves through St. Johns County*, February 6, 2023, available at <https://www.news4jax.com/news/local/2023/02/06/tristyn-bailey-the-murder-that-sent-shockwaves-through-st-johns-county/> (last viewed March 22, 2023); USA Today, *Sentencing begins for Aiden Fucci, 16, who stabbed 13-year-old Tristyn Bailey 114 times*, March 21, 2023, available at <https://www.usatoday.com/story/news/nation/2023/03/21/aiden-fucci-sentencing-hearing-tristyn-bailey-stabbing/11516860002/> (last viewed March 22, 2023).

⁵⁰ *Id.*

⁵¹ See News 4 JAX, *Teenage boy accused of killing Tristyn Bailey*, May 10, 2021, available at <https://www.news4jax.com/news/florida/2021/05/10/teenage-boy-arrested-in-death-of-tristyn-bailey/> (last viewed March 22, 2023).

⁵² See USA Today, *Sentencing begins for Aiden Fucci, 16, who stabbed 13-year-old Tristyn Bailey 114 times*, March 21, 2023, available at <https://www.usatoday.com/story/news/nation/2023/03/21/aiden-fucci-sentencing-hearing-tristyn-bailey-stabbing/11516860002/> (last viewed March 22, 2023).

- Any surviving parent must be given reasonable notice of petition to view or copy the photographs or video or audio recordings, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of photographs or video or audio recordings that depict the killing of a minor who willfully and knowingly violates the provisions in the section and any person who violates a court order issued pursuant to the section, commits a third degree felony.

The exemption created by the bill must be given retroactive application.

The bill provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates the “Rex and Brody Act.”

Section 3 amends s. 406.135, F.S., to make confidential and exempt public records copying and inspection requirements an autopsy report of a minor whose death was related to an act of domestic violence that is held by a medical examiner. The section provides for the disclosure to the surviving parent who did not commit the act of domestic violence that led to the minor’s death to view and copy the report.

The section amends s. 406.135, F.S., to conform to the expanded exemption for autopsy reports of a minor whose death was related to an act of domestic violence. Specifically:

- Certain government entities’ may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- The court may, upon a showing of good cause, issue an order authorizing any person to view or copy an autopsy report of a minor;
- The record custodian in control of an autopsy report of a minor, or his or her designee, must directly supervise anyone who views, copies, or handles the autopsy report;
- Any surviving parent who did not commit the act of domestic violence which led to the minor’s death must be given reasonable notice of petition to view or copy the autopsy report, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of an autopsy report of a minor who willfully and knowingly violates the provisions in s. 406.135, F.S., and any person who violates a court order issued pursuant to s. 406.135, F.S., commits a third degree felony.

As used in s. 406.135, F.S., a “medical examiner” is anyone who serves the role of a district medical examiner, as well as any employee, deputy, or agent of the medical examiner, or any other person who may obtain possession of a photograph, or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties. The bill amends “medical examiner” to include possession of a *report* of an autopsy. The bill also defines the term “minor” as a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01, F.S., or s. 743.015, F.S.

The exemption created by the bill must be given retroactive application.

The bill provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4 provides a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that if the photographs, video and audio recordings, and autopsy reports are released it could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and also the deceased minor's friends. The graphic and disturbing nature of these materials could also result in injury to the memory of the deceased.

Section 5 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for autopsy reports of a minor whose death was related to an act of domestic violence held by a medical examiner, thus, the bill will require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect a surviving parent of a deceased minor whose death was related to an act of domestic violence. This bill exempts only those autopsy reports of minors whose death was caused by domestic violence. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill (lines 52-58) makes confidential and exempt only an autopsy report of a minor whose death is related to an act of domestic violence. However, the bill (lines 70-75) prohibits a custodian of the record from allowing any autopsy of a minor to be viewed or copied. The bill should be amended to clarify the custodian's duty to the confidential and exempt autopsy reports.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.135 of the Florida Statutes,

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Rules on March 22, 2023:

The committee substitute:

- Expands the public records exemption in s. 119.071, F.S., making the photographs or video or audio recordings that depict the killing of a minor confidential and exempt

from public disclosure when held by an agency, and applies the exemption retroactively.

- Defines “killing of a minor” and specifies who may obtain such photographs and recordings and specifies the process for obtaining these materials.
- Provides a statement of public necessity as required by the State Constitution and provides that the expansion of this exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 24 and 25
insert:
Section 1. Paragraph (p) of subsection (2) of section
119.071, Florida Statutes, is amended to read:
119.071 General exemptions from inspection or copying of
public records.—
(2) AGENCY INVESTIGATIONS.—
(p)1. As used in this paragraph, the term:
a. "Killing of a law enforcement officer who was acting in



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12 accordance with his or her official duties” means all acts or
13 events that cause or otherwise relate to the death of a law
14 enforcement officer who was acting in accordance with his or her
15 official duties, including any related acts or events
16 immediately preceding or subsequent to the acts or events that
17 were the proximate cause of death.

18 b. “Killing of a victim of mass violence” means events that
19 depict either a victim being killed or the body of a victim
20 killed in an incident in which three or more persons, not
21 including the perpetrator, are killed by the perpetrator of an
22 intentional act of violence.

23 c. “Killing of a minor” means all acts or events that cause
24 or otherwise relate to the death of a victim who has not yet
25 reached the age of eighteen years at the time of the death,
26 including any related acts or events immediately preceding or
27 subsequent to the acts or events that were the proximate cause
28 of the death of a victim under the age of eighteen, events that
29 depict a victim under the age of eighteen being killed, or
30 events that depict the body of a victim under the age of
31 eighteen who has been killed.

32 2. A photograph or video or audio recording that depicts or
33 records the killing of a law enforcement officer who was acting
34 in accordance with his or her official duties, ~~or~~ the killing of
35 a victim of mass violence, or the killing of a minor is
36 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
37 of the State Constitution, except that a surviving spouse of the
38 decedent may view and copy any such photograph or video



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39 recording or listen to or copy any such audio recording. If
40 there is no surviving spouse, the surviving parents shall have
41 access to such records. If there is no surviving spouse or
42 parent, the adult children shall have access to such records.
43 Nothing in this paragraph precludes a surviving spouse, parent,
44 or adult child of the victim from sharing or publicly releasing
45 such photograph or video or audio recording.

46 3.a. The deceased's surviving relative, with whom authority
47 rests to obtain such records, may designate in writing an agent
48 to obtain such records.

49 b. A local governmental entity, or a state or federal
50 agency, in furtherance of its official duties, pursuant to a
51 written request, may view or copy a photograph or video
52 recording or may listen to or copy an audio recording of the
53 killing of a law enforcement officer who was acting in
54 accordance with his or her official duties, ~~or~~ the killing of a
55 victim of mass violence, or the killing of a minor, and, unless
56 otherwise required in the performance of its duties, the
57 identity of the deceased shall remain confidential and exempt.

58 c. The custodian of the record, or his or her designee, may
59 not permit any other person to view or copy such photograph or
60 video recording or listen to or copy such audio recording
61 without a court order.

62 4.a. The court, upon a showing of good cause, may issue an
63 order authorizing any person to view or copy a photograph or
64 video recording that depicts or records the killing of a law
65 enforcement officer who was acting in accordance with his or her



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official duties, ~~or~~ the killing of a victim of mass violence, or
the killing of a minor, or to listen to or copy an audio
recording that depicts or records the killing of a law
enforcement officer who was acting in accordance with his or her
official duties, ~~or~~ the killing of a victim of mass violence, or
the killing of a minor, and may prescribe any restrictions or
stipulations that the court deems appropriate.

b. In determining good cause, the court shall consider:

(I) Whether such disclosure is necessary for the public
evaluation of governmental performance;

(II) The seriousness of the intrusion into the family's
right to privacy and whether such disclosure is the least
intrusive means available; and

(III) The availability of similar information in other
public records, regardless of form.

c. In all cases, the viewing, copying, listening to, or
other handling of a photograph or video or audio recording that
depicts or records the killing of a law enforcement officer who
was acting in accordance with his or her official duties, ~~or~~ the
killing of a victim of mass violence, or the killing of a minor
must be under the direct supervision of the custodian of the
record or his or her designee.

5. A surviving spouse shall be given reasonable notice of a
petition filed with the court to view or copy a photograph or
video recording that depicts or records the killing of a law
enforcement officer who was acting in accordance with his or her
official duties, ~~or~~ the killing of a victim of mass violence, or



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93 the killing of a minor, or to listen to or copy any such audio
94 recording, a copy of such petition, and reasonable notice of the
95 opportunity to be present and heard at any hearing on the
96 matter. If there is no surviving spouse, such notice must be
97 given to the parents of the deceased and, if the deceased has no
98 surviving parent, to the adult children of the deceased.

99 6.a. Any custodian of a photograph or video or audio
100 recording that depicts or records the killing of a law
101 enforcement officer who was acting in accordance with his or her
102 official duties, ~~or~~ the killing of a victim of mass violence, or
103 the killing of a minor who willfully and knowingly violates this
104 paragraph commits a felony of the third degree, punishable as
105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 b. Any person who willfully and knowingly violates a court
107 order issued pursuant to this paragraph commits a felony of the
108 third degree, punishable as provided in s. 775.082, s. 775.083,
109 or s. 775.084.

110 c. A criminal or administrative proceeding is exempt from
111 this paragraph but, unless otherwise exempted, is subject to all
112 other provisions of chapter 119; however, this paragraph does
113 not prohibit a court in a criminal or administrative proceeding
114 upon good cause shown from restricting or otherwise controlling
115 the disclosure of a killing, crime scene, or similar photograph
116 or video or audio recording in the manner prescribed in this
117 paragraph.

118 7. The exemption in this paragraph shall be given
119 retroactive application and shall apply to all photographs or



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video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or~~ the killing of a victim of mass violence, or the killing of a minor, regardless of whether the killing of the person occurred before, on, or after May 23, 2019. However, nothing in this paragraph is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, ~~or~~ the killing of a victim of mass violence, or the killing of a minor.

8. This paragraph applies only to such photographs and video and audio recordings held by an agency.

9.a. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The expansion of the public records exemption in subparagraph (p)2. to allow for the expunction of a photograph or video or audio recording that depicts or records the killing of a minor is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this paragraph shall revert



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to that in existence on June 30, 2023, except that any amendments to this subsection other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of this subsection which expire pursuant to this paragraph.

Section 2. (1)(a) The Legislature finds that it is a public necessity that photographs and video and audio recordings that depict or record the killing of a minor be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that photographs and video and audio recordings that depict or record the killing of a minor render a graphic and often disturbing visual or aural representation of the deceased. Such photographs and video and audio recordings provide a view of the deceased in the final moments of life, in which they are often bruised, bloodied, broken, baring bullet wounds or other wounds, lacerated, dismembered, or decapitated. As such, photographs and video and audio recordings that depict or record the killing of a minor are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of personal computers and cellular telephones throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized



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dissemination of such photographs and video and audio recordings
would subject the immediate family of the deceased to continuous
injury.

(b) In addition to the emotional and mental injury that
these photographs and video and audio recordings may cause
family members, the Legislature is also concerned that
dissemination of photographs and video and audio recordings that
depict or record the killing of a minor is harmful to the
public. The Legislature is concerned that the release of these
photographs and video and audio recordings may educe violent
acts by persons who have a mental illness or who are morally
corrupt.

(c) The Legislature further recognizes that other types of
information, such as crime scene reports, continue to be
available which are less intrusive and injurious to the
immediate family of the deceased and continue to provide for
public oversight. The Legislature further finds that the
exemption provided in this act should be given retroactive
application because it is remedial in nature.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to public records; amending s.
119.071, F.S.; defining the term "killing of a minor";
expanding an existing exemption from public records
requirements for a photograph or a video or audio



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recording held by an agency which depicts or records
the killing of a law enforcement officer or killing of
a victim of mass violence to include a photograph or a
video or audio recording held by an agency which
depicts or records the killing of a minor; clarifying
that a surviving spouse, parent, or adult child of the
victim is not precluded from publicly releasing such
photograph or video or audio recording; providing
criminal penalties; providing retroactive
applicability; providing for future legislative review
and repeal of the exemption; conforming provisions to
changes made by the act; providing a statement of
public necessity; providing a short

By Senator Perry

9-00572A-23

2023404__

A bill to be entitled

An act relating to public records; providing a short title; amending s. 406.135, F.S.; revising the definition of the term "medical examiner"; defining the term "minor"; creating an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence; providing exceptions; requiring that any viewing, copying, or other handling of such autopsy reports be under the direct supervision of the custodian of the record or his or her designee; requiring that certain surviving parents of a minor whose death was related to an act of domestic violence be given notice of petitions to view or copy the minor's autopsy report and the opportunity to be present and heard at related hearings under certain circumstances; providing penalties; providing construction; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. This act may be cited as the "Rex and Brody Act."

Section 2. Section 406.135, Florida Statutes, is amended to read:

406.135 Autopsies; confidentiality of photographs and video

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

9-00572A-23

2023404__

and audio recordings; confidentiality of reports of minor victims of domestic violence; exemption.—

(1) ~~As used in For the purpose of~~ this section, the term:

(a) "Medical examiner" means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to this chapter, as well as any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a report, photograph, or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties.

(b) "Minor" means a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(2) (a) A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

(b) An autopsy report of a minor whose death was related to an act of domestic violence as defined in s. 741.28 held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving parent of the deceased minor may view and copy the report if the surviving parent did not commit the act of domestic violence which led to the minor's death.

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

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(3) (a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording of an autopsy or a minor's autopsy report or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of official ~~their~~ duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person, except an agent designated in writing by the deceased's surviving relative with whom authority rests to obtain such records, to view or copy such photograph, ~~or~~ video recording, or minor's autopsy report or listen to or copy an audio recording without a court order.

(4) (a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or a minor's autopsy report or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form.

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

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(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy or a minor's autopsy report must be under the direct supervision of the custodian of the record or his or her designee.

(5) ~~(a)~~ A surviving spouse must ~~shall~~ be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased, and if there is ~~the deceased has~~ no living parent, then to the adult children of the deceased.

(b) For an autopsy report of a minor whose death was related to an act of domestic violence as defined in s. 741.28, any surviving parent who did not commit the act of domestic violence which led to the minor's death must be given reasonable notice of a petition filed with the court to view or copy the report, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter.

(6) (a) Any custodian of a photograph or video or audio recording of an autopsy or a minor's autopsy report who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the

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

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third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) A criminal or administrative proceeding is exempt from this section, but ~~unless otherwise exempted,~~ is subject to all other provisions of chapter 119 unless otherwise exempted. ~~provided however that~~ This section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar report, photograph, or video or audio recording ~~recordings~~ in the manner prescribed herein.

(8) The exemptions in this section ~~This exemption~~ shall be given retroactive application.

(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that autopsy reports of minors whose deaths were related to acts of domestic violence be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that autopsy reports describe the deceased in a graphic and often disturbing fashion and that autopsy reports of minors whose deaths were related to acts of domestic violence may describe the deceased nude, bruised, bloodied, broken, with bullet or other wounds, cut open, dismembered, or decapitated. As such, these reports often contain highly sensitive descriptions of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to

9-00572A-23 2023404

the immediate family and minor friends of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of websites throughout the world encourages and promotes the wide dissemination of reports and publications 24 hours a day, and that widespread unauthorized dissemination of autopsy reports of minors whose deaths were related to acts of domestic violence would subject the immediate family and minor friends of the deceased to continuous injury. The Legislature further finds that the exemption provided in this act should be given retroactive application because it is remedial in nature.

Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 8, 2023

I respectfully request that **Senate Bill #404**, relating to Rex & Brody Act, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 9

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/22/23

Meeting Date

SB 404

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Cherie Crum

Phone

214-679-8502

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/22/23

Meeting Date

Senate Rules

Committee

SB 404

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ashlei Richardson for Florida Public Defender Association

Phone

850-488-6856

Address

103 N. Gadsden St.

Street

Email

ARichardson@fpda.org

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:



In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:

Florida Public
Defender Assoc.

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 Rules

BILL: CS/CS/SB 450

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senators Ingoglia and Martin

SUBJECT: Death Penalty

DATE: March 22, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Cellon</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 450 amends the death penalty statutes found in ss. 921.141 and 921.142, F.S., to clarify the judge and the jury's role in death penalty sentencing proceedings. The bill makes the following amendments to the current death penalty statutes by:

- Deleting current language requiring a unanimous jury recommendation for the imposition of the death penalty and inserting a recommendation of at least 8 jurors.
- Providing that if fewer than 8 jurors vote to recommend the death penalty, the jury's sentencing recommendation must be for life without the possibility of parole and the court is bound by that recommendation.
- Providing that if the jury recommends a sentence of death, the court may impose the recommended sentence of death, or a sentence of life imprisonment without the possibility of parole.
- Specifying that the death penalty may only be imposed if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

The court must enter a written order whether the sentence is for death or for life without the possibility of parole and the court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.

The bill may have an indeterminate fiscal impact. See Section V Fiscal Impact Statement.

The bill becomes effective upon becoming a law.

II. Present Situation:

Case Law and Subsequent Statutory Changes Regarding the Death Penalty

The Sixth Amendment of the U.S. Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .”¹ This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt.²

The U.S. Supreme Court in *Ring v. Arizona*, applied this right to Arizona’s capital sentencing scheme, which required a judge to determine the presence of aggravating and mitigating factors and to only sentence a defendant to death if the judge found at least one aggravating factor.³ The Court struck down the Arizona sentencing scheme, finding it to be a violation of the Sixth Amendment because it *permitted sentencing judges, without a jury, to find aggravating circumstances justifying imposition of the death penalty*.⁴

In 2016, the U.S. Supreme Court issued the *Hurst v. Florida* opinion finding that Florida’s death penalty sentencing process was unconstitutional because “the Sixth Amendment requires *a jury, not a judge, to find each fact necessary to impose a sentence of death*.”⁵ Thereafter, the Legislature amended ss. 921.141 and 921.142, F.S., to incorporate the following statutory changes:

- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- If at least ten of the twelve members of the jury determine that the defendant should be sentenced to death, the jury’s recommendation is a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if fewer than ten jurors determined that the defendant should be sentenced to death;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury recommends a sentence of death; and
- The judge is no longer permitted to “override” the jury’s recommendation of a sentence of life imprisonment by imposing a sentence of death.⁶

Also in 2016, *Hurst v. State*, on remand from the U.S. Supreme Court, was decided by the Florida Supreme Court. In addition to finding that the prior 2016 statutory amendments to the death penalty sentencing provisions were constitutional, the court also held that “in order for the

¹ U.S. CONST. Amend. VI.

² *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

³ *Ring v. Arizona*, 536 U.S. 584, 592 (2002).

⁴ *Id.* at 609 (emphasis added).

⁵ *Hurst v. Florida*, 577 U.S. 92 (2016) (emphasis added). The *Hurst v. Florida* decision was based on the Sixth Amendment and the 2002 U.S. Supreme Court decision in *Ring v. Arizona*, which held that juries rather than judges acting alone must make crucial *factual* determinations that subject a convicted murderer to the death penalty. *Ring v. Arizona*, 536 U.S. 584 (2002) (emphasis added).

⁶ Chapter 2016-13, L.O.F.

trial court to impose a sentence of death, the jury's recommended sentence of death must be *unanimous*."⁷

After the *Hurst v. State* decision in 2016, the Legislature again amended ss. 921.141 and 921.142, F.S., this time to require a *unanimous vote of the jury for a sentencing recommendation of death*.⁸

The current sentencing proceeding statutes are more fully set forth below.

Florida's Current Sentencing Proceedings in Capital Cases

The statutes governing the proceedings to determine a sentence of either death or life imprisonment without the possibility of parole⁹ in capital cases are set forth in ss. 921.141 and 921.142, F.S.¹⁰ The court conducts a sentencing proceeding upon conviction or adjudication of guilt of a defendant in a capital felony.¹¹ Typically, the proceeding is conducted by the trial judge before the trial jury as soon as practicable.¹²

Aggravating Factors and Mitigating Circumstances

During the sentencing proceeding, the jury (or the judge if the jury is waived by the defendant) considers evidence that is relevant to the nature of the crime and the character of the defendant. The evidence includes matters relating to any of the aggravating factors enumerated in s. 921.141(6), F.S., or mitigating circumstances enumerated in s. 921.141 (7), F.S.¹³

The aggravating factors are limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

⁷ *Hurst v. State*, 202 So.3d 40, 44, (Fla. 2016), *cert. den.*, 137 S.Ct. 2161 (2017) (emphasis added).

⁸ Chapter 2017-1, L.O.F.

⁹ Section 775.082(1)(a), F.S.

¹⁰ The sentencing proceedings in s. 921.142, F.S., are virtually identical to the sentencing proceedings found in s. 921.141, F.S., except that s. 921.142, F.S., only applies in capital drug trafficking cases, which contains certain aggravating factors relevant to drug trafficking cases.

¹¹ Sections 921.141(1) and 921.142(2), F.S.

¹² *Id.*

¹³ Notice of the prosecutor's intent to present evidence of particular aggravating factors must be served within 45 days after arraignment. Section 782.04(1)(b), F.S. There are 16 different aggravating factors in s. 921.141(6)(a)-(p), F.S., and eight statutory mitigating circumstances in s. 921.141(7), F.S.

- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03, F.S.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., or s. 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S., and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.¹⁴

Mitigating circumstances are the following:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.¹⁵

¹⁴ Section 921.141(6)(a)-(p), F.S. See s. 921.142(7)(a)-(j), F.S., for the aggravating factors in a capital drug trafficking felony case.

¹⁵ Section 921.141(7)(a)-(h), F.S. See 921.142(7)(a)-(h), F.S., for the mitigating factors in a capital drug trafficking felony case.

Jury Findings and Recommended Sentence

After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury deliberates and determines if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in s. 921.141(6), F.S.¹⁶

The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

- Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.
- Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:
 - Whether sufficient aggravating factors exist.
 - Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
 - Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.¹⁷

If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.¹⁸

Imposition of Sentence

If the jury has recommended a sentence of:

- Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.
- Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.¹⁹

¹⁶ Section 921.141(2)(a), F.S.; See s. 921.142(3)(a), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

¹⁷ Section 921.141(2)(b), F.S.; See s. 921.142(3)(b), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

¹⁸ Section 921.141(2)(c), F.S.; See s. 921.142(3)(c), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

¹⁹ Section 921.141(3), F.S.; See s. 921.141(4), F.S., for provisions relating to the imposition of sentence in a capital drug trafficking case.

Order of the Court and Automatic Review of the Case

In each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors found to exist, the mitigating circumstances reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082, F.S.²⁰

A judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules adopted by the Supreme Court.²¹

Case Law Interpreting Current Death Penalty Proceeding Requirements in Florida***Death Eligibility Decision is Jury's Only Role in Death Penalty Sentencing Under Poole v. State***

Subsequent to the Legislature's 2016 amendments to the death penalty sentencing proceedings in an effort to comply with both *Hurst v. Florida*²² and *Hurst v. State*²³ the Florida Supreme Court receded from its *Hurst v. State* opinion, eliminating the need for most of the statutory changes made in 2016.²⁴

In *Poole v. State*, the Florida Supreme Court opined that the *Hurst v. State* court had gone beyond where the U.S. Supreme Court required in order to bring Florida's death penalty proceedings into compliance with constitutional standards.²⁵

The *Poole* court left intact only the requirement that a unanimous jury find a statutory aggravating circumstance by a reasonable doubt standard of proof.²⁶ This particular part of Florida's death penalty sentencing proceeding is necessary, as the *Poole* court explained, because there are two components to the death penalty sentencing decision-making process: the *eligibility decision* which is the trier of fact's responsibility, and the *selection decision* which is the sentencing judge's responsibility.²⁷

As to the eligibility decision, the U.S. Supreme Court has required that the death penalty be reserved for only a subset of those who commit murder. "To render a defendant *eligible* for the

²⁰ Section 921.141(4), F.S.; See s. 921.142(5), F.S., for provisions relating to the order of the court in capital drug trafficking cases.

²¹ Section 921.141(5), F.S.; See s. 921.142(6), F.S., for provisions relating to the automatic review by the Florida Supreme Court in capital drug trafficking cases.

²² *Hurst v. Florida*, 577 U.S. 92 (2016).

²³ *Hurst v. State*, 202 So.3d 40 (Fla. 2016), interpreting and applying *Hurst v. Florida*, 577 U.S. 92 (2016).

²⁴ *Poole v. State*, 297 So. 3d 487 (Fla. 2020), receding from *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

²⁵ *Poole v. State*, 297 So. 3d 487 (Fla. 2020).

²⁶ *Poole v. State*, 297 So. 3d 487 (Fla. 2020).

²⁷ *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020).

death penalty in a homicide case, [the Supreme Court has] indicated that the *trier of fact* must convict the defendant of murder and find one ‘aggravating circumstance’ (or its equivalent) at either the guilt or penalty phase.”²⁸

The selection decision involves determining “whether a defendant eligible for the death penalty should in fact receive that sentence.”²⁹ The selection decision is a subjective determination to be made by the court. It is not a “fact” or “element” of the offense for the fact-finder to decide.³⁰

According to the *Poole* court, the *Hurst v. State* court misinterpreted the *Hurst v. Florida* decision on this key point: the *Hurst v. Florida* decision is about death penalty *eligibility*.

Post-*Poole* if a jury unanimously finds at least one aggravating circumstance exists in a murder case, the defendant is death-eligible.

According to *Poole*, the *Hurst v. State* court had a “mistaken view” of what constitutes an *element* of an offense which is a *fact* that a jury must determine exists beyond a reasonable doubt for a defendant to be death eligible. *Hurst v. State*, therefore, mistakenly decided that the Sixth Amendment right to trial by a jury required:

- Unanimous jury findings as to all of the aggravating factors that were proven beyond a reasonable doubt;
- That the aggravating factors are sufficient³¹ to impose a death sentence;
- That the aggravating factors outweigh the mitigating factors;³² and
- A unanimous jury recommendation of a sentence of death.³³

In sum, the *Poole* court rejected the *Hurst v. State* court’s view of a capital jury’s role that goes beyond the “fact-finding” required to determine whether a defendant is death eligible.³⁴

²⁸ *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020), quoting *Tuilaepa v. California*, 512 U.S. 967, 971-972 (U.S. 1994) (emphasis added).

²⁹ *Id.*

³⁰ *Poole v. State*, 297 So. 3d 487, 504 (Fla. 2020).

³¹ [F]or purposes of complying with s. 921.141(3)(a), F.S., “sufficient aggravating circumstances” means “one or more.” See *Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) (“sufficient aggravating circumstances” means “one or more such circumstances.” For purposes of complying with s. 921.141(3)(a), F.S., “sufficient aggravating circumstances” means “one or more.” See *Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) (“sufficient aggravating circumstances” means “one or more such circumstances”). *Poole v. State*, 297 So. 3d 487, 502 (Fla. 2020).

³² “The role of the section 921.141(3)(b) selection finding is to give the defendant an opportunity for mercy if it is justified by the relevant mitigating circumstances and by the facts surrounding his crime.” *Poole v. State*, 297 So. 3d 487, 503 (Fla. 2020). See also *Rogers v. State*, 285 So.3d 872, 886 (Fla. 2019).

³³ *Hurst v. Florida* does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed. The Supreme Court in *Spaziano* “upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. And as we have also explained, the Court in *Hurst v. Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.” See *Hurst v. Florida*, 136 S. Ct. at 624. See also *Spaziano v. Florida*, 468 U.S. 447 at 464-65, (1984) holding that the Eighth Amendment does not require a jury’s favorable recommendation before a death penalty can be imposed. *Poole v. State*, 297 So. 3d 487, 505 (Fla. 2020).

³⁴ “This Court clearly erred in *Hurst v. State* by requiring that the jury make any finding beyond the section 921.141(3)(a) eligibility finding of one or more statutory aggravating circumstances. Neither *Hurst v. Florida*, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury make the section 941.121(3)(b) selection finding or that the jury recommend a sentence of death.”

Other States

Twenty-seven states have death penalty statutes, however there are only 22 states with an active death penalty. Three states have governor-issued moratoriums in place (Oregon, California, and Pennsylvania). The Delaware and Washington state courts have ruled their death penalties unconstitutional. Twenty-three states have abolished the death penalty.³⁵

Of the 22 active death penalty states, only Alabama allows a judge to impose a death sentence based upon a non-unanimous (10-2 jury vote) jury verdict for death. If the jury returns a verdict of death, “the court shall sentence the defendant to death.”³⁶

Most states with the death penalty impose a life sentence if the jury makes a non-unanimous death recommendation. However, in some instances, if the jury cannot reach a unanimous decision:

- 5 states provide for the state to have another opportunity at a new sentencing hearing with a different jury (Alabama, Arizona, California, Kentucky, and Nevada); and
- Indiana and Missouri juries are considered to be “hung juries,” and the judge becomes the decision-maker.
- In Montana, the judge sentences based on a jury finding of aggravating factors.
- In Nebraska, a panel of judges decides the sentence and if the panel is non-unanimous, the sentence must be for life.³⁷

III. Effect of Proposed Changes:

The bill amends ss. 921.141 and 921.142, F.S., to clarify the judge and the jury’s role in death penalty sentencing proceedings.

Specifically, the bill amends ss. 921.141 and 921.142, F.S., by:

- Deleting current law requiring a unanimous jury recommendation for the imposition of the death penalty and inserting a recommendation of at least 8 jurors recommending the death penalty.
- Providing that if fewer than 8 jurors vote to recommend the death penalty, the jury’s sentencing recommendation must be for life without the possibility of parole and the court is bound by that recommendation.
- Providing that if the jury recommends a sentence of death, the court may impose the recommended sentence of death, or a sentence of life imprisonment without the possibility of parole.

³⁵ States with the Death Penalty, Death Penalty Bans, and Death Penalty Moratoriums, Britannica ProCon.org, available at <https://deathpenalty.procon.org/states-with-the-death-penalty-and-states-with-death-penalty-bans/>; (last visited February 24, 2023); Life Verdict or Hung Jury? How States Treat Non-Unanimous Jury Votes in Capital-Sentencing Proceedings, Death Penalty Information Center, available at <https://deathpenaltyinfo.org/stories/life-verdict-or-hung-jury-how-states-treat-non-unanimous-jury-votes-in-capital-sentencing-proceedings> (last visited February 24, 2023); and Map: These are the states that allow the death penalty, Joe Murphy, NBC News, October 27, 2021, available at: <https://www.nbcnews.com/news/all/map-these-are-states-allow-death-penalty-n1282556> (last visited February 24, 2023).

³⁶ Sections 13A-5-46, and 13A-5-47, A.C.

³⁷ See supra note 36.

- Specifying that the death penalty may only be imposed if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.
- The court must enter a written order whether the sentence is for death or for life without the possibility of parole and the court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.

The bill becomes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be an indeterminate fiscal impact on the criminal trial courts, appellate courts, prosecutors, defense attorneys, and appellate counsel as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

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

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

CS/CS by Rules on March 22, 2023:

The committee substitute:

- Removes language providing that if at least 10 jurors recommend a sentence of death, the court must impose the recommended sentence of death.
- Removes language providing that if either 8 or 9 jurors recommend a sentence of death, the court may sentence the defendant to life or death.
- Provides that if fewer than 8 jurors vote to recommend a death sentence, the jury's recommendation must be for life imprisonment without the possibility of parole, and the court must impose the life sentence.
- Provides that if at least 8 jurors recommend a sentence of death, the court may impose the recommended sentence of death if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt, or the court may impose a sentence of life imprisonment without the possibility of parole.

CS by Criminal Justice on March 6, 2023:

The committee substitute:

- Keeps the necessary jury vote count for the court to impose the death sentence to at least 8 jurors voting for death but refines the court's sentencing options related to the jury vote count.
- Provides that if at least 10 jurors recommend a sentence of death, the court must impose the recommended sentence of death, if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.
- Provides that if either 8 or 9 jurors recommend a sentence of death, the court may sentence the defendant to life or death, but may only render a sentence of death if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.
- Additionally, the court must enter a written order whether the sentence is for death or for life without the possibility of parole and the court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2023	.	
	.	
	.	
	.	

The Committee on Rules (Ingoglia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 65 - 149
and insert:

2. Death, and at least eight jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury



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12 unanimously finds at least one aggravating factor beyond a
13 reasonable doubt.

14 (b) If the defendant waived his or her right to a
15 sentencing proceeding by a jury, the court, after considering
16 all aggravating factors and mitigating circumstances, may impose
17 a sentence of life imprisonment without the possibility of
18 parole or a sentence of death. The court may impose a sentence
19 of death only if the court finds that at least one aggravating
20 factor has been proven to exist beyond a reasonable doubt.

21 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
22 IMPRISONMENT OR DEATH.—In each case in which the court imposes a
23 sentence of life imprisonment without the possibility of parole
24 or death, the court shall, considering the records of the trial
25 and the sentencing proceedings, enter a written order addressing
26 the aggravating factors set forth in subsection (6) found to
27 exist, the mitigating circumstances in subsection (7) reasonably
28 established by the evidence, whether there are sufficient
29 aggravating factors to warrant the death penalty, and whether
30 the aggravating factors outweigh the mitigating circumstances
31 reasonably established by the evidence. The court must include
32 in its written order the reasons for not accepting the jury's
33 recommended sentence, if applicable. If the court does not issue
34 its order requiring the death sentence within 30 days after the
35 rendition of the judgment and sentence, the court shall impose a
36 sentence of life imprisonment without the possibility of parole
37 in accordance with s. 775.082.

38 Section 2. Subsections (3), (4), and (5) of section
39 921.142, Florida Statutes, are amended to read:

40 921.142 Sentence of death or life imprisonment for capital



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41 drug trafficking felonies; further proceedings to determine
42 sentence.—

43 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This
44 subsection applies only if the defendant has not waived his or
45 her right to a sentencing proceeding by a jury.

46 (a) After hearing all of the evidence presented regarding
47 aggravating factors and mitigating circumstances, the jury shall
48 deliberate and determine if the state has proven, beyond a
49 reasonable doubt, the existence of at least one aggravating
50 factor set forth in subsection (7).

51 (b) The jury shall return findings identifying each
52 aggravating factor found to exist. A finding that an aggravating
53 factor exists must be unanimous. If the jury:

54 1. Does not unanimously find at least one aggravating
55 factor, the defendant is ineligible for a sentence of death.

56 2. Unanimously finds at least one aggravating factor, the
57 defendant is eligible for a sentence of death and the jury shall
58 make a recommendation to the court as to whether the defendant
59 shall be sentenced to life imprisonment without the possibility
60 of parole or to death. The recommendation shall be based on a
61 weighing of all of the following:

62 a. Whether sufficient aggravating factors exist.

63 b. Whether aggravating factors exist which outweigh the
64 mitigating circumstances found to exist.

65 c. Based on the considerations in sub-subparagraphs a. and
66 b., whether the defendant should be sentenced to life
67 imprisonment without the possibility of parole or to death.

68 (c) If at least eight jurors determine ~~a unanimous jury~~
69 ~~determines~~ that the defendant should be sentenced to death, the



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jury's recommendation to the court must ~~shall~~ be a sentence of death. If fewer than eight jurors ~~a unanimous jury does not~~ determine that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of life imprisonment without the possibility of parole.

(4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence of life.

2. Death, and at least eight jurors recommend a

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

And the title is amended as follows:

Delete lines 10 - 14

and insert:

court to impose the recommended sentence of life imprisonment without the possibility of parole if fewer than eight jurors recommend a sentence of death; authorizing the court to impose a sentence of life imprisonment without the possibility of parole or a sentence of death if at least eight jurors

By the Committee on Criminal Justice; and Senators Ingoglia and Martin

591-02323A-23

2023450c1

A bill to be entitled

An act relating to the death penalty; amending ss. 921.141 and 921.142, F.S.; requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of death to the court; requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of life imprisonment without the possibility of parole to the court; requiring the court to impose the recommended sentence of death if a certain number of jurors recommend a sentence of death; authorizing the court to impose a sentence of life imprisonment without the possibility of parole or a sentence of death if a certain number of jurors recommend a sentence of death; requiring the court to include in its written order the reasons for not accepting the jury's recommended sentence, if applicable; specifying that the court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 921.141, Florida Statutes, are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.-

(2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.-This

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

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subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

(b) The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If at least eight jurors determine ~~a unanimous jury determines~~ that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of death. If fewer than eight jurors ~~a unanimous jury does not~~ determine that the defendant should be sentenced to death, the

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

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jury's recommendation to the court ~~must shall~~ be a sentence of life imprisonment without the possibility of parole.

(3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence of life.

2. Death, and if at least ten jurors recommend a sentence of death, the court must impose the recommended sentence of death. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

3. Death, and either eight or nine jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.

(4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—In each case in which the court imposes a

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sentence of life imprisonment without the possibility of parole or death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (6) found to exist, the mitigating circumstances in subsection (7) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. The court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

Section 2. Subsections (3), (4), and (5) of section 921.142, Florida Statutes, are amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (7).

(b) The jury shall return findings identifying each

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aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If at least eight jurors determine a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of death. If fewer than eight jurors a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of life imprisonment without the possibility of parole.

(4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence of life.

2. Death, and if at least ten jurors recommend a sentence of death, the court must impose the recommended sentence of

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death. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

3. Death, and either eight or nine jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

(b) If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds at least one aggravating factor has been proven to exist beyond a reasonable doubt.

(5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—In each case in which the court imposes a sentence of life imprisonment without the possibility of parole or death sentence, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (7) found to exist, the mitigating circumstances in subsection (8) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating

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175 circumstances reasonably established by the evidence. The court
176 must include in its written order the reasons for not accepting
177 the jury's recommended sentence, if applicable. If the court
178 does not issue its order requiring the death sentence within 30
179 days after the rendition of the judgment and sentence, the court
180 shall impose a sentence of life imprisonment without the
181 possibility of parole in accordance with s. 775.082.

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

The Florida Senate

APPEARANCE RECORD

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3/22/23

Meeting Date

Rules

Committee

450

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Christie Arnold

Phone

407 312 5374

Address

201 W Park Ave

Email

carhold@flaccb.org

Street

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing: Florida

Conference of Catholic
Bishops

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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Bill Number or Topic

RULES

Committee

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Amendment Barcode (if applicable)

Name

AARON WAYT "WAIT" FL ASSN OF CRIMINAL
DEFENSE LAWYERS

Phone

(407) 435-3194

Address

553 E TENN ST

Email

AARON@DONPUMPHREY.COM

Street

TLH

FL

32308

City

State

Zip

Speaking:

☐ For



☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



☒ I am appearing without
compensation or sponsorship.



☐ I am a registered lobbyist,
representing:



☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

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Bill Number or Topic

03/22/23

Meeting Date

Rules

Committee

Amendment Barcode (if applicable)

Name Mayor Rich Walker

Phone 913 390 1453

Address 10590 NW 62nd Ct
Street

Email swalker@cityofjacksonville.org

Parkland FL 33076
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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412K

3-22-23

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450

Meeting Date

Bill Number or Topic

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Rules

Committee

Amendment Barcode (if applicable)

Name Barbara DeVane

Phone 850-251-4280

Address 625 E. Brevard St

Email barbadevane1@yahoo.com

Tallahassee FL 32308
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

FL NOW

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

The Florida Senate

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3-22-23

Meeting Date

Rules

Committee

480

Bill Number or Topic

Amendment Barcode (if applicable)

Name Pastor Marcus R. McCoy, Jr.

Phone (386) 547-1379

Address 596 W. Church St
Street

Email marcus@equal-ground.com

Orlando
City

FL
State

32805
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Equal Ground

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

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CS/SB 450
Bill Number or Topic

Amendment Barcode (if applicable)

2/22/23
Meeting Date
Rules
Committee

Name Buddy Jacobs - General Counsel Phone 904-753 5522

Address FLA Prosecuting Attys Assoc Email Buddy@JSWFLwida.com
Street
Fernandine Bch FL 32034
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FLA. Prosecuting Attys Assoc.

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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Bill Number or Topic

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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Rules

Committee

SB 450

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Cherrie Crim

Phone

214-679-8502

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
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sponsored by:

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The Florida Senate

APPEARANCE RECORD

3/22/23

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RULES

Committee

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Bill Number or Topic

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Amendment Barcode (if applicable)

Name

ASHLEI RICHARDSON SON FL PUBLIC DEFENDERS ASSOCIATION

Phone

(850) 488-6850

Address

103 N GADSDEN ST

Email

Street

TLH

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:


☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

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 Rules

BILL: SM 848

INTRODUCER: Senator Powell and Brodeur

SUBJECT: People of Iran

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Proctor</u>	<u>MS</u>	Favorable
2.	<u>Brown</u>	<u>Twogood</u>	<u>RC</u>	Favorable

I. Summary:

SM 848 provides a memorial to urge the Congress of the United States to stand in support of the fight for freedom of the people of Iran.

The memorial requires the Secretary of State to dispatch copies to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.

II. Present Situation:

Iran

Political Structure

The Islamic Republic of Iran is an authoritarian theocratic republic with a Shia Islamic political regime.¹ The supreme leader as head of state is appointed by an Assembly of Experts, Iran's parliament.² Second highest-ranking to the supreme leader is the president, who is elected by popular vote.³ An appointed Guardian Council (council) has as its official duties the vetting and disqualifying of candidates for state elections, including presidential candidates; supervising of

¹ Bureau of Democracy, Human Rights, and Labor, United States Dep't of State, *2021 Country Reports on Human Rights Practices: Iran*, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/iran> (last visited Mar. 7, 2023).

² *Id.*

³ Freedom House, *Freedom in the World 2022: Iran, Supreme Leader Ali Khamenei has served since 1989*, available at <https://freedomhouse.org/country/iran/freedom-world/2022> (last visited Mar. 8, 2023).

elections; and vetoing or demanding change to legislation.⁴ The supreme leader, who has life tenure, appoints the head of the judiciary, the heads of state broadcast media, and the Expediency Council, which mediates disputes between a council and the assembly.⁵ In June 2021, the head of the judiciary won the presidency, with help from compromised elections.⁶ The president also appoints a cabinet that must be confirmed by the assembly.⁷

While the assembly has the ability to select and dismiss the supreme leader, its authority is weakened by the powers of the unelected council. The council is composed of 12 members, six of whom are Islamic clerics appointed by the supreme leader and six of whom are lawyers, appointed by the chief justice.⁸ Pursuant to constitutional edict, the supreme leader appoints the council's chief justice, thereby solidifying control.⁹

In the recent 2021 elections, the council rejected 7,000 candidates from running for office, effectively eliminating most moderates and centrists from the ballot.¹⁰

No woman candidate has been allowed to run for President.¹¹

Human Rights Abuses

The international community has heavily criticized Iranian officials for perpetrating human rights abuses and establishing and endorsing a questionable rule of law.¹² Human rights lawyers, anti-corruption activists, and journalists are routinely arrested, imprisoned, and lashed.¹³

Specific abuses carried out by the government and its agents are:

- Credible reports of child labor and other forms of human trafficking;
- Executions without due process;
- Forced disappearances;
- Torture;
- Arbitrary arrest or detention;
- Harsh and life-threatening prison conditions;
- Imprisoning of citizens as political prisoners;
- Unlawful interference with privacy;
- Severe restrictions on religious freedoms;
- Punishment of relatives for actions of a family member;
- Harsh restrictions and censorship on free expression and media, including blocking of internet access; and

⁴ Bureau of Democracy, Human Rights, and Labor, *supra* note 1.

⁵ Freedom House, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ United Against Nuclear Iran, *Organizational Chart of the Islamic Republic of Iran*, available at <https://www.unitedagainstanucleariran.com/government-institution/guardian-council> (last visited Mar. 7, 2023).

⁹ *Id.*

¹⁰ The New York Times, *Iran's Stacked Election is Expected to Produce a Hard-Line Parliament*, available at <https://www.nytimes.com/2020/02/20/world/middleeast/iran-2020-elections.html> (last visited Mar. 8, 2023).

¹¹ Freedom House, *supra* note 3.

¹² *Id.*

¹³ *Id.*

- Attacks on or lack of protection for women, minorities, and persons of diverse groups.¹⁴

Likewise, citizens are unable to peaceably protest without fear of a violent government reprisal. Also prohibited is freedom of association or participation in groups considered a threat to the regime, including any group that criticizes the government. As can be concluded from the political structure and lack of checks and balances and transparency, citizens are disenfranchised from peacefully, and through free and fair elections, changing their government.¹⁵

Protests

On September 13, 2022, Iran's morality police arrested Mahsa Amini, a 22-year old, for improperly wearing the hijab, a required head scarf in Iran.¹⁶ Within 3 days, she was dead.¹⁷ Although officials declared her death an "unfortunate incident" due to a pre-existing condition, reports emerged that she had been brutally beaten and her skull fractured, leaving her in a coma from which she did not recover.¹⁸

Her death while in custody sparked protests throughout the country that continue today. Across Iran women led these protests, chanting "women, life, freedom"; tearing off their hijabs; and publicly cutting their hair.¹⁹ These predominantly peaceable protests have been met with swift and deadly governmental crackdown. Specifically, observers have documented the use of excessive and lethal force on protestors with shotguns, assault rifles, and handguns.²⁰ Security forces round up activists on dubious charges, and judges issue death sentences in wholly unfair trials. As of November 14, 2022, investigations continue in the reported deaths of at least 341 protestors, including 52 children. These numbers continue to climb. To date, estimates of imprisonments from the recent protests are at more than 19,600 protestors.²¹

¹⁴ Bureau of Democracy, Human Rights, and Labor, *supra* note 1.

¹⁵ *Id.*

¹⁶ Maggie McGrath, Forbes, *Mahsa Amini: The Spark That Ignited a Woman-Led Revolution* (Dec. 16, 2022), available at <https://www.forbes.com/sites/maggiemcgrath/2022/12/06/mahsa-amini-the-spark-that-ignited-a-women-led-revolution/?sh=5c99ca325c3d> (last visited Mar. 9 2023).

¹⁷ *Id.*

¹⁸ Asia News, *Tehran, police: Mahsa Amini's death 'unfortunate accident'. Protest Spreads*, available at <https://www.asianews.it/news-en/Tehran,-police:-Mahsa-Aminis-death-unfortunate-accident.-Protest-spreads-56685.html> (last visited Mar. 9, 2023); Associated Press News, *Mahsa Amini is the Latest Victim of the Misogynist Mullahs' Regime in Iran* (Sept. 19, 2022), available at <https://apnews.com/article/middle-east-iran-france-arrests-d2885fc65f51a6ee8758791e192c6992> (last visited Mar. 9, 2023).

¹⁹ McGrath, *supra* note 16.

²⁰ Human Rights Watch, *Iran: Brute Force Used in Crackdown on Dissent* (Jan. 12, 2023), available at <https://www.hrw.org/news/2023/01/12/iran-brute-force-used-crackdown-dissent> (last visited Mar. 9, 2023).

²¹ National Public Radio, *Iran acknowledges it has detained 'tens of thousands' in recent protests* (Feb. 5, 2023), available at <https://www.npr.org/2023/02/05/1154584532/iran-acknowledges-it-has-detained-tens-of-thousands-in-recent-protests> (last visited Mar. 9, 2023).

United Nations Actions On Iran

The Commission on the Status of Women

The UN Commission on the Status of Women, (commission) composed of 45 member states, was established in 1946. The commission promotes women's rights, documents global inequities, and shapes standards on equality and the empowerment of women.²²

In response to Iran's brutal crackdown on the protestors, the UN, led by the United States, voted to adopt a resolution to remove Iran for the remainder of its four-year term from the commission.²³ Iran is the first member state to be removed.²⁴

The Joint Comprehensive Plan of Action

In 2015, Iran and several world powers, including the U.S., entered into an accord, the Joint Comprehensive Plan of Action (JCPOA).²⁵ Countries to the accord are the five permanent members of the UN Security Council, China, France, Russia, the United Kingdom, and the United States.²⁶ The JCPOA attached significant restrictions to Iran's nuclear program in exchange for relief on sanctions. The U.S. withdrew from the accord in 2018 and Iran began violating accord provisions a year later.²⁷ The UN is urgently calling for continued talks amongst JCPOA signatories in light of reports that Iran has been enriching uranium to weapons grade material.²⁸

Memorial

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.

III. Effect of Proposed Changes:

SM 848 provides a memorial to urge the Congress of the United States to stand in support of the fight for freedom of the people of Iran.

The memorial requires the Secretary of State to dispatch copies to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

²² United Nations News, *Iran Removed from UN Commission on the Status of Women* (Dec. 14, 2022), available at <https://news.un.org/en/story/2022/12/1131722> (last visited Mar. 9, 2023).

²³ *Id.*

²⁴ Caroline Kapp, Council on Foreign Relations, *Women This Week: Iran Becomes First Member State Ever Expelled from UN Women* (Dec. 16, 2022), available at <https://www.cfr.org/blog/women-week-iran-becomes-first-member-state-ever-expelled-un-women> (last visited Mar. 9, 2023).

²⁵ Kali Robinson, Council on Foreign Relations, *What is the Iran Nuclear Deal?*, available at <https://www.cfr.org/background/what-iran-nuclear-deal> (last visited Mar. 9, 2023).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.

By Senator Powell

24-02004-23

2023848__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to stand in support of the fight for
freedom of the people of Iran.

WHEREAS, the people of Iran have the right to live in a
safe, democratic country that is free of religious persecution
and extremism, and

WHEREAS, the heroism displayed by the people of Iran is
inspirational, and those protesting on the streets deserve our
full attention and support as they call for women, life, and
freedom, and

WHEREAS, the people of Iran are calling for a new
government that is democratically elected, free, and where the
people have the right to self-determination, and

WHEREAS, according to the United States-based human rights
monitor Human Rights Activists News Agency, at least 469 people,
including 63 children and 32 women, have been killed since
demonstrations began in Iran on September 17, 2022, and
thousands of people have been arrested, and

WHEREAS, the protests began after the brutal murder of
Mahsa "Jina" Amini by the morality police for not wearing her
hijab correctly, and

WHEREAS, the activism of millions worldwide has resulted in
the Islamic Republic of Iran's removal from the United Nations
Women's Commission, and an independent investigation has been
launched by the United Nations into the ongoing deadly violence
against protesters in Iran, and

WHEREAS, the United States is encouraged to stop all

Page 1 of 2

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

24-02004-23

2023848__

discussions on the Iran nuclear agreement, formally known as the
Joint Comprehensive Plan of Action, to continue to sanction
members of the Islamic Republic of Iran and the Islamic
Revolutionary Guard Corps, and to continue to amplify the voices
and the will of the people of Iran by maintaining Internet
access so that Iranians may continue to expose the injustices of
their daily lives, and

WHEREAS, federal representatives should continue to push
the United Nations' investigative mechanism for crimes against
humanity committed by Iran and demand the end of unlawful
imprisonment and execution in Iran, and

WHEREAS, as the fearless people of Iran continue to take to
the streets, the call for unity among all Americans in support
of the people of Iran should continue to be amplified, NOW,
THEREFORE,

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

That the Congress of the United States is urged to stand in
support of the fight for freedom of the people of Iran.

BE IT FURTHER RESOLVED that that the Secretary of State
dispatch copies of this memorial to the President of the United
States, the President of the United States Senate, the Speaker
of the United States House of Representatives, and each member
of the Florida delegation to the United States Congress.

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



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 14, 2023

I respectfully request that **Senate Memorial #848**, relating to **People of Iran** be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Bobby Powell", written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 24

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 Rules

BILL: SM 1036

INTRODUCER: Senator Wright

SUBJECT: Florida National Guard

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Proctor</u>	<u>MS</u>	Favorable
2.	<u>Brown</u>	<u>Twogood</u>	<u>RC</u>	Favorable

I. Summary:

SM 1036 is a memorial to the Congress of the United States, urging Congress to impel the United States National Guard Bureau to review resource allocations to the Florida National Guard and allow an increase to the state's force structure.

The memorial requires the Secretary of State to dispatch copies to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.

II. Present Situation:

National Guard and the National Guard Bureau

The National Defense Act of 1916¹ established the National Guard Bureau as a separate unit of the militia division of the federal government.² In 1948, the Secretary of Defense of the United States Department of Defense issued an order designating the National Guard Bureau as a joint bureau of the Departments of the Army and Air Force.³ Today, the National Guard Bureau oversees each of the 54 National Guards in U.S. states and territories.⁴

¹ National Defense Act of 1916, Pub. L. 64-85 (June 3, 1916).

² National Archives, *Guide to Federal Records, Records of the National Guard Bureau (NGB)*, available at <https://www.archives.gov/research/guide-fed-records/groups/168.html> (last visited Mar. 2, 2023).

³ *Id.* Section. 250.01(13), F.S.

⁴ Air Force, *Air National Guard*, available at <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104546/air-national-guard/> (last visited Mar. 2, 2023).

The National Guard is unique among militia in that it serves the country in both the local community and overseas. The dual mission of a Guard member means that each member serves through both the National Guard of the state and through the U.S. Army or the U.S. Air Force.⁵ The collective membership of each National Guard is designated as its force structure. The force structure of each National Guard is allocated by the National Guard Bureau.⁶

Florida National Guard

The Florida National Guard dates back to 1565, when Spanish founders of St. Augustine organized a company of citizen-soldiers to protect the local community.⁷ A member of the Florida National Guard serves either in the state Army National Guard or in the state Air National Guard, considered a reserve component of each of those armed forces.⁸ Overseeing the National Guard as a federally-recognized officer, the adjutant general is appointed by the Governor and subject to Senate confirmation.⁹ The adjutant general, responsible for training and operations of the National Guard, must have served in the Florida National Guard for the preceding 5 years and attained the rank of colonel or higher.¹⁰ Ranked above adjutant general is the Governor, who serves as commander-in-chief of all militia in the state.¹¹

Recent Duties of the Florida National Guard

In the last two years, Florida National Guard members have been mobilized to multiple overseas deployments and assigned to assist and respond to:

- The COVID-19 recovery phase;
- Natural disasters including response to Tropical Storm Nicole, Hurricane Ian, and the Chipola Fire;
- Migration support; and
- State corrections support.¹²

In 2022 alone, natural disasters necessitating a Florida National Guard response totaled nine, requiring an aggregate activation of 9,928 Florida National Guard members.¹³

Since September 11, 2001, more than 25,000 Florida National Guard members have been mobilized to respond to out-of-state and overseas operations.¹⁴

⁵ *Id.*

⁶ 10 U.S.C. s. 10503(1).

⁷ Dep't of Military Affairs, *Home*, available at <https://dma.myflorida.com/> (last visited Mar. 2, 2023).

⁸ Section 250.01(3), (6), and (13), F.S.

⁹ Section 250.10(1), F.S.

¹⁰ *Id.*

¹¹ Section 250.06(1), F.S.

¹² Major General John Haas, Florida National Guard, Dep't of Military Affairs, PowerPoint, *FLNG Overview Brief*, pp. 7-9 (Feb. 21, 2023) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

¹³ Dep't of Military Affairs, *2022 Agency Legislative Bill Analysis, SM 1036* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

¹⁴ Major General Haas, *supra* note 12 at 5.

Demographics

The force structure of the Florida National Guard is comprised of more than 12,000 members¹⁵, while Florida is the third most-populous state, estimated at more than 22 million residents.¹⁶ This force structure in proportion to the state population ranks Florida 53rd out of the 54 states and territories of the United States that have a National Guard.¹⁷ In the past 30 years, the state's population doubled, while the force structure of the National Guard actually declined in number.¹⁸ The current ratio of the Florida National Guard to state population is 1.7 Florida National Guard members to 100,000 residents of Florida, while the national average ratio is 2.3.¹⁹ Along with the state's low positioning of Florida National Guard members to current population, Florida is expected to increase in population by five million over the next 10 years.²⁰ Moreover, Florida ranks as the 4th most disaster-prone state nationally.²¹

Other states similarly sized to Florida, Texas and Ohio, have a force allocation of almost 18,000 members to Florida's 12,000. Meanwhile, the average number of days the Florida National Guard activated a member in the last 3 years, 91, far surpasses the national average of 39 days.²²

Congressional Support for Increased Funding and Allocation

On March 24, 2021, members of the Florida Congressional Delegation sent a written request to both the Secretary of the United States Department of Defense and the Chief of the National Guard Bureau.²³ In their request, Congress members asked for more equitable funding and resource allocation for the Florida National Guard. These members of Congress based their request on the disproportionality between the state population compared to the size of the structure force, along with the state's unique vulnerability to continuing disasters.²⁴ Specifically, Congressional members specified that if force structure were proportional, the Florida National Guard would have 21,000, rather than 12,000 Guard members.²⁵

On June 1, 2021, members of Congress representing California, Texas, and Florida sent a written request to the Secretary of Defense for an increased allocation for the National Guard particular to these states.²⁶ In support, Congressional members cite that California, Texas, and Florida rank at the lowest level of structure force to population and at the top for highest percentage of largest

¹⁵ *Id.* at 4.

¹⁶ World Population Review, *Florida Population 2023*, available at <https://worldpopulationreview.com/states/florida-population> (last visited Mar. 2, 2023).

¹⁷ Major General Haas, *supra* note 12 at 10.

¹⁸ *Id.*

¹⁹ Dep't of Military Affairs, *supra* note 13.

²⁰ Major General Haas, *supra* note 12.

²¹ *Id.*

²² Dep't of Military Affairs, *supra* note 13.

²³ Letter from members of the Florida Congressional Delegation to Secretary Lloyd J. Austin III, U.S. Dep't of Defense and Chief Daniel R. Hokanson, National Guard Bureau, March 24, 2021 (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Letter from members of the California, Texas, and Florida Congressional Delegations to Secretary Lloyd Austin, U.S. Dep't of Defense, June 1, 2021 (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

counties in the United States, and that these states expect to receive a disproportionate future increase in migration.²⁷

Memorial

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.

III. Effect of Proposed Changes:

The bill is a memorial to the Congress of the United States, urging Congress to impel the United States National Guard Bureau to review resource allocations to the Florida National Guard and allow an increase to the state's force structure.

The memorial requires the Secretary of State to dispatch copies to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁷ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because the bill is a memorial, there is no mandated fiscal impact. However, should the state receive an increase in Florida National Guard members, the state may incur an indeterminate initial cost of activating additional Florida National Guard members based on training and equipment costs.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.

²⁸ Dep't of Military Affairs, *supra* note 13.

By Senator Wright

8-00952-23

20231036__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to impel the United States National Guard Bureau to examine the resource allocations of the Florida National Guard and allow an increase in its force structure.

WHEREAS, the number of soldiers and airmen allocated to each state's National Guard, known as its "force structure," is determined by the United States National Guard Bureau in Washington, D.C., and

WHEREAS, with approximately 21 million residents, Florida is the third most populous state in the nation but has a force structure of just over 12,000 Guardsmen, and its ratio of one Guardsman for every 1,833 residents ranks 53rd among the 54 states and territories of the United States which have a National Guard component, and

WHEREAS, due to the unprecedented events of 2020 and 2021, including COVID-19 response in addition to natural disasters and overseas deployments, the Florida National Guard expended the same number of workdays within 18 months as it had expended within the previous 20 years, and

WHEREAS, the Florida National Guard continues to meet its mission goals; however, the shortage of these invaluable "citizen soldiers," combined with the state's growing population and increased need for National Guard activation and response, has resulted in the repeated deployment of the same soldiers, which ultimately leads to excessive stress and fatigue and negatively impacts recruitment, retention, and readiness, and

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WHEREAS, the United States National Guard Bureau's report, "Impact of U.S. Population Trends on National Guard Force Structure," released to Congress in April of 2021, acknowledges the aforementioned concerns within Florida and other regions, stating, "...the National Guard may need to evaluate re-allocating mission sets to other geographic areas to keep pace with changing demographics across the country," NOW, THEREFORE,

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

That the Florida Legislature respectfully urges the United States Congress to impel the United States National Guard Bureau to examine the resource allocations of the Florida National Guard and allow an increase in its force structure.

BE IT FURTHER RESOLVED that the Secretary of State dispatch copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1210

INTRODUCER: Senator Burgess

SUBJECT: Public Records/Human Trafficking Victims

DATE: March 21, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	Favorable
2. <u>Tuszynski</u>	<u>Twogood</u>	<u>RC</u>	Favorable

I. Summary:

SB 1210 amends s. 943.0583, F.S., expanding the public records exemption authorizing human trafficking victims to expunge a criminal history record related to offenses listed under the habitual violent felony offender designation unless a victim was found guilty of or entered a plea of guilty or nolo contendere to such an offense.

The bill also creates a new exemption from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for any petition filed by a human trafficking victim to expunge a criminal history record and all pleadings and documents related to the petition.

The bill makes findings that the expansion of the exemption and the new exemption from public records disclosure are each a public necessity as required by the State Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The expansion of the exemption and the new exemption in the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028 in accordance with s. 119.15, F.S., unless the Legislature reviews and renews the exemptions before that date. If the expansion of the exemption related to the human trafficking victim expunction is not saved from repeal, the provision will revert to the version as it exists on June 30, 2023, except that any amendments to the subsection must be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the expanded exemption which expire.

There is no anticipated fiscal impact on state, county or municipal governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2022-2024)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery.²⁷ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 787.06(1)(a), F.S.

borders of the United States or smuggled across international borders worldwide.²⁸ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.²⁹ Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.³⁰ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³¹

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,³² purchasing, patronizing, procuring, or obtaining³³ another person for the purpose of exploitation of that person.³⁴ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.³⁵ Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;³⁶
- Labor or services of any child under the age of 18 who is an unauthorized alien³⁷ commits a first degree felony;³⁸
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;³⁹
- Commercial sexual activity⁴⁰ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴¹ or

²⁸ *Id.*

²⁹ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited March 7, 2023).

³⁰ *Id.*

³¹ *Id.*

³² Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

³³ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

³⁴ Section 787.06(2)(d), F.S.

³⁵ Section 787.06(3), F.S.

³⁶ Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

³⁷ Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

³⁸ Section 787.06(3)(c)1., F.S.

³⁹ Section 787.06(3)(e)1., F.S.

⁴⁰ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁴¹ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective⁴² or mentally incapacitated⁴³ is involved commits a life felony.⁴⁴

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.⁴⁵ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.⁴⁶

Florida is ranked the third highest state of reported human trafficking cases in the United States.⁴⁷ In 2021, reports of commercially exploited children to the Florida Abuse Hotline remained relatively stable, increasing from 3,181 reports in 2020 to 3,182 reports in 2021.⁴⁸

Public Records Exemption relating to Human Trafficking

In part, current law provides a public record exemption for criminal intelligence⁴⁹ and criminal investigative information⁵⁰ including:

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity; and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.⁵¹

⁴² Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁴³ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁴⁴ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in s. 775.082(3)(a)6., F.S., s. 775.083, F.S., or s. 775.084, F.S.

⁴⁵ Section 787.06(8)(b), F.S.

⁴⁶ Section 787.06(9), F.S.

⁴⁷ Florida Alliance to End Human Trafficking, *The Issue*, available at <https://floridaallianceendht.com/the-issue/> (last visited March 7, 2023).

⁴⁸ The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2022, p. 2, July 2022, available at <https://oppaga.fl.gov/Documents/Reports/22-05.pdf> (last visited March 7, 2023).

⁴⁹ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁵⁰ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

⁵¹ Section 119.071(2)(h)1., F.S.

Human Trafficking Victim Expunction

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction⁵² of a criminal history record resulting from his or her arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking.⁵³

For purposes of human trafficking victim expunction, “victim of human trafficking” means a person subjected to coercion⁵⁴ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.⁵⁵

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme and must not be one of the following offenses under s. 775.084(1)(b)1., related to the designation as a “habitual violent felony offender”, including:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary; or
- Aggravated stalking.⁵⁶

⁵² When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained. *See* s. 943.045(16), F.S.

⁵³ Section 943.0583(3), F.S.

⁵⁴ Section 787.06, F.S., defines “coercion” as “1. Using or threatening to use physical force against any person; 2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority against his or her will; 3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4. Destroying, concealing removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5. Causing or threatening to cause financial harm to any person; 6. Enticing or luring any person by fraud or deceit; or 7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.”

⁵⁵ Section 943.0583(1)(c), F.S.

⁵⁶ Section 943.0583(3), F.S. This subsection provides that expunction is not permitted if the offense is related to an offense enumerated in s. 775.084(1)(b)1., F.S., related to habitual violent felony offenders.

The human trafficking victim is eligible to receive the expunction regardless of the disposition of the arrest or of any charges unless the criminal history record is related to one of the above-listed offenses.

The court with original jurisdiction over the crime that the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.⁵⁷ A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.⁵⁸ The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.⁵⁹

In contrast to other expunctions made under s. 943.0585, F.S., a court is required to treat a petition seeking to expunge more than one eligible case as a single petition.⁶⁰ Florida's clerks of court are prohibited from charging a filing fee, service charge, or copy fee or any other charge for a petition for a human trafficking victim expunction.⁶¹

When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.⁶² A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.⁶³ The criminal history record that has been expunged is considered confidential and exempt⁶⁴ from public records requirements.⁶⁵

⁵⁷ Section 943.0583(2), F.S.

⁵⁸ Section 943.0583(4), F.S.

⁵⁹ Section 943.0583(6), F.S.

⁶⁰ Section 943.0583(2), F.S.

⁶¹ Section 943.0583(2), F.S.

⁶² Section 943.045(16), F.S.

⁶³ Section 943.0583(8)(b), F.S.

⁶⁴ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute. *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004). Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

⁶⁵ Section 119.071(2)(h), F.S.

Current law also provides that criminal intelligence⁶⁶ and criminal investigative information⁶⁷ is confidential and exempt from public records requirements. Such information includes:⁶⁸

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;⁶⁹
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;⁷⁰ and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.⁷¹

Florida law does not currently provide a public records exemption for a human trafficking victim's petition and any accompanying documents for expunction of his or her criminal history record resulting from an offense committed while he or she was a victim of human trafficking.

III. Effect of Proposed Changes:

The bill amends s. 943.0583, F.S., expanding the application of the human trafficking victim expunction provision. A victim of human trafficking will now be authorized to expunge a criminal history record related to any offense listed in s. 775.084(1)(b)1., F.S., unless a victim was found guilty of or entered a plea of guilty or nolo contendere to such an offense. As a result, a victim will now be able to obtain an expunction for an offense related to the designation as a "habitual violent felony offender" when he or she is arrested for such an offense but charges are not filed by the state attorney or a no information is filed, or when the victim is found not guilty by a judge or a jury.

The bill provides that the expansion of the public records exemption related to expunging certain records that are related to offenses listed in s. 775.084(1)(b)1., F.S., is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless the Legislature reviews and renews the expansion of the exemption before that date. If the expansion is not saved, the subsection will revert to the version in existence at June 30, 2023, except that any amendments to this subsection other than by this act shall be preserved and continued to operate to the extent that they are not dependent upon the portions of this subsection that expire.

The bill amends s. 943.0583, F.S., establishing that any petition filed by a human trafficking victim to expunge a criminal history record and all pleadings and all related documents are confidential and exempt from public records disclosure requirements. The bill provides that the exemption related to the petition and all pleadings and documents related to the expunction

⁶⁶ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁶⁷ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

⁶⁸ Ch. 2015-146 L.O.F.

⁶⁹ See s. 787.06(3)(a), F.S.

⁷⁰ See s. 787.06(3)(b), (d), (f), and (g), F.S.

⁷¹ *Id.*

petition is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless the Legislature reviews and renews the exemption before that date.

The bill also provides a statement of public necessity as required by the State Constitution, which notes:

[t]he Legislature finds it is a public necessity that criminal history records of human trafficking victims related to any offense listed in s. 775.084(1)(b)1. that was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction or a judgment of acquittal was rendered by a judge, or a verdict of not guilty was rendered by a judge or jury, and that are ordered to be expunged under s. 943.0583, F.S., be made confidential and exempt from 119.07(1), F.S., and s. 24(a), Article I of the State Constitution. Further, the Legislature finds that it is a public necessity that a petition filed under s. 943.0583, F.S., and all pleadings and documents related to the petition be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Persons who are victims of human trafficking and who have been arrested, charged, or convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. These victims face barriers to employment and loss of other life opportunities, and the fact that they are seeking expungement, as well as the information contained in related pleadings and documents, would expose these petitioners to possible discrimination due to details of their past lives becoming public knowledge. Therefore, it is necessary that these specified criminal history records, even though such record is related to certain serious offenses, and these petitions, pleadings, and related documents be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for petition for expunction of human trafficking victims and all pleadings and documents related to the petition, as well as expands the current exemption related to the specific criminal history records that can be expunged to new records, thus the bill will require two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Scope of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect human trafficking victims from exposure to possible discrimination due to details of their past lives becoming public knowledge. This bill exempts only those persons who are at risk of harm, and their criminal history records and the documents related to petitioning the court for such an expunction, which could pose a harm to them, from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0583 of 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.

By Senator Burgess

23-00234-23

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A bill to be entitled

An act relating to public records; amending s. 943.0583, F.S.; expanding an existing public records exemption relating to human trafficking victims seeking expunction of certain records related to an offense listed in s. 775.084(1)(b)1., F.S.; providing for future review and repeal of the expanded exemption; providing for the reversion of specified provisions if the exemption is not saved from repeal; providing that a petition for human trafficking victim expunction and all pleadings and documents related to the petition are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (3) of section 943.0583, Florida Statutes, is amended, subsection (12) is added to that section, and subsections (10) and (11) of that section are republished, to read:

943.0583 Human trafficking victim expunction.—

(3) (a) A person who is a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for one or more offenses committed or reported to have been committed while the person was a victim of human trafficking, which offense was

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

23-00234-23

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committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 and 847, without regard to the disposition of the arrest or of any charges.

(b) ~~However,~~ This section does not apply to any offense listed in s. 775.084(1)(b)1. if the defendant was found guilty of, or pled guilty or nolo contendere to, any such offense.

(c) Determination of the petition under this section should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. If a person is adjudicated not guilty by reason of insanity or is found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it prevent any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

(d) The expansion of the public records exemption in paragraph (b) to allow for the expunction of certain criminal history records related to an offense listed in s. 775.084(1)(b)1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on

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

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October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this subsection shall revert to that in existence on June 30, 2023, except that any amendments to this subsection other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of this subsection which expire pursuant to this paragraph.

(10)(a) A criminal history record ordered expunged under this section that is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record shall be made available:

1. To criminal justice agencies for their respective criminal justice purposes.

2. To any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties.

3. Upon order of a court of competent jurisdiction.

(b) A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(11)(a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person

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who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

(12)(a) A petition filed pursuant to this section and all pleadings and documents related to the petition are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds it is a public necessity that criminal history records of human trafficking victims related to any offense listed in s. 775.084(1)(b)1., Florida

23-00234-23

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Statutes, which offense was dismissed or nolle prosequi by the state attorney or statewide prosecutor or dismissed by a court of competent jurisdiction, or for which a judgment of acquittal was rendered by a judge or a verdict of not guilty was rendered by a judge or jury, and the records of which are ordered to be expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Further, the Legislature finds that it is a public necessity that a petition filed under s. 943.0583, Florida Statutes, and all pleadings and documents related to the petition be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been arrested, charged, or convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. These victims face barriers to employment and loss of other life opportunities, and the fact that they are seeking expungement, as well as the information contained in related pleadings and documents, would expose these petitioners to possible discrimination due to details of their past lives becoming public knowledge. Therefore, it is necessary that such specified criminal history records, even though such records are related to certain serious offenses, and such petitions, pleadings, and related documents be made confidential and exempt in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Section 3. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/22/23

Meeting Date

Rules

Committee

SB1210

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Cherie Krizan

Phone

214-679-8502

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/22/23

Meeting Date

Rules

Committee

1210

Bill Number or Topic

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 407-312-5374

Address 201 W Park Ave
Street

Email carnold@flaccb.org

Tallahassee

City

FL

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing: Florida
Conference of Catholic
Bishops

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Appropriations Committee on Health and
Human Services, *Vice Chair*
Appropriations Committee on Agriculture, Environment,
and General Government
Education Postsecondary
Ethics and Elections
Fiscal Policy
Health Policy
Rules

SENATOR ILEANA GARCIA
36th District

March 21, 2023

Chair Mayfield,

I am writing to respectfully request an absence excusal from the Committee on Rules scheduled for Wednesday, March 22nd, at 8:30 AM. Thank you for your consideration.

Sincerely,

Senator Ileana Garcia
District 36

REPLY TO:

- ☐ 2828 Coral Way, Suite 208, Miami, Florida 33145 (305) 442-6841
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

CourtSmart Tag Report

Room: KB 412

Caption: Senate Rules Committee

Case No.: -

Judge:

Type:

Started: 3/22/2023 8:31:14 AM

Ends: 3/22/2023 9:53:10 AM

Length: 01:21:57

8:31:12 AM	Recording Paused
8:31:12 AM	Recording Resumed
8:31:53 AM	Chair Mayfield calls meeting to order
8:31:54 AM	Roll call
8:32:04 AM	Quorum announced
8:32:42 AM	Senator Garcia is excused
8:32:46 AM	Pledge of Allegiance
8:33:07 AM	Chair with opening comments
8:33:32 AM	Tab 7 SM 1036 Florida National Guard
8:33:36 AM	Senator Wright explains the bill
8:33:42 AM	Questions
8:34:44 AM	Debate
8:34:51 AM	Senator Wright closes on the bill
8:35:04 AM	Roll call
8:35:06 AM	SM 1036 is reported favorably
8:35:51 AM	Tab 5 CS/SB 450 Death Penalty
8:35:54 AM	Senator Ingoglia
8:36:14 AM	Amendment Barcode 654152
8:36:20 AM	Senator Ingoglia explains the amendment
8:37:21 AM	Questions
8:37:31 AM	Senator Rouson
8:37:56 AM	Senator Ingoglia
8:39:31 AM	Senator Rouson
8:39:57 AM	Senator Ingoglia
8:40:43 AM	Senator Book
8:41:03 AM	Senator Ingoglia
8:41:52 AM	Senator Book
8:42:51 AM	Senator Ingoglia
8:43:27 AM	Senator Book
8:43:31 AM	Senator Ingoglia
8:44:22 AM	Senator Osgood
8:45:04 AM	Senator Ingoglia
8:45:52 AM	Senator Book
8:46:06 AM	Senator Ingoglia
8:46:24 AM	Senator Burton
8:46:42 AM	Senator Ingoglia
8:47:46 AM	Senator Burton
8:47:54 AM	Senator Ingoglia
8:47:56 AM	Debate
8:48:09 AM	Senator Ingoglia waives close
8:48:23 AM	Amendment is adopted
8:48:24 AM	Back on the bill
8:48:27 AM	Questions
8:48:32 AM	Appearance Forms
8:48:39 AM	Christie Arnold, FL Conference of Catholic Bishops, speaks
8:50:01 AM	Aaron Wayt, FL Assn of Criminal Defense Lawyers, speaks
8:52:48 AM	Mayor Rich Walker speaks
8:53:47 AM	Barbara DeVane, FL NOW, waives
8:53:52 AM	Pastor Marcus R. McCoy, Jr., waives
8:54:00 AM	Buddy Jacobs, General Counsel, FL Prosecuting Attys Assoc., waives
8:54:09 AM	Sara Elliott waives
8:54:16 AM	Cherie Crim waives

8:54:21 AM Ashlei Richardson, FL Public Defenders Association, waives
8:54:32 AM Debate
8:54:41 AM Senator Rouson
8:56:48 AM Senator Osgood
8:59:48 AM Senator Book
9:02:02 AM Senator Torres
9:04:05 AM Senator Baxley
9:06:06 AM Senator Hooper
9:07:20 AM Senator Burton
9:08:26 AM Chair Mayfield
9:10:02 AM Senator Ingoglia closes on the bill
9:16:22 AM Roll call
9:17:05 AM CS/SB 450 is reported favorably
9:17:12 AM Tab 4 SB 404 Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of
9:17:21 AM Senator Perry explains the bill
9:18:00 AM Questions
9:18:04 AM Late-filed Amendment Barcode 145616 - without objection
9:18:18 AM Senator Hutson explains the amendment
9:18:33 AM Questions
9:18:38 AM Debate
9:18:48 AM Senator Perry
9:18:59 AM Senator Hutson closes on the amendment
9:19:00 AM Amendment is adopted
9:19:05 AM Back on the bill
9:19:06 AM Questions
9:19:14 AM Appearance Forms
9:19:15 AM Cheri Crim waives
9:19:16 AM Ashlei Richardson waives
9:19:25 AM Debate
9:19:26 AM Senator Perry closes on the bill
9:20:03 AM Roll call
9:20:38 AM CS/SB 404 is reported favorably
9:20:42 AM Tab 8 SB 1210 Public Records/Human Trafficking Victims
9:20:52 AM Senator Burgess explains the bill
9:21:37 AM Questions
9:21:43 AM Senator Osgood
9:22:22 AM Senator Burgess
9:23:06 AM Appearance Forms
9:23:07 AM Cherie Crim waives
9:23:10 AM Christie Arnold waives
9:23:17 AM Debate
9:23:23 AM Senator Burgess waives close
9:23:28 AM Roll call
9:24:02 AM SB 1210 is reported favorably
9:24:07 AM Tab 6 SM 848 People of Iran
9:24:17 AM Senator Powell explains the bill
9:25:23 AM Questions
9:26:17 AM Debate
9:26:25 AM Senator Brodeur
9:28:27 AM Senator Powell closes on the bill
9:28:58 AM Roll call
9:29:34 AM SM 848 is reported favorably
9:29:36 AM Tab 1 SB 164 Controlled Substance Testing
9:29:52 AM Senator Polsky explains the bill
9:30:22 AM Questions
9:31:25 AM Amendment Barcode 384396
9:31:35 AM Senator Polsky explains the amendment
9:31:46 AM Questions
9:31:55 AM Debate
9:32:02 AM Senator Polsky waives close - amendment adopted
9:32:05 AM Back on the bill
9:32:11 AM Questions

9:32:14 AM	Senator Perry
9:32:38 AM	Senator Polsky
9:33:05 AM	Senator Perry
9:33:17 AM	Senator Polsky
9:33:25 AM	Chair Mayfield
9:33:54 AM	Senator Perry
9:34:26 AM	Senator Polsky
9:35:14 AM	Appearance Forms
9:35:23 AM	Sara Elliott waives
9:35:26 AM	Cherie Crim waives
9:35:33 AM	Nazbi Chowdbury, United Way of Broward County, waives
9:35:40 AM	Ashlei Richardson waives
9:35:46 AM	Jarrod Fowler, Florida Medical Association, waives
9:35:49 AM	Megan Fay, Florida Association of Nurse Anesthesiology, waives
9:35:56 AM	Debate
9:36:10 AM	Senator Book
9:36:45 AM	Senator Rouson
9:37:18 AM	Senator Perry
9:38:37 AM	Senator Boyd
9:39:18 AM	Senator Broxson
9:40:16 AM	Chair Mayfield
9:41:28 AM	Senator Polsky closes on the bill
9:42:51 AM	Roll call
9:43:26 AM	CS/SB 164 is reported favorably
9:43:31 AM	Tab 3 CS/SB 264 Interests of Foreign Countries
9:43:46 AM	Senator Collins explains the bill
9:45:01 AM	Questions
9:45:07 AM	Late-filed Amendment Barcode 833514 -without objection
9:45:19 AM	Senator Collins explains the amendment
9:46:52 AM	Questions
9:46:55 AM	Debate
9:46:58 AM	Senator Collins waives close
9:47:09 AM	Amendment adopted
9:47:10 AM	Back on the bill
9:47:11 AM	Questions
9:47:13 AM	Appearance Forms
9:47:18 AM	Isabelle Garbarino, Florida Department of Agriculture, waives
9:47:33 AM	Debate
9:47:40 AM	Senator Collins closes on the bill
9:48:04 AM	Roll call
9:48:41 AM	CS/CS/SB 264 is reported favorably
9:48:43 AM	Tab 2 CS/CS/SB 226 Support for Dependent Adult Children
9:49:02 AM	Senator Berman explains the bill
9:50:36 AM	Questions
9:50:37 AM	Appearance Forms
9:50:41 AM	Cherie Crim waives
9:50:43 AM	Sara Elliott waives
9:50:46 AM	Lisa Hurley, Family Law Section-FL Bar, waives
9:50:52 AM	Debate
9:50:56 AM	Senator Baxley
9:51:34 AM	Senator Berman waives close
9:51:42 AM	Roll call
9:52:20 AM	CS/CS/SB 226 is reported favorably
9:52:29 AM	Vote after motions
9:52:33 AM	Senator Jones
9:52:37 AM	Senator Broxson
9:52:51 AM	Without objection, motions adopted
9:52:56 AM	Senator Perry moves to adjourn
9:53:00 AM	Meeting adjourned